



Issues in Informed Consent

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Who May Give Informed Consent?

- A person who has both:
 - Legal authority to consent to medical treatment, and
 - Decisional capacity to make health care decisions



Legal Authority to Consent

- In general,
 - The person with legal authority to consent to treatment for an adult patient is the patient himself.
 - The person with legal authority to consent to treatment for a minor patient is the minor's parent (or guardian, or person standing in loco parentis)



Decisional Capacity

- The ability to make health care decisions (often described as “competence”)



Consent to Treatment for Adults

- General rule: Adults consent for themselves.
- Exceptions:
 - Adults without decisional capacity
 - Emergencies
- For adults without decisional capacity, need a substituted decision-maker.



Substituted Decision-Makers

- Formal substituted decision-makers:
 - Some legal guardians
 - Persons with health care power of attorney
- Informal substituted decision-makers
 - Probably okay to accept spouse, parent, or other adult relative as a substituted decision-maker



Who May Consent to Treatment for a Minor?

- General Rule: Parental Consent
 - Parent, guardian, or person standing in loco parentis must consent
- Exceptions:
 - Emergencies/urgent circumstances
 - Parent's temporary absence
 - Minor's consent rule
 - Emancipated minors



Minor's Consent Rule (GS 90-21.5)

- Gives unemancipated minors the legal authority to consent to treatment for the prevention, diagnosis, or treatment of:
 - Reportable communicable diseases
 - Pregnancy
 - Abuse of controlled substances or alcohol
 - Emotional disturbance



Minor's Consent Rule (cont.)

- Gives legal authority to consent
- But health care provider should not accept minor's consent if minor does not have decisional capacity to consent



Minor's Consent Rule FAQs

- What's the minimum age for minor to consent under minor's consent rule?
 - Statute says “any” minor may consent – don't take literally.
 - No bright-line rule setting a minimum age. Issue is decisional capacity, not age. Decide on case-by-case basis.
 - Obviously, younger minors less likely to have decisional capacity.



Minor's Consent Rule FAQs

- Can you tell a minor's parent about treatment minor receives on his/her own consent?
 - Usually, no. Two exceptions:
 - If notifying the parent is essential to the life or health of the minor, *should* notify.
 - If parent contacts the health care provider and asks about the treatment, *may* notify (but don't have to).



Special rule for immunizations GS 130A-153(d)

- Physician or local health department may immunize a minor who is presented for immunization by an adult who signs a statement that he or she has been authorized to obtain the immunization.



The “public health exception”: Treatments required by law

- Examples from NC law:
 - Immunizations
 - Examinations/treatments that are CD control measures
 - Bloodborne pathogen tests ordered after an exposure incident



Treatments required by law

- Exception to usual rules of informed consent:
 - Patient does not have legal right to refuse the treatment, so “consent” is coerced, not voluntary.
 - Patient does not weigh options and make an informed choice.



How to deal with refusals of treatments required by law?

- Patient does not have to give *consent*, but still needs to *submit*.
- Explain legal requirements and legal consequences of refusal.
- If patient still refuses to submit, don't force treatment, *enforce* it.



HIV testing in NC (GS 130A-148)

- General rule: Informed consent required
 - Adults can consent
 - Minors:
 - Parent, guardian, or person standing in loco parentis can consent
 - Minor with decisional capacity can consent under minor's consent rule



HIV testing in NC – Special Circumstances

- State CD rules can require tests when necessary to protect the public health
- Physician can order test for person incapable of consenting, if no substitute decision-maker is available and test is necessary for medical care



HIV testing in NC – Special Circumstances (cont.)

- If a minor can't consent on own, and parent/guardian refuses consent, minor may still be tested if there is reasonable suspicion of either of the following:
 - The minor is infected, or
 - The minor has been sexually abused



HIV testing in NC – Special Circumstances (cont.)

- Pregnant women must be given HIV pre-test counseling as early in pregnancy as possible. Health care provider must test woman unless she refuses to give informed consent after being counseled.