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
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.
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.