Who Can Give Informed Consent and What is the Nurse's Role in Obtaining Consent for Treatment?

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Nurses are often confused as to what their role is when obtaining consent for treatment. In most employment settings, the employer has adopted a policy concerning the nurse's role and when such a policy exists, it should be followed. If questions arise about the policy, seeking information out from resources within the facility, including the nurse manager or the risk manager, is a good idea.

As you know from previous Bulletins, informed consent for treatment is essential in order to avoid allegations of assault and battery and other possible legal accusations. What may not be as clear is who can give consent for treatment.

An adult 18 years of age and older can give consent for his or her own treatment, unless they have a guardian who is designated to provide consent for the individual. Since there is a presumption of competency of all adults, including an elderly patient, when there is a question that the individual patient cannot give his or her consent for treatment, a judicial determination and/or a medical evaluation by a neurologist, psychiatrist or other specific health care providers must take place and be documented. 1 In short, incompetency cannot be presumed.

If a patient designates another to provide informed consent for him or her during a specific procedure, the employer's policy should provide such a form and the patient can fill it out. Or, a patient may come into your facility with a durable power of attorney for health care appointing someone, such as a daughter or husband, to provide consent. Again, the policy should be consulted and followed.

A minor, someone who is 17 years and younger, is generally considered not competent to make informed consent decisions. As a result, it is the minor's parents who provide the informed consent for treatment. There are exceptions to this rule, however, and they include if the minor is married, if the minor is pregnant, or if the minor is considered "emancipated". 2 Each state has its own laws concerning exceptions to the general rule, so your employer's policy should include those exclusions.

In an emergency situation, if the patient, including a minor, is unable to provide his or her own consent, consent is presumed and treatment is provided absent directions to the contrary (e.g., a living will or durable power of attorney for health care or other such form).

Another general principle of informed consent is that it is the health care provider doing the procedure

or treatment that obtains the informed consent of the patient, including a nurse midwife or nurse anesthetist, as examples. Obtaining informed consent is a process that requires a detailed exchange of information concerning the treatment or procedure so that the patient can make a knowledgeable choice about the proposed plan.

So, with your employer's policy as a guide, what is your role in obtaining the informed consent of the patient? Generally, you are responsible for:

- Ensuring that the consent form is signed by the appropriate person—e.g., the patient, the guardian, the agent under a durable attorney for health care. Your only role is as a witness to the person putting his or her signature on the form and dating the form. The forms provide a place for your signature as the witness and the date as well;
- Document that the signature was obtained, including the date and time in the nursing notes;
- If the patient seems confused about the procedure or has additional questions, your role is one of an advocate for the patient. Instruct the patient not to sign the form until the requested information is obtained, notify the appropriate health care provider (e.g., physician, surgeon, nurse practitioner) and document same;
- You can explain the nursing care that will take place after the procedure or treatment, what medications you administered or will administer, and any other aspect of *nursing* care; and
- Provide comfort and support to the patient and his family or guardian while waiting for the procedure or treatment to begin.

FOOTNOTES

See, as examples, Elena Nichols and Peter Buckley (2007), "Informed

Consent And Competency: Doctor's Dilemma On The Consultation Liaison Service", 4(3) Psychiatry, 53-55. Available at http://ncbi.nlm.nih.gov/pmc/articles/PMC29223591. Accessed 5/15/13; Deborah Bowman, John Spicer and Rehana Iqbal (2012). Informed

Consent: A Primer For Clinical Practice. NY: Cambridge University Press.

1. See, Ann Maradiegue (2003), "Minor's Rights Versus Parental Rights: A

Review Of Legal Issues In Adolescent Health Care", 48 (3) Journal

Of Midwifery And Womens' Health. Available at http://medscape.com/viewarticle/456472 . Accessed 5/14/13.

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