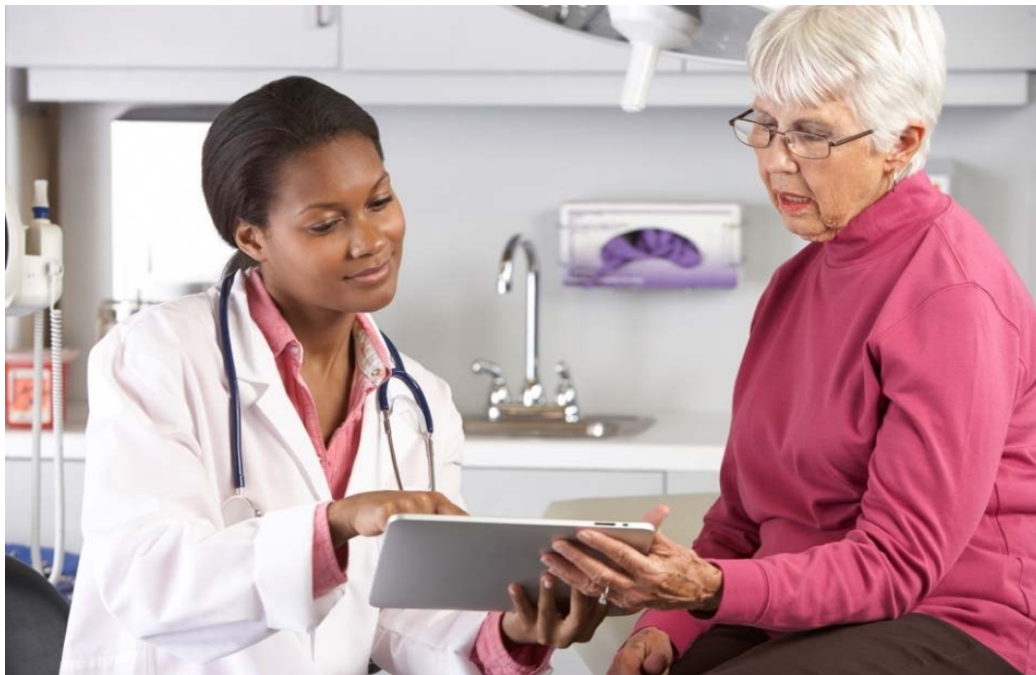

Consent, Refusal, and Advance Directives



Kim C. Stanger

Compliance
Bootcamp

(3-17)

This presentation is similar to any other legal education materials designed to provide general information on pertinent legal topics. The statements made as part of the presentation are provided for educational purposes only. They do not constitute legal advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the speaker. This presentation is not intended to create an attorney-client relationship between you and Holland & Hart LLP. If you have specific questions as to the application of law to your activities, you should seek the advice of your legal counsel.



Fun!



True or False?

1. A provider may disregard a competent patients' refusal if necessary to save the patient.
2. If the patient lacks capacity, the provider may provide necessary care that is in the patient's best interests.
3. Mature minors may consent to their own healthcare.
4. Pregnant minors may consent to their own care.
5. Consents must be written to be valid.

True or False?

6. Written consents are valid for one year.
7. Living wills, durable powers of attorney, POSTs, and DNRs are the only valid advance directives in Idaho.
8. Advance directives must contain statutory elements to be valid.
9. POST forms must be completed by a physician.
10. Advance directives are automatically suspended during surgeries.

Overview

- Informed Consent
- Refusal of Consent
- Withdrawing from Care
- Advance Directives
- Mental Holds





Written Materials

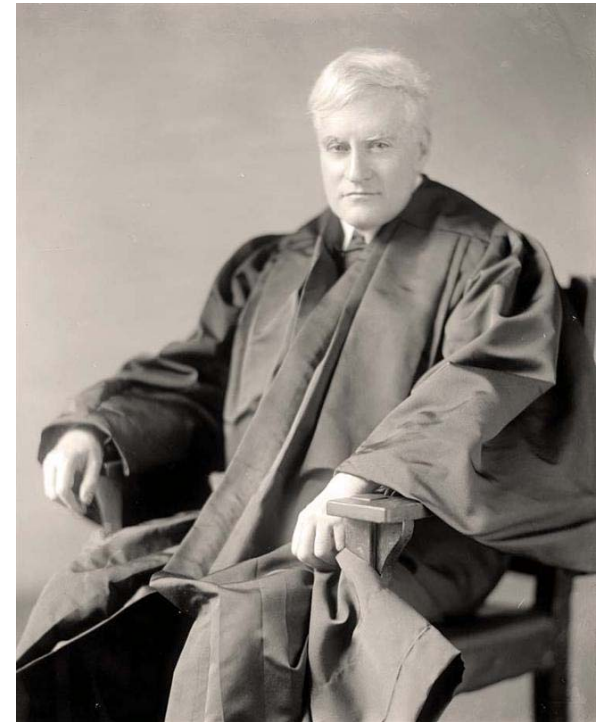
- Idaho Medical Consent Act, IC 39-4501 et seq.
- Article, *Medical Consents in Idaho: A Primer*, Univ. of Idaho L. Review
- Sample Informed Consent Policy
- Idaho Mental Hold Law, IC 66-326
- Idaho Shelter Care Act, IC 16-2411

Informed Consent



Consent: General Principles

- “Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages.” Justice Cordozo, *Schloendorff v. Soc’y of N.Y. Hosp.*, 105 N.E. 92, 93 (N.Y. 1914)



Consent: General Principles

- Must have valid consent for treatment.
- If patient lacks capacity to consent:
 - Check for advance directive, or
 - Obtain consent from authorized representative.
- In an emergency and no time to obtain consent, provide necessary care.
- Must provide sufficient information to ensure that the consent is informed.

Consent: Liability

- Failure to obtain consent =
 - Lack of informed consent tort
 - Battery
 - False imprisonment
 - Malpractice
 - Other?
- Penalties
 - Criminal fines
 - Prison
 - Civil damages
 - Adverse licensure action

**Informed
consent is a
defense**

Lack of Informed Consent

- Treat patient who lacks capacity to consent to their own care (e.g., patient medicated, intoxicated, underage, etc.).
- Ignore patient's prior wishes or decisions (e.g., provides care contrary to advance directive).
- Continue treatment even though patient has objected or withdraws consent.
- Provides treatment that exceeds scope of consent.
- Fails to inform patient of sufficient info reasonably necessary to enable patient to make an informed decision.
- Fails to effectively communicate with patient so as to convey or receive informed consent (e.g., limited English proficiency, disability, etc.).

Medical Consent and Natural Death Act (IC 39-4501 et seq.)



Capacity

- “Any person who comprehends the need for, the nature of and the significant risks ordinarily inherent in, any contemplated ... health care, treatment or procedure is competent to consent thereto on his or her own behalf.”
- “Any health care provider may provide such health care and services in reliance upon such a consent if the consenting person appears to the health care provider securing the consent to possess such requisite comprehension at the time of giving consent.”

(IC 39-4503, emphasis added)

Capacity: Minors

- May minors consent to their own care?



Minor's Capacity

- Consent for the furnishing of health care to [1] any person who is not then capable of giving such consent or [2] **who is a minor** may be given or refused by the following, provided that the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care:
 - Court appointed guardian.
 - Person named in living will and durable power of attorney.
 - Spouse.
 - Adult child.
 - Parent.
 - Delegation of parental authority per IC 15-5-104.
 - Relative.
 - Any other competent person representing himself or herself to be responsible for health care.

(IC 39-4504(1))

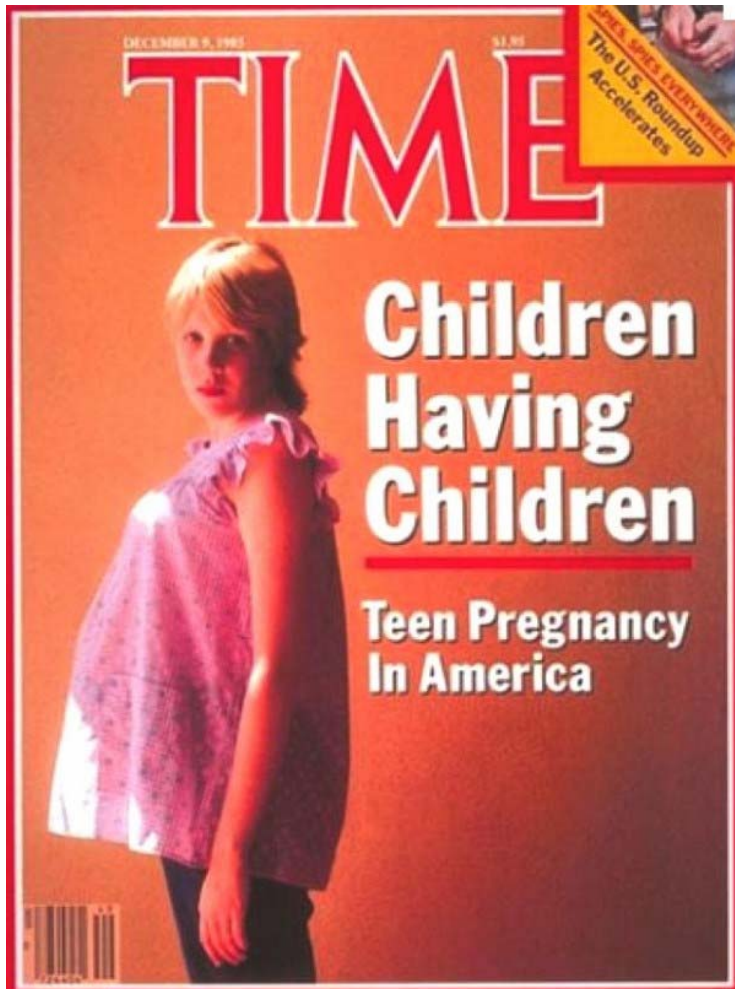
Capacity: Minors

- Conservative approach: do not allow minor to consent to their own care unless:
 - Minor is emancipated.
 - Statute authorizes minor to consent to their own care.
 - Statute authorizes care regardless of consent.
- Mature minor doctrine might apply, but be careful.

Minor's Capacity” Emancipation

- Minor is probably emancipated and able to consent to their own healthcare if:
 - **Married or has been married** (*see* IC 18-604(3))
 - **In armed forces** (*see* IC 18-604(3))
 - **Living on own and self-sufficient** (*see* IC 66-402(6))
 - **Court declares them emancipated** (*see* IC 16-2403(1))
- Must still satisfy the basic test, i.e., be able to “comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated ... health care...”
(IC 39-4503)

Minor's Capacity: Emancipation



- *What about pregnant minors?*

Minor's Capacity: Emancipation

- Pregnancy is probably not an emancipating event.
 - “Capacity to become pregnant and capacity for mature judgment concerning the wisdom of bearing a child or having an abortion are not necessarily related.”
(IC 18-602)
 - “To protect minors from their own immaturity”, abortions for “pregnant unemancipated minors” generally require:
 - Parental/guardian consent, or
 - Judicial finding that minor is mature and capable of giving informed consent.
(IC 18-602, 18-609A)
- *If pregnancy were an emancipating event, you would not need parental consent for abortion.*

Minor's Capacity: Statutes Allow Minor Consent

- Emergency medical exam and stabilizing treatment in hospital. (HHS Interpretive Guidelines to 42 CFR 489.24)
- Examinations, prescriptions devices, and info regarding contraceptives if practitioner determines that minor has sufficient intelligence and maturity to understand the nature and significance of treatment. (IC 18-603)
- Family planning services funded by Title X of the Public Health Services Act. (42 USCX300(a))

Minor's Capacity: Statutes Allow Minor Consent

- Drug treatment or rehab. (IC 37-3102)
 - If minor is age 16 or older, cannot notify parents without minor's consent.
- Age 14: testing or treatment for reportable infectious or communicable disease. (IC 39-3801)
- Age 14: hospitalization for observation, evaluation and treatment for mental condition. (IC 66-318(a)(2))
 - Treating facility must notify parents
- Age 17: unpaid blood donations. (IC 39-3701)
- Others?

Mature Minor Doctrine

- In other states, minors with sufficient maturity may consent to their own care.
- Idaho statutes are ambiguous.
 - IC 39-4503 states “any person” of sufficient comprehension may consent to or refuse their own care. *See also* IC 18-603 and 18-609A; Idaho AG Op. (2/16/10).
 - IC 39-4504 identifies those who may consent for minors.
- No Idaho cases resolving the conflict.

Mature Minor Doctrine

- At some point, constitutional right of privacy or parenthood will likely be decisive.
 - Individual probably has fundamental right to make decisions about themselves and their offspring, especially in matters of reproductive rights. *See, e.g., Carey v. Population Services Int'l* (S.Ct. 1977)
 - But we don't have any Idaho cases regarding this right now.
- Until then, you may want to consider what Idaho judge or jury would think...

Mature Minor Doctrine

- Risks of allowing minor to consent to their own care absent express statute or case:
 - May expose practitioner to liability if court concludes minor lacked capacity to consent.
 - May limit ability to disclose info to parents.
 - May limit ability to obtain payment.

Mature Minor Doctrine

- As general rule, practitioners should require parental consent unless minor is emancipated or statute applies.
- If rely on mature minor doctrine, be careful; consider, and document relevant factors.
 - Age
 - Maturity, intelligence and understanding per IC 39-4503
 - Nature of treatment, including risks

Authority: Surrogates

- “Consent for the furnishing of ... health care ... to [1] any person who is not then capable of giving such consent ... or [2] who is a minor may be given or refused in the order of priority set forth hereafter; provided
 - that the surrogate decision maker shall have sufficient comprehension as required to consent to his or her own health care, and
 - the surrogate decision maker shall not have authority to consent to or refuse health care contrary to such person's advance directives, POST or wishes expressed by such person while the person was capable of consenting to his or her own health care.”

(IC 39-4504(1))

Authority: Surrogates

- **Surrogate decision makers**
 - Court appointed guardian.
 - Person named in living will and durable power of attorney if conditions triggering authority are satisfied.
 - Spouse.
 - Adult child.
 - Parent.
 - Delegation of parental authority per IC 15-5-104.
 - Relative representing himself as appropriate responsible person to act under the circumstances.
 - Any other competent person representing himself or herself to be responsible for health care.

(IC 39-4504(1))

Authority: Surrogates

- Surrogate who, in good faith, gives consent for another is immune from civil liability.
- Practitioner who, in good faith, obtains consent from apparently competent patient or other authorized surrogate is immune from civil liability.

(IC 39-4504(2)-(3))

Authority: Emergency

- “If the person [1] presents a medical emergency or there is a substantial likelihood of his or her life or health being seriously endangered by withholding or delay in the rendering of ... health care to such person and the person [2] has not communicated and is unable to communicate his or her treatment wishes, the attending health care provider may, in his or her discretion, authorize and/or provide such health care, as he or she deems appropriate, and all persons, agencies and institutions thereafter furnishing the same, including such health care provider, may proceed as if informed, valid consent therefor had been otherwise duly given.”

(IC 39-4504(1))

Authority: Emergency

- “No ... physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital or health services to any individual regardless of age where [1] that individual is unable to give this consent for any reason and [2] there is no other person reasonably available who is legally authorized to consent to the providing of such care, provided, however, [3] that such person, physician, or hospital has acted in good faith and without knowledge of facts negating consent.”

(IC 56-1015)

Authority: Statutes

Some statutes allow treatment without consent.

- Treatment of infant by “safe haven”. (IC 39-8203)
- Minor taken brought to “shelter care”. (IC 16-2411)
- Certain tests and treatments for newborns, including germicide and PKU tests. (IC 39-903, -909, -912)
 - **Parents may refuse based on religion.**
- Limited testing or treatment ordered by law enforcement, such as blood test for DUI or testing of prisoners for communicable diseases. (IC 18-8003, -8002; 39-604)

Form of Consent

- “It is not essential to the validity of any consent ... that the consent be in writing or any other specific form of expression.”

(IC 39-4507)

- Under Idaho law, consent may be:

- Implied

- Oral

- Written

The more significant the treatment, the greater the need to document informed consent.

- Other laws or payor standards may require documented consent, e.g.,
 - COPs 42 CFR 482.13(b), 482.24(c)(2)(v), 42 CFR 482.51(b)(2); 485
 - Joint Commission RC.02.01.01

Form of Consent

- “When the giving of such consent is recited or documented in writing and expressly authorizes the care ..., and when such writing or form has been executed or initialed by a person competent to give such consent for himself or another, such written consent, in the absence of convincing proof that it was secured maliciously or by fraud, is presumed to be valid for the furnishing of such care..., and the advice and disclosures of the attending [practitioner], as well as the level of informed awareness of the giver of such consent, shall be presumed to be sufficient.”

(IC 39-4507)

Form of Consent: Suggestions



Invasiveness and Risks

- **Specific consent: significant treatment**
 - Communication about specific treatment.
 - Pre-published forms may help provide info and document consent, but beware undue reliance.
 - Medical record notes confirming that elements of consent satisfied, e.g., patient competency, discussion, understanding, questions/answers.
- **General consent: upon registration**
 - Covers basic treatment activities, e.g., physical exams, basic medications, diagnostic tests, labs and pathology, photos, etc.
- **Implied consent**

Form of Consent: Consent Form

- Name and signature of patient or legal representative.
- Name of the provider.
- Name of treatment or procedures.
- Name of all practitioners performing the procedure and individual significant tasks if more than one practitioner.
- Risks and benefits.
- Alternative procedures and treatments and their risks .
- Date and time consent is obtained.
- Statement confirming procedure was explained to patient.
- Signature of person witnessing the consent.
- Name and signature of person who explained the procedure to the patient or guardian.

(See CMS SOM to 42 CFR 482.24(c)(2)(v))

Informed Consent

- “Consent, or refusal to consent, for the furnishing of health care ... shall be valid in all respects if the person giving or refusing the consent is sufficiently aware of pertinent facts respecting [1] the need for, [2] the nature of, and [3] the significant risks ordinarily attendant upon such a person receiving such care, as to permit the giving or withholding of such consent to be a reasonably informed decision.”

(IC 39-4506)

Informed Consent

- “Any such consent shall be deemed valid and so informed if the health care provider ... has made such disclosures and given such advice respecting pertinent facts and considerations as would ordinarily be made and given under the same or similar circumstances, by a like health care provider of good standing practicing in the same community. As used in this section, the term "in the same community" refers to that geographic area ordinarily served by the licensed general hospital at or nearest to which such consent is given.

(IC 39-4506)

- *“What info would other practitioners in community give?”*

Informed Consent

Informed Consent = Communication

- Practitioner communicates info relevant to treatment
- Patient understands the material facts, e.g., benefits, risks, and likely consequence of the proposed treatment and alternatives.
- Patient makes informed decision to consent or refuse treatment.

Consent form = Documentation

- Supplements oral or other info given by the practitioner.
- Documents that the communication process took place, e.g., that practitioner communicated relevant info, patient understood info, and patient made voluntary, informed decision.

Informed Consent

- Beware situations where consent may not be informed.
 - Patient lacks sufficient education, intelligence or maturity to understand relevant considerations.
 - Patient does not speak the same language or suffers from disability.
 - Patient is medicated, distracted, stressed, etc.

Informed Consent

- Ensure that patient understands.
 - Evaluate whether patient is in a condition so as to be able to process relevant info.
 - Speak at the patient's level of understanding.
 - Beware language barriers.
 - Discrimination statutes may require interpreters, translators, or communication aids.
 - Supplement oral communications with written or visual material and documentation.
 - Give the patient an opportunity to ask questions and receive answers.

Informed Consent

- Informed consent typically requires disclosure of:
 - Nature of proposed treatment.
 - Potential benefits, risks or side effects, including problems that might occur during recuperation.
 - Likelihood of achieving goals.
 - Reasonable alternatives.
 - Relevant risks, benefits and side effects of alternatives, including consequences of not receiving care.
 - Persons who will perform significant aspects of treatment.
- *What information would you want to make informed decision?*

Informed Consent: Therapeutic Privilege

- In some states, provider may refuse to disclose certain information to patient if non-disclosure is determined to be in the patient's best interests.
- HIPAA allows provider to refuse to disclose info to patient to avoid substantial risk of harm.

(45 CFR 164.524)

- Use cautiously!
 - No Idaho precedent.
 - Contrary to general presumption that patient is entitled to make informed decision.
 - If invoke, document basis.

Scope and Duration

- Consent is generally limited to specific procedure or course of treatment for which consent was given and any incidental, included procedures.
- Consent generally does not extend to procedures outside scope of original consent.
- New consent should be obtained if change in circumstances, e.g.,
 - change that impacts risk.
 - change in method or treatment.
 - change in providers.
 - significant lapse in time.

Scope and Duration

- If possible, obtain consent sufficiently in advance to give patient time to consider and decide on alternatives.
 - Depends on circumstances.
- But not so far in advance that circumstances might change.
 - Obtain or reaffirm consent if too much time has passed or circumstances have changed.
- Beware “old” consents because circumstances may have changed.

Responsibility for Obtaining Consent

- “A licensed hospital and any employee of a health care provider, acting with the approval of such an attending or other individual health care provider, may perform the ministerial act of documenting such consent by securing the completion and execution of a form or statement in which the giving of consent for such care is documented by or on behalf of the person.”

(IC 39-4508)

Responsibility for Obtaining Consent

- “Obtaining sufficient consent for health care is the duty of the attending health care provider upon whose order or at whose direction the contemplated health care ... is rendered.”

(IC 39-4508)

- Practitioner is the person with the knowledge, training and licensure necessary to diagnose condition and have effective communication.
- Practitioner is the person who will be liable for failure to obtain informed consent.

Refusal of Treatment



Refusal of Treatment: Patient Self-Determination

- Idaho “recognizes the established common law and the fundamental right of [competent] persons to control the decisions relating to the rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn....”

(IC 39-4509)

- Right to consent = right to refuse care or withdraw consent.

(See IC 39-4502(7), “‘Consent to care’ includes refusal to consent to care and/or withdrawal of care.”)

Refusal of Treatment: “Against Medical Advice”

- Provide sufficient info to allow patient to make informed refusal.
- Document in chart:
 - Patient’s competency.
 - Explanation of risks and benefits.
 - Practitioner’s attempt to obtain patient’s informed consent.
 - Patient’s signature confirming voluntary decision.
 - Witnesses.
- Attempt to obtain patient’s signed refusal.

Refusal of Treatment: Surrogates

- Consent for health care “may be given or refused” by the authorized surrogate.

(IC 39-4504(1))

- “Health care ... shall be withdrawn and denied in accordance with a valid directive” from:
 - a competent patient,
 - a patient's health care directive, or
 - by a patient's surrogate decision maker.

Exception: developmentally disabled person.

(IC 39-4514(3))

Refusal of Treatment: Surrogates

- Child neglect = “without proper ... medical or other care ... necessary for his well-being because of the conduct or omission of his parents, guardian or other custodian or their neglect or refusal to provide them.”

(IC 16-1602(25))

- Vulnerable adult neglect = “failure of a caretaker to provide ... medical care reasonably necessary to sustain the life and health of a vulnerable adult...”

(IC 39-5302(8))

- Providers must report suspected neglect.

(IC 16-1605; 39-5303)

Refusal of Treatment: Surrogates

- Parents or guardians may decline treatment based on religious beliefs.
 - Idaho does not “require the granting of permission for or on behalf of any patient who is not able to act for himself by his parent, spouse or guardian in violation of the religious beliefs of the patient or the patient’s parent or spouse.”

(IC 39-4501(3))

- “No child whose parent or guardian chooses for such child treatment by prayers through spiritual means alone in lieu of medical treatment shall be deemed for that reason alone to be neglected or lack parental care necessary for his health and well-being.”

(IC 16-1602(25))

Refusal of Treatment: Surrogates

- “The right to practice religion freely does not include the right to expose the community or the child to ... ill-health or death... Parents may be free to become martyrs themselves. But it does not follow they are free ... to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.”

(Prince v. Massachusetts, 328 U.S. 158 (1944))

Refusal of Treatment: Surrogates

- Court may order treatment despite surrogate's refusal.
 - For children: IC 16-1627 creates process for obtaining expedited authority to provide emergency care.
 - For adults: ?

Refusal of Treatment: Surrogates

- Practical advice for situations where surrogates refuse treatment recommended by provider:
 - If parents disagree regarding treatment:
 - Treatment not urgent: let them work it out.
 - Treatment is urgent: rely on consent for necessary care.
 - If treatment is not necessary to patient's wellbeing, provider should generally respect surrogate's authority.
 - If treatment is necessary, provider may need to report matter to appropriate authorities and let them handle.
 - Provider may petition the court directly or through appointment of temporary guardian.
- Beware providing treatment without authority.

Refusal of Treatment: Developmentally Disabled

- To withhold or withdraw life-sustaining treatment, attending physician + one other physician must certify:
 - Patient has terminal condition such that the application of artificial life-sustaining procedures would not result in the possibility of saving or significantly prolonging the life of the developmentally disabled patient;
 - Procedures would only prolong the moment of the patient's death for a period of hours, days or weeks; and
 - Death is imminent, whether or not the life-sustaining procedures are used.

(IC 66-405(8))

- With modern technology, it is very difficult to satisfy this standard.

Refusal of Treatment: Baby Doe Regs

- Baby Doe Regs apply to “infants”.
 - less than one year of age, or
 - older than one year of age but less than two years of age who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long term disability.

(IDAPA 16.06.05.004.07)

- Providers must report neglect of infants, including “withholding of medically indicated treatment from disabled infants with life-threatening conditions.”

(IDAPA 16.06.05.020)

Advance Directives



Advance Directives

- Competent adult patients “have the fundamental right to control the decisions relating to their rendering of their medical care, including the decision to have life-sustaining procedures withheld or withdrawn.”

(IC 39-4509)

- Competent adult may express their directives through:
 - Direct instructions by competent patient.
 - Be sure to document same.
 - Advance directives executed in case the patient becomes incompetent or unable to communicate.
(See IC 39-4510)

Advance Directives

- Living Will
- Durable Power of Attorney
- Physician's Order for Scope of Treatment ("POST")
- Do Not Resuscitate ("DNR")
- Mental Health Care Directives
- Others?

Advance Directives

- “Directive,’ ‘advance directive’ or ‘health care directive’ means a document that substantially meets the requirements of [IC 39-4510(1)] or is a "Physician Orders for Scope of Treatment" (POST) form or is another document which represents a competent person's authentic expression of such person's wishes concerning his or her health care.”

(IC 39-4502(8)).

Advance Directives

- Do not get too hung up on technical compliance with form.
- “It is not essential to the validity of any consent for the furnishing of hospital, medical, dental or surgical care, treatment or procedures that the consent be in writing or any other specific form of expression.” (IC 39-4507).
- “It is the intent of the legislature to establish an effective means for such communication. It is not the intent of the legislature that the procedures described in sections 39-4509 through 39-4515 [e.g., living wills, DPOAs, or POSTs] are the only effective means of such communication.... Any authentic expression of a person's wishes with respect to health care should be honored.”

(IC 39-4509(3)).

[www.ag.idaho.gov/livingWills/
livingWills_index.html](http://www.ag.idaho.gov/livingWills/livingWills_index.html)

The screenshot shows a Windows Internet Explorer browser window displaying the website for the Idaho Office of the Attorney General. The address bar shows the URL: http://www.ag.idaho.gov/livingWills/livingWills_index.html. The browser's Favorites bar includes links to various resources like HH Secure, HIPAA (160), AHLA Lists, AKS (2), CMS home, CMS Stark, eCFR, EMTALA guidelines, Gmail, HIPAA, Hotmail, Idaho Statutes, IDAPA DHW, IDSOS Search, MapQuest, and Nursing Facilities. The website header features the text "OFFICE OF THE ATTORNEY GENERAL STATE OF IDAHO" and a portrait of Lawrence G. Wasden. A navigation menu includes links for Home, Consumers, Victims, News, Careers, Opinions, About Us, Contact Us, and Search. The main content area is titled "Living Wills and Idaho's Natural Death Act" and contains two paragraphs of text. The first paragraph discusses planning for retirement, weddings, and education, noting that health choices at the end of life are often unplanned. The second paragraph discusses planning for property transfer and the well-being of family members, emphasizing the importance of living wills and advance directives. To the right of the text are three buttons: "Living Will FAQs", "Download Form", and "Senior Resources". A sidebar on the left lists various office services such as "About Our Office", "Concealed Weapons", "Consumer Protection", "Internet Safety", "Living Wills" (with links to "Download PDF Form" and "FAQs"), "Medal of Honor", and "Media Center". The Windows taskbar at the bottom shows the system tray with the date and time: 3:30 PM, 1/25/2014.

Presumed Consent to Resuscitation

- Consent for CPR is presumed unless:
 - Surrogate decision-maker communicates patient's wishes not to receive CPR and any conditions have been met;
 - Living will or DPOA is in effect in which patient declined CPR and conditions have been met; or
 - POST is in effect in which patient declined CPR and conditions have been met.

(IC 39-4514(5))

Revocation of Advance Directive

- Maker may revoke at anytime by:
 - Intentionally canceling, defacing, obliterating, burning, tearing, or otherwise destroying the document by maker or in maker's presence and at maker's direction.
 - Written revocation signed by maker.
 - Oral revocation by maker.
- * *What about other manifestation?*
- Maker is responsible for notifying provider.
- Provider not liable for failing to act on revocation unless provider has actual knowledge of revocation.

(IC 39-4511A)

Suspension of Advance Directive

- Advance directive is NOT automatically suspended during surgery.
- Maker may suspend an advance directive at anytime by:
 - Written, signed suspension by maker expressing intent to suspend.
 - Oral expression by maker expressing intent to suspend.
- * *What about other manifestation?*
- Upon meeting the termination terms of the suspension as defined by the maker, the living will, DPOA, POST or other advance directive will resume.

Immunity for Acting per Advance Directive

- Providers and facilities are immune from liability if:
 - Provider acts in good faith pursuant to the directives in a facially valid advance directive.
 - If provider cannot assist due to conscience, provider makes good faith effort to help patient obtain services of another provider before withdrawing from care of patient.
- Persons who exercise responsibilities of a DPOA in good faith are immune from liability.

(IC 39-4513)

Idaho Health Care Directive Registry

- Patient may register advance directive in the Idaho Health Care Directive Registry at www.sos.idaho.gov/general/hcdr.htm.
- Providers may, but are not required to, check registry.



www.sos.idaho.gov/general/hcdr.htm

IDSOS Health Care Directive Registry - Windows Internet Explorer provided by Holland and Hart, LLP

http://www.sos.idaho.gov/general/hcdr.htm

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IDSOS Health Care Directive Registry

Page Safety Tools

 IDAHO SECRETARY OF STATE
Legislative and Executive Affairs

Ben Yursa, Secretary of State

Health Care Directive Registry

LogIn to search the Registry

Forms below are provided in PDF format.

If you have Adobe Reader 4.0 or above, the forms can be filled out on your screen and printed out.

[Idaho Health Care Directive Registry Form](#)

[Living Will and Durable Power of Attorney for Health Care](#)

[Frequently Asked Questions](#)

[Here is the link](#) to the Attorney General's information about living wills.

Step 1: Fill out the Idaho Health Care Directive Registry form.

This authorizes the Secretary of State's office to file your documents in the Idaho Health Care Directive Registry.

Attach your Living Will and Durable Power of Attorney for Health Care.

Although it is not required, it is recommended that your Living Will and Power of Attorney for Health Care be witnessed or notarized.

If you already have these documents.
Compare them to the form provided on this page to be sure that they substantially contain the information required.

If you do not have these documents.
Click on the link to open the Living Will and Durable Power of Attorney for Health Care form.

You can also request that a packet be mailed to you by calling (208) 332-2814.

Done

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Mental Holds in Idaho



Mental Hold

- Rules differ for:
 - Facilities that have a psych ward and are licensed or authorized to treat psych conditions.
 - Statutes allow for 24-hour or 72-hour hold. (See IC 66-318 to -322)
 - Hospitals without psych facilities who may receive a psych patient.
 - Statutes allow for mental hold to obtain exam by designated examiner. (IC 66-326)
 - Adult v. Minor

Adult: Mental Hold



- 24-hour mental hold at hospital initiated by:
 - a peace officer, or
 - medical staff member, physician’s assistant, or advanced practice registered nurse at a hospital to which person is brought for care,
- if the officer or practitioner has reason to believe that:
 - the person is gravely disabled due to mental illness or
 - the person’s continued liberty poses an imminent danger to that person or others, as evidenced by a threat of substantial physical harm.

(IC 66-326)

Adult: Mental Hold

"Mentally ill" means a person, who as a result of a substantial disorder of thought, mood, perception, orientation, or memory, which grossly impairs judgment, behavior, capacity to recognize and adapt to reality, requires care and treatment at a facility or through outpatient treatment.

(IC 66-317(12))

Adult: Mental Hold

"Gravely disabled" means a person who, as result of mental illness, is:

- (a) In danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs, such as nourishment, or essential clothing, medical care, shelter or safety; or
- (b) Lacking insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, be in danger of serious physical harm due to the person's inability to provide for any of his own basic personal needs such as nourishment, essential clothing, medical care, shelter or safety.

(IC 66-317(13))

Adult: Mental Hold

"Likely to injure himself or others" means either:

- (a) A substantial risk that physical harm will be inflicted by the proposed patient upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or
- (b) A substantial risk that physical harm will be inflicted by the proposed patient upon another as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or
- (c) The proposed patient lacks insight into his need for treatment and is unable or unwilling to comply with treatment and, based on his psychiatric history, clinical observation or other clinical evidence, if he does not receive and comply with treatment, there is a substantial risk he will continue to physically, emotionally or mentally deteriorate to the point that the person will, in the reasonably near future, inflict physical harm on himself or another person.

(IC 66-317(11))

Mental Hold: Notice to Family

- Notice must be given to patient's immediate relatives of:
 - Patient's whereabouts.
 - Reasons for detaining persons.
(IC 66-326(5))
- Not clear who must give notice.
- Hospital should ensure notice is given.

Mental Hold: Court Proceedings

- W/in 24 hours of hold: petition with court for temporary hold.
 - If court orders exam: continue to hold.
 - If court denies exam: presume release unless other basis to hold patient.
 - W/in 24 hours of court order: designated exam and report to court.
 - W/in 24 hours of exam: prosecutor initiates commitment proceedings.
 - If no order extending custody, should release patient.
- (IC 66-326)

Mental Hold: Limited Immunity

- Applies to detaining, failing to detain, diagnosing, transporting, treating or releasing patient per the mental hold law.
- To get immunity, must –
 - Comply with procedure in chapter; and
 - Act in good faith and without gross negligence, and

(IC 66-341)

Minor: Mental Hold



- A mental hold at a hospital initiated by:
 - a police officer, or
 - a physician, physician’s assistant or advanced practice nurse
- if:
 - an emergency condition exists, and
 - the person has probable cause to believe that child is suffering from a serious emotional disturbance as a result of which he is likely to cause harm to himself or others or is manifestly unable to preserve his health or safety with the supports and assistance available to him, and
 - immediate detention and treatment is necessary to prevent harm to the child or others.

(IC 16-2411(1)-(2))

Minor: Mental Hold

- “Emergency” means a situation in which the child’s condition, as evidenced by recent behavior, poses a significant threat to the health or safety of the child, his family or others, or poses a serious risk of substantial deterioration in the child’s condition which cannot be eliminated by the use of supportive services or intervention by the child’s parents, or mental health professionals, and treatment in the community while the child remains in his family home.

(IC 16-2403(6))

Minor: Mental Hold

"Serious emotional disturbance" means an emotional or behavioral disorder, or a neuropsychiatric condition which results in a serious disability, and which requires sustained treatment interventions, and causes the child's functioning to be impaired in thought, perception, affect or behavior.

- A disorder shall be considered to "result in a serious disability" if it causes substantial impairment of functioning in family, school or community.
- A substance abuse disorder does not, by itself, constitute a serious emotional disturbance, although it may coexist with serious emotional disturbance.

(IC 16-2403(13))

Minor: Mental Hold

"Likely to cause harm to himself or to suffer substantial mental or physical deterioration" means that, as evidenced by recent behavior, the child:

- (a) Is likely in the near future to inflict substantial physical injury upon himself; or
- (b) Is likely to suffer significant deprivation of basic needs such as food, clothing, shelter, health or safety; or
- (c) Will suffer a substantial increase or persistence of symptoms of mental illness or serious emotional disturbance which is likely to result in an inability to function in the community without risk to his safety or well-being or the safety or well-being of others, and which cannot be treated adequately with available home and community-based outpatient services.

(IC 16-2403(10))

Minor: Mental Hold

“Likely to cause harm to others” means that, as evidenced by recent behavior causing, attempting, or threatening such harm with the apparent ability to complete the act, a child is likely to cause physical injury or physical abuse to another person.

(IC 16-2403(11))

Minors: Notice to Family

- The health care professional shall notify the parent or legal guardian, if known, as soon as possible and shall document in the patient's chart the efforts to contact the parent or legal guardian.
- If the parent or legal guardian cannot be located or contacted, the health care professional shall cause a report to be filed as soon as possible and in no case later than twenty-four (24) hours with the Idaho department of health and welfare or an appropriate law enforcement agency

(IC 16-2411(2))

Minors: Detention Against Parent's Consent

- A minor may not be detained against the parent or legal guardian's explicit direction unless the child is taken into protective custody by a peace officer.
- A minor may be detained for a reasonable period of time necessary for a peace officer to be summoned to the hospital to make a determination whether he/she should initiate protective custody.

(IC 16-2411(2))

Questions?

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