

# PATIENT CONSENT



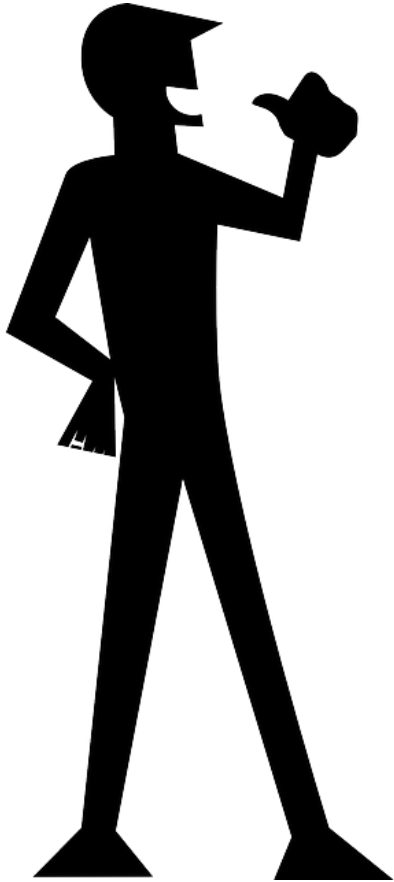
- Valid Consent
- Minor Consent
- Advance Directives

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# GENERAL PRINCIPLES

- Valid consent is required prior to treatment.
- Must provide sufficient information to ensure that the consent is informed:  
*“pertinent facts respecting the need for, the nature of, and the significant risks ordinarily attendant upon such person receiving such care. . . .”*
- Consenting individual must have capacity.

# CAPACITY TO CONSENT



“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.”

I.C. §39-4503

# CAPACITY: MINORS



# MINORS

- Surrogate Authority – “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. . . .”
  - Court appointed guardian.
  - Person named in living will and durable power of attorney.
  - Spouse.
  - Adult child.
  - Parent.
  - Delegation of parental authority per I.C. §15-5-104.
  - Relative.
  - Any other competent person representing himself or herself to be responsible for health care.

Idaho Code §39-4504(1)

# MINORS

- Conservative approach: do not allow minor to consent to their own care unless
  - Minor is emancipated.
  - A statute authorizes minor to consent to their own care.
  - A statute authorizes care regardless of consent.

# MINORS

## EMANCIPATION

- Minor is probably emancipated and able to consent to their own healthcare if:
  - Married or has been married (*see* I.C. §18-604(3))
  - In armed forces (*see* I.C. §18-604(3))
  - Living on own and self-sufficient (*see* I.C. §66-402(6))
  - Court declares them emancipated (*see* I.C. §16-2403(1))
- Must still show that the minor “comprehends the need for, the nature of and the significant risks ordinarily inherent in any contemplated ... health care. . . .”

I.C. §39-4503





## *What about pregnancy?*

- Pregnancy is probably not an emancipating event.
- If pregnancy were an emancipating event, you would not need parental consent for an abortion.
  - “To protect minors from their own immaturity,” abortions for “pregnant unemancipated minors” generally requires
    - Parental/guardian consent, or
    - Judicial finding that minor is mature and capable of giving informed consent.

I.C. §§18-602, 18-609A

# MINORS

## STATUTES ALLOWING A MINOR'S CONSENT

- Emergency treatment
  - Medical exam and stabilizing treatment in hospital.  
(HHS Interpretive Guidelines to 42 CFR 489.24)
- Contraceptives
  - 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. (I.C. §18-603)
- Family planning services
  - Funded by Title X of the Public Health Services Act.  
(42 USCX300(a))

# MINORS

## STATUTES ALLOWING A MINOR'S CONSENT

- Drug treatment or rehab.
  - If minor is age 16 or older, cannot notify parents without minor's consent. (I.C. §37-3102)
- STD Testing/Treatment (14+)
  - Testing or treatment for reportable infectious/communicable disease. (I.C. §39-3801)
- Inpatient Mental Health Treatment (14+)
  - Hospitalization for observation, evaluation and treatment for mental condition. (I.C. §66-318(a)(2))
  - Treating facility must notify parents
- Unpaid blood donations (17+). (I.C. §39-3701)

# MINORS

## MATURE MINOR DOCTRINE

- In other states, statutes allow minors with sufficient maturity to consent to their own care.
- Idaho statutes are ambiguous.
  - I.C. §39-4503 states “any person” of sufficient comprehension may consent to or refuse their own care.
  - I.C. §39-4504 identifies those who may consent for minors.
- No Idaho cases resolving the conflict.

# CAPACITY TO CONSENT

- “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.”

I.C. §39-4503

# MINORS

- 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. . . .
  - Court appointed guardian.
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  - Relative.
  - Any other competent person representing himself or herself to be responsible for health care.

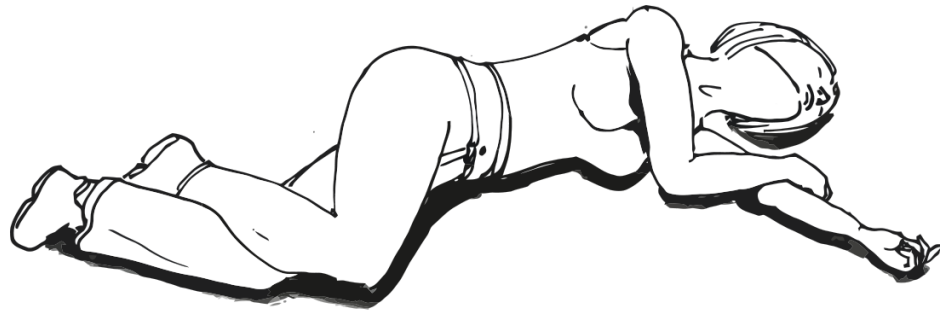
I.C. §39-4504(1)

# MINORS

## 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 information to parents or guardians.
  - May limit ability to obtain payment.

# CAPACITY



- What if a patient lacks capacity to consent?
  - In an emergency and no time to obtain consent, provide necessary care.
  - Provide care consistent with patient's advance directive.
  - Obtain consent from an authorized surrogate.
  - Provide care consistent with statute granting authority.

I.C. §39-4504(1)



# AUTHORITY: EMERGENCY

- Medical emergency:
  - There is a substantial likelihood of the patient's life or health being seriously endangered by withholding or delay in the rendering of health care.
  - The patient 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."

I.C. §§39-4504(1), 56-1015

# AUTHORITY: SURROGATE

- Surrogate must have capacity.
- Cannot contradict patient's advance directive, POST, or other known wishes.
- Authority of surrogate determined by the following statutory hierarchy:
  - 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 I.C. §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.

I.C. §39-4504(1)

# AUTHORITY: STATUTE

Some statutes allow treatment without consent.

- Treatment of infant by “safe haven.” (I.C. §39-8203)
- Minor brought to “shelter care.” (I.C. §16-2411)
- Mental holds at hospital. (I.C. §66-326)
- Certain tests and treatments for newborns (e.g., germicide, PKU). (I.C. §§39-903, 39-909, 39-912)
- Limited testing or treatment ordered by law enforcement, such as blood test for DUI or testing of prisoners for communicable diseases. (I.C. §§18-8003, 18-8002; 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.”

I.C. §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.
  - IDAPA
  - Conditions of Participation
  - Joint Commission or other accreditation conditions

# 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.”

I.C. §39-4507

# INFORMED CONSENT

- To be a reasonably informed decision, the individual must be sufficiently aware of pertinent facts respecting
  - the need for;
  - the nature of; and
  - the significant risks ordinarily attendant upon such a person receiving such care.
- 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.

I.C. §39-4506

# INFORMED CONSENT

- Ensure that patient understands.
- Give the patient an opportunity to ask questions and receive answers.
- Communicate and document.
- Beware limited duration and scope, including revocation.
- Responsibility of practitioner to ensure valid consent is obtained. (I.C. §39-4508)



# REFUSAL OF TREATMENT

- Consent to care includes refusal to consent to care and withdrawal of care. (I.C. §39-4502)
- “AMA” – attempt to obtain patient’s signed refusal.
- An authorized Surrogate can refuse or withdraw care, subject to the following exceptions
  - Developmentally disabled persons (I.C. §39-4514(3))
  - Vulnerable adults (I.C. §39-5302(8))
  - Abused/neglected children (I.C. §16-1602(25))



# ADVANCE DIRECTIVES



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

I.C. §39-4509

# ADVANCE DIRECTIVES

## FORMS

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

*"Any authentic expression of a person's wishes with respect to health care should be honored."*

I.C. §39-4509(3)

# ADVANCE DIRECTIVES

## REVOCAION & SUSPENSION

- Maker may revoke or suspend 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.
- Maker is responsible for notifying provider of changes; provider not liable for failing to act on revocation or suspension unless provider has actual knowledge.
- Advance directives are NOT automatically suspended during surgery.

I.C. §§39-4511A, 39-4511B

# QUESTIONS?

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