



# Medicolegal Aspects of Surgical Technology

Introduction to Surgical Technology



# Lesson Objectives

1. Differentiate among law, standards of practice, and codes of conduct
2. Define risk management and a sentinel event
3. Explain the difference between licensure, certification, and registration
4. Discuss the importance of documentation in the perioperative setting
5. Explain informed consent
6. Discuss adverse events in the perioperative environment
7. Discuss different examples of negligence that occur in the perioperative environment
8. Discuss the reasons why sexual harassment, bullying, and extreme forms of verbal abuse exist in the perioperative environment
9. Details about consent

# Law in Health and Types of Law

Laws reflect society's rules, created by the people and enforced by government

- ST mainly concerned with statutes and liability.

## Types of Law

- Federal law
- State law
- Administrative law and regulations
- Civil law
- Criminal law
- Common law
- Corporate law



# Types of Law – Examples

## Federal Law

Health Insurance Portability and Accountability Act of 1996 (HIPAA)



## Administrative Law and Regulations

Occupational Safety and Health Administration (OSHA) issues regulations



## Civil Law

Tort Laws (Negligence Tort, Intelligience Tort)

Medical Malpractice

# Basic Legal Terms

Accountability

Held  
responsible  
for actions

Affidavit

Facts  
sworn to  
be true

Bona fide

In good  
faith

Case law

All legal  
decisions  
on a single  
legal  
subject

Complaint

First action  
filed  
initiates  
law suit

Defendant

Person  
accused or  
sued

# Basic Legal Terms

Deposition

Pre-trial  
questions  
answered  
under  
oath

Federal law

Federal  
court laws

Guardian

Protector  
for person  
incapable  
of making  
decisions

Iatrogenic  
injury

Injury  
from  
activity of  
health  
care  
worker

Indictment

Formal  
accusation

Jury

Group  
who  
decides  
outcome  
of trial

# Basic Legal Terms

Larceny

Taking  
property w/o  
consent

Law, Common

Principles that  
change w/  
court ruling

Law, Statutory

Law in writing  
by legislature

Liability

Obligation to  
do or not do  
action

Liability,  
Corporate

Obligation of  
corporate  
body to do or  
not do action

Liability,  
Personal

Obligation of  
individual to  
something or  
not do  
something

# Basic Legal Terms

Malpractice

Misconduct  
that results in  
harm

Negligence

Omission or  
commission that is  
reasonable under  
circumstances

Negligence,  
criminal

Reckless  
disregard for  
safety

Perjury

Intentionally  
lying under  
oath

Plaintiff

Person who  
starts  
lawsuit

Precedent

Court decisions  
that provides  
example for  
future judging



# Basic Legal Terms

## Standard of care

Conduct that is expected in medical scenario

## State law

State regs/laws

## Subpoena

Order to testify or produce documents

## Tort

Civil wrong, intentional or unintentional

## Trial

Parties dispute evidence in court to resolve innocence or guilt

# Torts

- Actions that result in physical or psychological harm or injury to another
- **Types of torts:**
  - Intentional
  - Negligence (no intention of causing harm)
- **Intentional Tort**
  - Intentional wrongdoing
  - Results in injury or harm to another person
  - physical attack on another person
  - Invasion of privacy
  - False imprisonment
  - Defamation

# Torts

- **Negligence Torts**

- Patient Misidentification
- Performing incorrect procedure
- Retained foreign bodies
- Patient Burns
- Specimen Neglect
- Incorrect drug administration
- Defective equipment/instrument
- Break in sterile technique
- Abandonment



# Facility Standards and Policy

- Health care facilities accredited by The Joint Commission (TJC)
- Accreditation received after performance evaluation
- Performance based upon:
  - Proper orientation training for students and employees
  - Policy Documentation
  - Compliance to Policies
  - Adherence to Operating room protocols
- To maintain accreditation, facilities must meet standards and policies to meet expectations of TJC



# Standards of Practice, Position Statements, and Codes of Conduct

## **Standards of Practice**

- Technical guidelines detailing the methods and techniques for specific procedures
- e.g., Method to use during the surgical hand and arm scrub
- Organizations like AST publish these standards
- Rapid Changes to these standards are avoided

# Standards of Practice, Position Statements, and Codes of Conduct

## Position Statements

- Organizations issue position statements alongside technical and professional standards.
- Express the organization's opinions on professional practice and policy
- Do not supersede laws, Practice Acts, or hospital policies
- Serve to publicly declare the organization's perspective on various issues
- AST publishes position statements on its website: <http://www.ast.org>

# Standards of Practice, Position Statements, and Codes of Conduct

## **AST Code of Conduct:**

1. To maintain the highest standards of professional conduct and patient care.
2. To hold in confidence, with respect to the patient's beliefs, all personal matters.
3. To respect and protect the patient's legal and moral rights to quality patient care.
4. To not knowingly cause injury or any injustice to those entrusted to our care.
5. To work with fellow technologists and other professional health groups to promote harmony and unity for better patient care.
6. To follow principles of asepsis.
7. To maintain a high degree of efficiency through continuing education.
8. To maintain and practice surgical technology willingly, with pride and dignity.
9. To report any unethical conduct or practice to the proper authority.
10. To adhere to the Code of Ethics at all times with all members of the health care team.

# Right to Practice

## Required Documentations to practice:

- Certification
  - Validation of eligibility
  - May or may not be required by law
  - Varies by organization for STs
- Licensure
  - Issued by state
  - Allows monitoring of professionals
- Registration
  - Ensures public protection
  - Maintained by state governments
  - Recommended for STs

## MEDICAL PRACTICE





# Common Acts of Negligence in Perioperative Setting

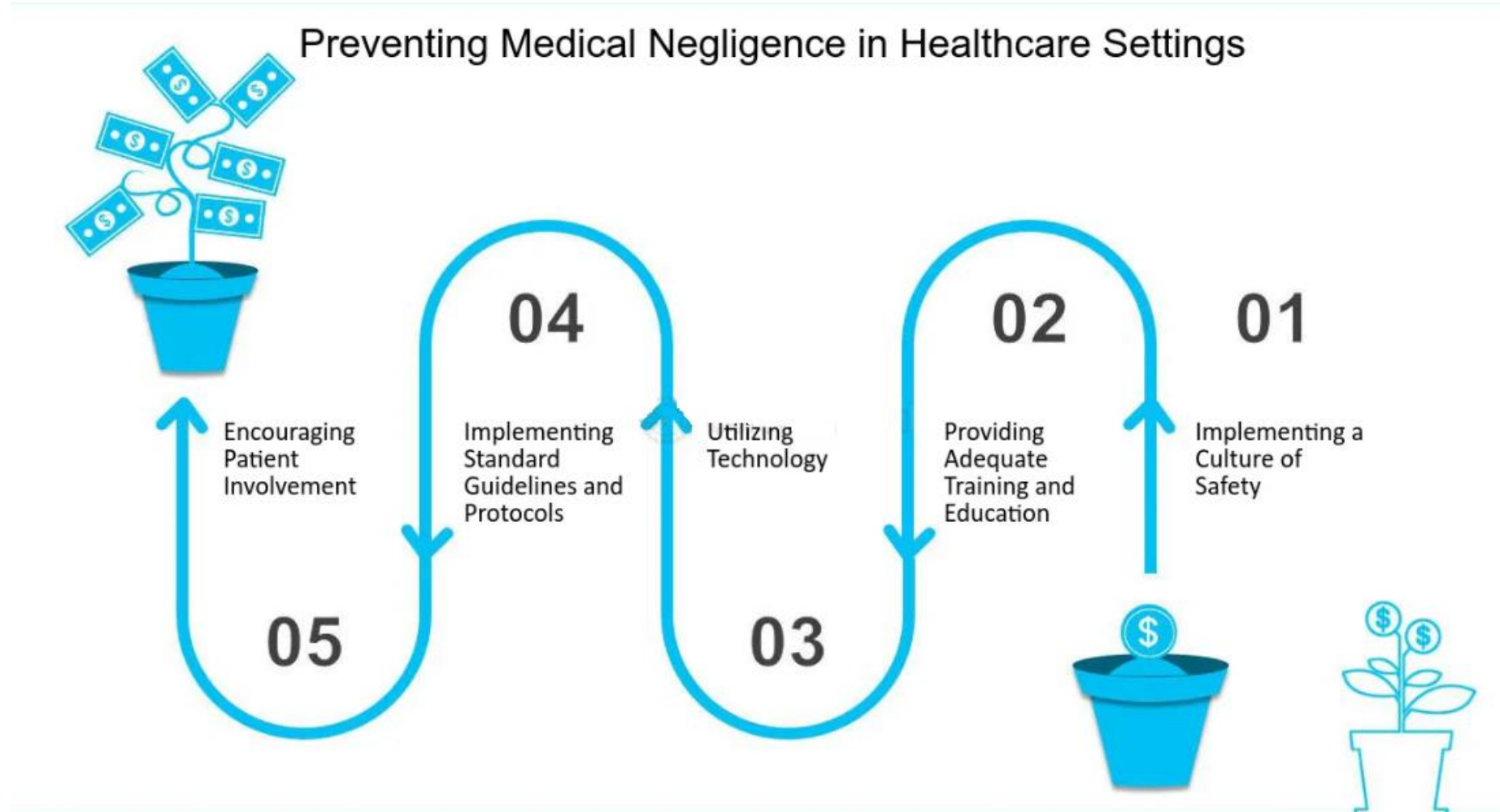
- Unintended retained foreign objects
- Burns
- Falls
- Incorrect patient positioning
- Operating on the wrong patient or wrong site
- Incorrect identification or loss of a specimen
- Medication errors
- Abandonment
- Failure to communicate and miscommunication
- Loss of or damage to the patient's property
- Negligent delegation

**Watch the Video on "Common Types of Medical Malpractice Examples". Link in the next slide**

# Common Types of Medical Malpractice Examples

- [Click Here](#) to watch the video!

# Preventing Medical Negligence



# Disruptive and Violent Behavior

- Roots of disruptive and violent behaviors in the OR
  - Traditional hierarchy
  - Authoritarian practices
  - Normalization of abuse
- Types of workplace abuse
  - Bullying
  - Hazing
  - Sexual harassment
  - Disruptive behavior



# Disruptive and Violent Behavior

## Resources for Legal Information on Forms of Workplace Abuse

- Equal Employment Opportunity Commission  
[https://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](https://www.eeoc.gov/laws/types/sexual_harassment.cfm)
- The Joint Commission Workplace Violence Prevention—Bullying  
[https://www.jointcommission.org/workplace\\_violence\\_prevention\\_--\\_bullying/](https://www.jointcommission.org/workplace_violence_prevention_--_bullying/)
- EEOC extended definition of sexual harassment  
<https://www.un.org/womenwatch/osagi/pdf/whatissh.pdf>
- American College of Surgeons Statement on Harassment, Bullying, and Discrimination  
<https://www.facs.org/about-ac/s/statements/117-harassment>

# Incidents in the Health Care Setting

## **Adverse events or sentinel events:**

- Necessitate thorough documentation and investigation.
- Incident reporting involves:
  - Notifying the operating room supervisor
  - Filling out designated forms promptly
  - Reports detail facts without opinions
- Remedy: Whistleblowing policies
  - Encourage employees to report misconduct or negligence
  - Education, training, and awareness creation
- Safety measures (promoting awareness, complying with protocols, reporting unsafe conditions promptly)



# Developing an Incident/ Sentinel Event Report

- Must include
  - WHO: Individuals involved
  - WHERE: Place of the incident
  - WHEN: Time of the incident
  - HOW: Manner of the incident
- Guidelines
  - Write and submit the report after the event
  - State the facts only; give no opinions
  - Use professional language
  - Use first person
  - Don't become intimidated
  - Take your time
  - Submit to the OR director/manager
  - Informal investigation may be conducted



# Risk Management

- Primary goal is to prevent harm to patients, staff, and visitors to the facility through
  - Education
  - Promotion of safety measures
  - Compliance with safety measures
  - Follow-up
  - Staff training
  - Reporting policies
  - Cooperation with risk managers
- Organizations have internal risk management systems to improve patient care, safety, among other topics
  - Near Misses for process improvement
  - Reports can be filed anonymously and electronically
  - Risk management should be "non-punitive" to encourage reporting and promote a "Culture of Safety"

# Universal Protocol

- Put in place by the Joint Commission in 2003.
- Checklist with the following goals:
  - Prevention of Wrong Person Surgeries
  - Prevention of Wrong Surgeries
  - Prevention of Wrong site surgeries

**Watch the "Universal Protocol" Video for an overview of this process in a hospital setting**

# Universal Protocol Video



# Universal Protocol Video

## Summary of Video:

- Universal Protocol sets checkpoints for prevention of errors. The patient, intended procedure, surgical site (laterality), and other information are checked at these steps:
  - Pre-operatively
  - When entering the OR Suite
  - Surgical "Time-Out" just prior to incision
  - Surgical "Debriefing" at completion of the procedure
- Prevents:
  - Wrong Patient Surgeries
  - Wrong Side or Site Surgeries
  - Wrong Procedure Surgeries

# Documentation

- Healthcare standards mandate precise documentation of all patient encounters
- The Health Insurance Portability and Accountability Act of 1996 (HIPAA) ensures patient confidentiality
- Includes legal record of patient interactions and care recommendations, standardized across healthcare facilities.

**Medical  
Record**

Name \_\_\_\_\_

Date \_\_\_\_\_

# HIPAA Video

- Watch the "[HIPAA Video](#)" for an overview of HIPAA compliance



# HIPAA Video

## **Summary of Video:**

- People or organizations with access to patients' private health information must protect this information



# Documentation

## Common Types of Documentation

- Patient medical record
- Informed consent
- Intraoperative record
- Anesthesia record
- Patient charges
- Birth and death certificates
- Specimen and pathology records
- Advance health care directive

# Documentation

## **General guidelines for documentation include:**

- Every document must include the patient's unique identifiers
- The date must be accurate
- Correct errors by making a line, correct, and initial
- Documentation must be legible in black ink
- Use brief, exact wording
- Use correct language and spelling
- Always log off computers; do not share passwords
- Documentation must include signature

# Medical Records and Documents

- Sum of all healthcare encounters including reports, assessments, surgical procedure records, etc. Including:
- **Informed Consent**
  - Legal right for patients to be informed about invasive procedures, requires signed consent.
- **Intraoperative Record:**
  - Detailed documentation of surgical procedures, equipment, personnel, and implants.
- **Anesthesia Record:**
  - Documents anesthesia process, drugs used, complications, physiological monitoring, and interventions.
- **Patient Charges:**
  - Documented in the patient chart, typically on dedicated forms as per operating room policy.

# Medical Records and Documents

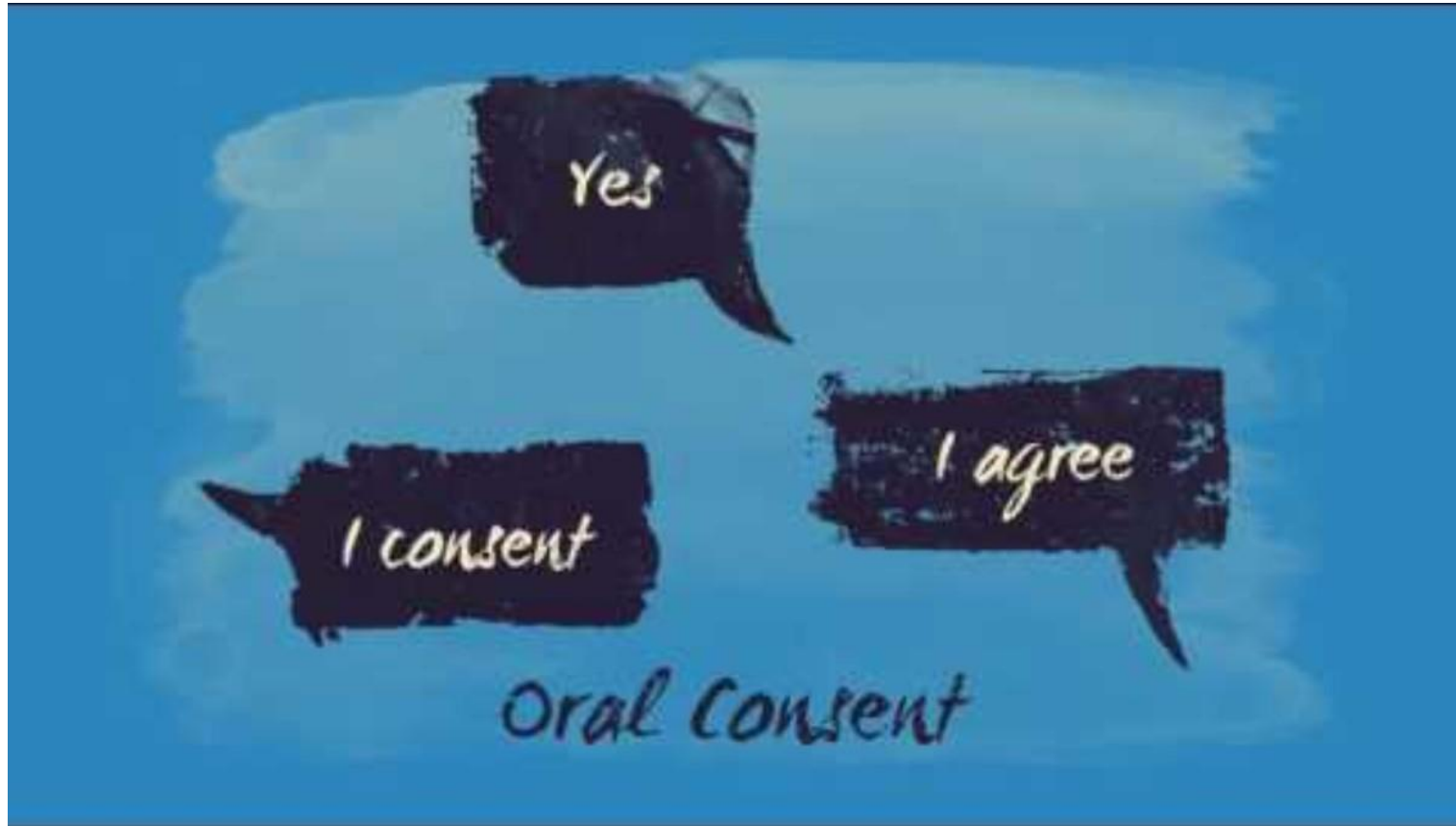
- **Specimen and Pathology Records:**
  - Documentation accompanying all surgical specimens, critical for preventing errors.
- **Advance Health Care Directive:**
  - Document specifying medical care preferences if patient becomes incapacitated.
- **Organ Donation:**
  - Patients can refuse organ donation after death, requires documentation in patient's chart.
- **Refusal of Blood or Tissue Products:**
  - Patients may refuse blood or tissue products based on faith or personal beliefs, requires advance directive if unwanted.
- **Medical Power of Attorney:**
  - Patient assigns proxy for medical treatment decisions, giving them legal authority.

# Consent for Surgery: Basic Right

- **Consent**
  - Permission “to touch”
  - Recipient & Performer
  - No surgery w/o consent
- **Express Consent**
  - Statement permission for care
- **Implied Consent**
  - Act w/o written consent

**Watch video on "Informed Consent: Express vs Implied"**

## Informed Consent: Express vs Implied

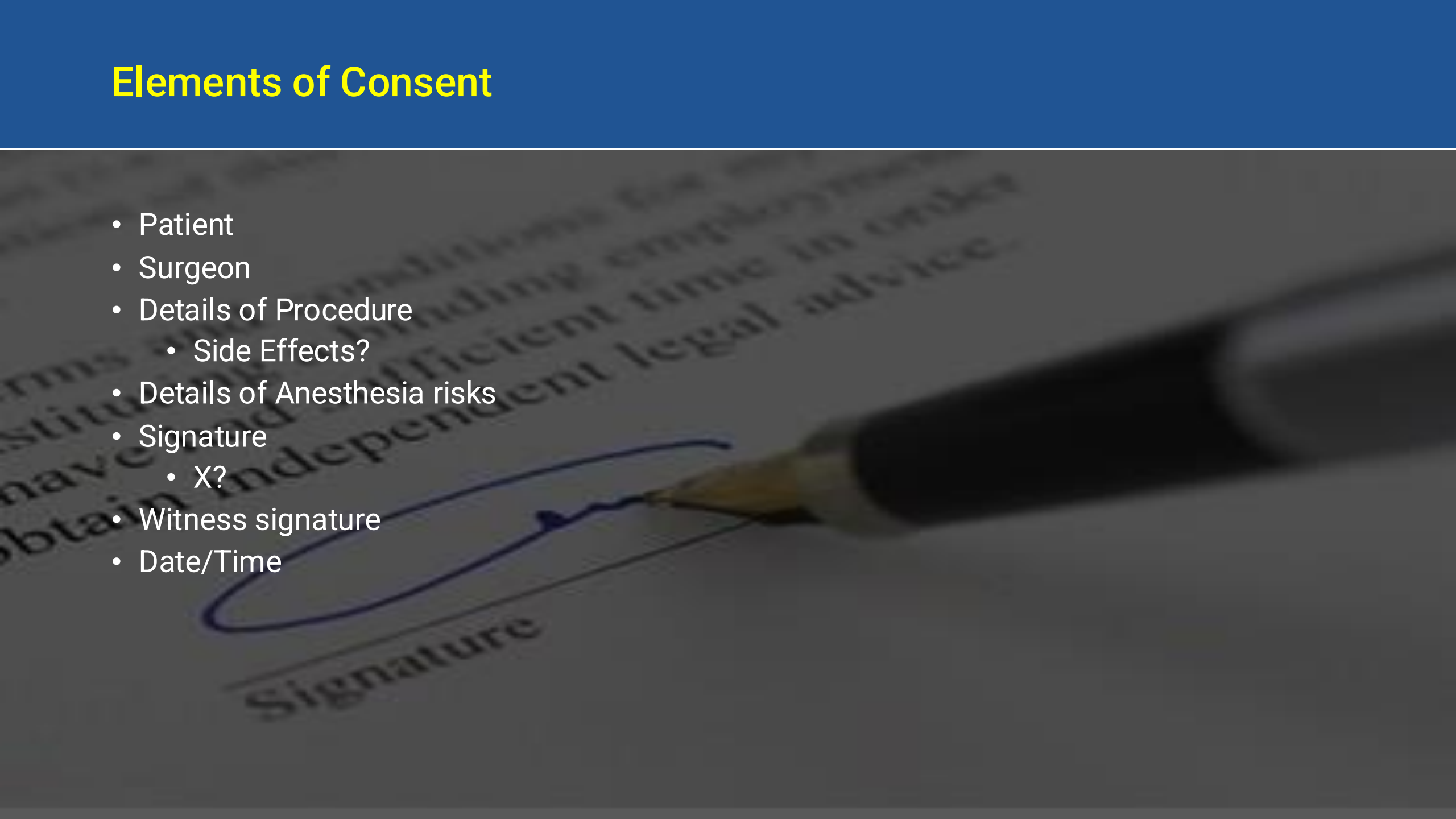


# Informed Consent

- Voluntary agreement of the individual based on their understanding of the information provided.
- **Types of Informed Consent:**
  - General Consent
    - Every patient
    - Routine services
  - Special Consent
    - Any invasive procedure
    - All surgery
- **Conditions of Consent:**
  - Understandable language
  - No intimidation
  - Treatment/Complications
  - Risks/Benefits
  - Alternatives



# Elements of Consent

- Patient
  - Surgeon
  - Details of Procedure
    - Side Effects?
  - Details of Anesthesia risks
  - Signature
    - X?
  - Witness signature
  - Date/Time
- 
- The background of the slide is a blurred image of a document. A pen is shown writing a signature on a line labeled 'Signature'. The document text is out of focus but appears to contain legal or medical terms.

# Read Chapter 3 From The E-book

Read **Chapter 3** from your E-Book to pass the upcoming quiz from **Surgical Technology - Elsevier eBook on VitalSource, 8th Edition**.

[Click Here](#) access Chapter 3!

# Thank you!

Get ready for your quiz and rest of the activities now. Best of luck!