

INFORMED CONSENT

What is informed consent?

Informed consent is consent to treatment given by a patient or a patient's legal representative, after being fully informed in language the patient or patient's legal representative can reasonably be expected to understand, of all material facts relating to the treatment, including:¹

- The nature and character of the treatment proposed and administered.
- The anticipated results of the treatment proposed and administered.
- The recognized possible alternative forms of treatment.
- The recognized serious possible risks, complications, and anticipated benefits involved in the treatment proposed and the recognized possible alternative forms of treatment, including non-treatment.

When is informed consent required?

Generally, except in certain emergency cases² or when the patient requests not to be fully informed,³ informed consent is required before any treatment may be rendered to a patient.⁴ A physician's failure to obtain informed consent prior to treatment may subject the physician to liability in a medical malpractice action for any injuries caused by treatment to which the patient or the patient's legal representative did not consent.⁵

Special informed consent is required in some instances. See AIDS/HIV/STD.

Who may give consent to treatment?

An otherwise competent adult patient may give informed consent to treatment.⁶

If a patient is not competent to give informed consent, informed consent may be obtained from one of the following persons in order of priority:⁷

- The appointed guardian of the patient, if any.

¹ RCW 7.70.050(3), .060(1)(a).

² RCW 7.70.050(4)

³ RCW 7.70.060(1)(b).

⁴ RCW 7.70.050(1).

⁵ *Id.*

⁶ RCW 7.70.060(1).

⁷ RCW 7.70.065(1)(a).

- A person to whom the patient has given a durable power of attorney encompassing the authority to make health care decisions.
- The patient's spouse or state registered domestic partner.
- Children of the patient who are age 18 or older.
- Parents of the patient.
- Adult siblings of the patient.

If the physician seeking informed consent for an incompetent patient makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class of priority and finds no such person available, authorization may be given by any person in the next class in the order of descending priority.⁸ No person may provide informed consent if a person in a higher class of priority has refused to give such authorization.⁹ If there are two or more persons in the same class of priority, the decision must be unanimous among all available members of that class.¹⁰

Is a minor competent to give informed consent?

A minor is competent to provide informed consent in certain specific situations.¹¹ See MINORS, TREATMENT OF for when minors can provide informed consent.

Who may provide informed consent on behalf of minors who are not authorized to provide consent on their own behalf?

If a minor is not otherwise authorized to provide informed consent for health care, including mental health care, such consent may be obtained from one of the following persons in order of priority:¹²

- The appointed guardian, or legal custodian of the minor patient, if any.
- A person authorized by the court to consent for medical care for a child in an out-of-home placement.
- Parents of the minor child.
- A person to whom the parents have given a signed authorization to make health care decisions.

⁸ RCW 7.70.065(1)(b).

⁹ RCW 7.70.065(1)(b)(i).

¹⁰ RCW 7.70.065(1)(b)(ii).

¹¹ RCW 70.24.110, RCW 70.96A.230, RCW 71.34.500, *Smith v. Seibly*, 72 Wn. 2d 16 (1967).

¹² RCW 7.70.065(2)(a).

- A competent adult representing himself or herself to be a relative responsible for the healthcare of the child, provided that the person sign a sworn statement to that effect.

A physician may rely on the representation of a person who claims to be responsible for the healthcare decisions of a child, but is not required to do so.¹³ A physician who renders care to a minor, relying on consent obtained from a person who has signed such a sworn declaration is protected from legal action related to the consent.¹⁴

Must informed consent be obtained in an emergency?

Not necessarily. Consent of the patient will usually be implied if an emergency situation exists requiring prompt treatment to avoid the possibility of injury or death and if the patient is unable to consent for any reason and no other person legally authorized to provide consent is reasonably available.¹⁵

How should informed consent be documented?

Signed consent forms may be used, but not in lieu of, or as a substitute for, a discussion with the patient.¹⁶ Signed consent forms should be kept in the patient's chart.

If the patient requests not to be informed or to receive only limited information, the patient's request should be put in writing, signed by the patient, and placed in the patient's chart.¹⁷

Discussions with the patient about risks, benefits and alternatives should be documented with specificity in the patient's chart. The absence of specific contemporaneous documentation of informed consent discussions in medical malpractice actions alleging failure to obtain informed consent brought on behalf of patients who have died or become incompetent may prove difficult to defend. In such cases, absent such documentation, the physician may be barred by the deadman's statute from presenting evidence as to the details of what the physician told the patient,¹⁸ or as to the physician's habit and routine in informing similarly situated patients, about risks, benefits, and alternatives to the treatment proposed and administered.¹⁹

Must informed consent be given to involuntarily committed patients?

Generally, yes. But see **INVOLUNTARY COMMITMENT – CHEMICAL DEPENDENCY** and **INVOLUNTARY COMMITMENT – MENTAL DISORDERS** for circumstances where informed consent is not required. Informed consent may be contained in a validly executed mental health advance directive.²⁰

¹³ RCW 7.70.065(2)(b)

¹⁴ RCW 7.70.065(2)(d).

¹⁵ RCW 7.70.050(4).

¹⁶ RCW 7.70.060(5).

¹⁷ RCW 7.70.060(1)(b).

¹⁸ RCW 5.60.030.

¹⁹ *Lasher v. University of Washington*, 91 Wn. App. 165, rev. denied, 136 Wn. 2d 1029 (1998).

²⁰ RCW 7.70.068.

Should a physician ever promise a patient a particular result from treatment or a cure?

No. Generally, the law presumes that a physician does not guarantee a particular result or cure. If, however, the physician promises the patient or the patient's legal representative that a particular injury will not occur, the physician may be liable for medical malpractice if the injury does occur.²¹

²¹ RCW 7.70.030.