Informed Consent: What Does It Really Mean for Sexual Assault Victims?

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Informed Consent
Objectives

• Define informed consent
• Define informed refusal
• Discuss capacity to consent
• List the different components that should be covered by consent during the medical forensic examination process
• Discuss legal implications of consent

What Is Informed Consent?
“Informed Consent”

Communication between the healthcare provider and the patient that explains:

- The risks and the benefits of undergoing a particular procedure
- The alternatives available
- Options of NOT participating/proceeding

“Patients have a moral and legal right to determine what will be done with their own person; to be given accurate, complete, and understandable information in a manner that facilitates an informed judgment; to be assisted with weighing the benefits, burdens, and available options in their treatment, including the choice of no treatment; to accept, refuse, or terminate treatment without deceit, undue influence duress, coercion, or penalty; and to be given necessary support throughout the decision making and treatment process.”

(ANA, 2001, p. 8)
K1  Not sure if we need to keep this slide in here for NSAC?
K, 7/28/2015
Informed consent is one of the overarching issues that affect all patients whom advocates and forensic nurses see.

For which of these do you need informed consent?

- General medical care
- Pregnancy testing and care
- Testing and prophylaxis for STIs
- HIV prophylaxis
- Forensic specimen collection and release
- Photographs, including colposcopic images
- Permission to contact the patient for medical purposes
- Release of medical information
Victim Advocates’ Role

- Can explain the process
- Can discuss options
- Can provide support for victim
- Obtaining informed consent is ultimately the medical provider’s legal responsibility!

Neurobiology of Trauma
Neurobiology of Trauma

• High stress = impaired prefrontal cortex
• Impairs victims’ ability to recall events chronologically
• Trauma may impact ability to understand informed consent

Language
Language – for Medical Personnel

• Goal is to avoid coercion and/or judgment
  – Recommend for medical issues only
  – Decision to report is not a medical issue
• Use “patient” instead of “victim”
• Avoid terms like “claims” or “alleges” she was raped or “supposedly” was raped as it implies that medical staff doubt her story
• Use quotations as much as possible when recording the history


Language – for Medical Personnel

• Describe findings in factual terms rather than ways that could be construed as value-laden
  – Avoid judgmental statements like “patient passed out” or “patient was drunk”
  – Alternatives might be “difficult to arouse” or “alcohol on breath”
• Instead of using colloquialisms, describe them using medical language or by using the patient’s words with quotation marks around them
• Avoid “no distress noted” or “no trauma”
  – OK to use “no physical injury noted”

Language – for Medical Personnel

• Avoid “WNL” (within normal limits) or “normal exam”
  – Best to avoid abbreviations in general
• For every visible injury, use all methods of documentation available
  – Exact written documentation of the injury, photography, and use of traumagram or body map to illustrate injury


Capacity to Consent – Adolescents
Capacity to Consent: Adolescents—Legal Issues

• Not addressing children
• Issue spotting & homework
• Information you need to know for your jurisdiction:
  – Age of consent to access services
  – Reproductive health
  – Medical forensic exam
  – Mandatory reporting
  – Parental rights

Capacity to Consent: Adolescents—Medical Issues

**Informed Consent**
• Able to legally consent to services
• Explain all aspects of the exam in a manner they can understand
• Formal signed document
• Parent/guardian/proxy
• Can be withdrawn at any time

**Informed Assent**
• Expressed willingness to participate
• Old enough to understand
• Too young to give informed consent (legally)
• Informal agreement
• Can be withdrawn at any time
Capacity to Consent – Incapacitated Patients

Capacity to Consent – Vulnerable Populations
Legal Implications of Consent

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Implications of Granting Law Enforcement Access

- Goes to prosecutor
- *Brady* case—exculpatory information must be released to defense
- May be released to defendant as well
- Protective orders
- Refusal
Limited Waivers

• NEVER use a general waiver
• Waiver should specify:
  – Who
  – What
  – Where
  – When
  – How

Mechanics of Granting Access

• Privilege belongs to the patient
• Limited v. general waivers
• Narrowly tailor waivers—redact prior medical history
• Separate waivers for records v. release for medical providers to speak with someone about those records
• Can revoke at any time
• Electronic v. paper medical records
Informed Refusal

Photographs
Photography – Medical Issues

- Photographer
- Storage
- Handling
- Release

Photography – Legal Issues

- Experienced prosecutors disagree about how to handle photos
- Options
  - Release as part of forensic medical exam
  - Withhold unless and until requested by law enforcement
- Protective Orders for photos
Consent for Information Release

Role of Victim Advocates

• System-based v. community-based

• Privilege
  – Presence of third parties

• Medical provider **CANNOT** delegate the responsibility of informed consent to a victim advocate
Recommendations for Practice

- Use a *limited* waiver—NEVER a general open waiver
- Use separate waivers:
  - To release the records themselves
  - To authorize medical professionals to talk to law enforcement, prosecutors, etc. about those records
- Ensure a trauma-informed explanation to patient
Recommendations for Practice

• Talk to your local prosecutors regarding local law and best practices
• Talk to hospital counsel/administration regarding patient releases and to ensure procedures are in place to comply with any limitations requested by the victim
  – Ensure that medical records personnel are part of that discussion
  – Work closely with your medical records department to ensure they understand limits of releases
• If your program is not hospital-based, find a local civil attorney
Recommendations for Practice

- If photos are not released along with the medical forensic exam report, ensure law enforcement and/or the prosecutors know when/if they are available as well as the process for requesting and obtaining those photos.
- Never turn over a patient’s records or agree to talk to anyone about the patient or their records without independently confirming the patient did in fact authorize the release/contact.
- If you are testifying, INSIST on proper preparation.

Recommendations for Practice – Victim Advocates

- Get to know medical practitioners in your jurisdiction.
- Understand the medical forensic exam procedures, forms, waivers/releases.
- Practice explaining the procedures.
- Talk to medical practitioners about your respective roles.
- Stay in your lane.
• Resource materials provided

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• SAFEta Project – International Association of Forensic Nurses [www.safeta.org](http://www.safeta.org)
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