

# **HEALTH SERVICES POLICY & PROCEDURE MANUAL**

North Carolina Department Of Correction  
Division Of Prisons

SECTION: Administrative – Patient Rights

POLICY # AD IV-1

PAGE 1 of 3

SUBJECT: Informed Consent

EFFECTIVE DATE: February 2008  
SUPERCEDES DATE: September 2005

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## **PURPOSE**

To insure appropriate consents are obtained.

## **STATUTORY AUTHORITY**

G.S. 148-22.1 provides statutory authority which allows medical staff of the North Carolina Division of Prisons to perform, or arrange performance by competent and skillful surgeons, surgical operations upon any inmate when such operation is necessary for the improvement or maintenance of his/her health. The decision to perform an operation shall be made by the attending surgeon. No such operation shall be performed without the written consent of the inmate patient. If the inmate is a minor, consent must be obtained from a responsible family member, a guardian, or someone having legal custody of the minor.

## **DEFINITION**

Informed consent is the written granting of permission in writing by a patient to an examination, diagnostic test, or proposed medical or surgical procedure after receiving appropriate information about the benefits, risks, and alternatives.

Prior to signing an informed consent, the physician/dentist shall disclose to the inmate in a clear and understandable manner, information which will enable inmate to evaluate the options and make a knowledgeable decision based on that information, before consenting to a course of treatment. This is to include the possibility of complications, disfigurements, and incision into or removal of body parts. The patient shall be given a general idea of what to expect in the early and late postoperative periods and be given a general idea of the time frame involved. The following requirements are necessary in obtaining informed consent:

### **Pre-Operative**

1. The person responsible for carrying out the procedure should obtain informed consent.
2. The patient must be legally and mentally capable of granting informed consent, in the physician's determination.
3. The patient must be free from coercion or undue influence when granting consent
4. Consent is to be granted for a specific treatment or procedure.
5. The patient is to be given an opportunity to ask questions and receive answers to questions prior to granting consent.
6. The patient has the right to refuse treatment or withdraw consent.

Signed consent forms are to be obtained from the patient for the following:

Procedures involving any anesthesia (general, local or spinal)  
Radiation therapy  
Electroconvulsive therapy  
Experimental procedures  
Blood donation and transfusion  
Religiously motivated treatments/or non-treatments  
Organ Donations

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HIV Testing

Dental Procedures (including restorations, root canals, and extractions)

Oral Surgery

Medication Administration which involve risk of harm to the patient (i.e. chemotherapy, myelograms, arteriograms, pyelograms)

Mental Health Treatment (DC- 945).

**\*Special consideration will be given to the inmate/patient for which English is a second language, those who are deaf or blind, or anyone experiencing communication barriers. The name of the translators or interpreters assisting the physician must be documented on the consent form.**

The patient may rescind consent at any time; however, treatment rendered while the consent was in effect is to be considered authorized by the patient.

**NOTE:** Informed consent **IS NOT** required in life threatening situations in which the patient is not capable of granting consent.

### CONSENT FOR MINORS

A minor is a patient who is under 18 years of age who is not emancipated (by marriage or by a judicial decree of emancipation).

A parent or legal guardian must sign the consent form or give verbal consent, for an inmate/patient for non-emergency medical treatment. A minor may consent to treatment under the following conditions parental or guardian involvement:

1. *“when seeking services for prevention, diagnosis and treatment of venereal diseases and other diseases reportable under N.C. Gen. Stat. 130-A-135 (1992), pregnancy, abuse of controlled substances or alcohol, or emotional disturbances, as authorized in N.C. Gen. Stat. 90-21.5 (1990).*
2. An unwed minor mother may consent to medical or surgical treatment services for her child.

If a minor inmate is unconscious or incapable of granting informed consent, and consent from a parent or legal guardian cannot be obtained within the time constraints necessitated by nature of the situation, medical decisions may be made by the chief medical officer and the superintendent of the correctional facility. (N.C. Gen. Stat. 148-22.2) The Director of Health Services/designee should be made aware of these actions.

Medical personnel shall document all measures taken to obtain permission form parents or legal guardians.

\*North Carolina Health Information Management Association Legal Reference Manual; Second Edition, 1993.

### MENTAL CAPACITY

If an inmate has been determined to be mentally incompetent, “or if a physician doubts a patient’s capacity to consent, even though the patient has not been judged legally incompetent” the consent of a responsible member of his/her family or a guardian must be obtained. In the event a responsible member of the inmate’s family or a guardian cannot be contacted (as evidenced by the return of a registered letter to the last known address of the

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guardian or responsible relative), the Director of Health Services/designee of the Division of Prisons is authorized to give ***substituted consent***. The Director of Health Services of the Division of Prisons may also withhold (on behalf of the inmate) consent to proposed medical or surgical procedures.

1. Legal Aspects of Health Care Administration, George D. Pozgar. Copyright 1996 Chapter 11 – Patient Consent

### DOCUMENTATION

Orderly presentation of recorded patient information is essential. Therefore, various consent for treatment forms must be signed by the inmate patient (these include medical, surgical, dental, and oral surgical). If an inmate refuses treatment, a refusal of treatment form must be signed. If the patient refuses to sign a refusal of treatment form, two staff members must witness the refusal and document accordingly on the Refusing Health Care Against Orders of Responsible Clinician (DC-442).

### EMERGENCY TREATMENT

If the responsible physician determines that emergency surgery is necessary to preserve the life or health of an inmate, and the inmate is incapacitated and unable to grant consent, consent will be sought from a family member, guardian, or someone having legal custody. If consent cannot be obtained by a responsible family member, guardian, or person with legal custody within the time necessitated by the nature of the emergency, the Medical Director/Director of Health Services (physician) and the facility superintendent (with the advice of the medical staff) shall give ***substitute consent***.

In emergency surgical cases, the Director of Health Services/designee (physician) and the medical staff of the facility are to maintain careful and complete records of the measures taken to obtain consent. A complete medical record signed by the Director of Health Services/designee, the surgeon, and all surgical consultants of the operation will be created.

Informed consent for medical intervention will not be required when staff is responding to life threatening conditions that require immediate action to preserve the health and safety of the patient.



2-29-08

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Paula Y. Smith, Director of Health Services

Date

SOR: Director of Medical Records