Keeping you "in the know" in the ASC industry

1

PROGRESSIVE
SURGICAL SOLUTIONS
A DIVISION OF BSM CONSULTING

Informed Consent in the ASC

DEBRA STINCHCOMB, MBA, BSN, RN, CASC
PROGRESSIVE SURGICAL SOLUTIONS, A DIVISION OF BSM CONSULTING

WILL MILLER
HIGGS FLETCHER AND MACK

2

Learning Objectives

- Understand the process of obtaining an informed consent
- Identify the challenges and develop the solutions for challenges such as guardianship
- Understand real life scenarios and use them as examples in their ASC

PROGRESSIVE SURGICAL SOLUTIONS

3

Regulations and Standards: CMS

CMS: PATIENT RIGHTS

416.50(e) Standard: Exercise of rights and respect for property and person

- A well-designed informed consent process would include **discussion** of the following elements:
  - A description of the proposed surgery, including the anesthesia to be used;
  - The indications for the proposed surgery;
  - Material risks and benefits for the patient related to the surgery and anesthesia, including the likelihood of each, based on the available clinical evidence, as informed by the responsible practitioner's clinical judgment. Material risks could include risks with a high degree of likelihood but a low degree of severity, as well as those with a very low degree of likelihood but high degree of severity;
  - Treatment alternatives, including the attendant material risks and benefits;

CMS CENTERS FOR MEDICARE & MEDICAID SERVICES

PROGRESSIVE SURGICAL SOLUTIONS

4

Regulations and Standards: CMS

CMS: PATIENT RIGHTS

416.50(e) Standard: Exercise of rights and respect for property and person

- A well-designed informed consent process would include **discussion** of the following elements:
  - The probable consequences of declining recommended or alternative therapies;
  - Who will conduct the surgical intervention and administer the anesthesia;
  - Whether physicians other than the operating practitioner will be performing important tasks related to the surgery, in accordance with the ASC's policies. Important surgical tasks include: opening and closing, dissecting tissue, removing tissue, harvesting grafts, transplanting tissue, administering anesthesia, implanting devices and placing invasive lines;
  - Whether, as permitted by State law, qualified medical practitioners who are not physicians will perform important parts of the surgery or administer the anesthesia, and if so, the types of tasks each type of practitioner will carry out; and that such practitioners will be performing only tasks within their scope of practice for which they have been granted privileges by the ASC.

5

Regulations and Standards: AAAHC

AAAHC

9.E, 10.I.J Properly executed informed consent(s) was (were) obtained prior to anesthesia administration and pre-operatively. One consent form may be used to satisfy the requirements of these two Standards.

- Documentation is present to demonstrate that the following have been **discussed** with the patient:
  a. The necessity or appropriateness of the proposed procedure or surgery.
  b. Alternative treatment techniques.
- The clinical record demonstrates that the patient's written consent, or that of the patient's representative, was obtained before the surgery or procedure was performed.

6

Regulations and Standards: TJC

TJC

- Written policy to include:
  - Specific care and treatment or services that require informed consent
  - Circumstances that would allow exceptions
  - When a surrogate decision maker may give informed consent
- Process should include a **discussion**
  - Proposed care, treatment or services
  - Benefits, risks, and side effects and potential problems during recuperation
  - Reasonable alternatives

7

Informed Consent

- "Consent is a process, not a form" (Fay Rozovsky)
- Communication between a patient and healthcare provider
- Patients have responsibilities
- A signed consent records the conclusion of the process

8

Informed Consent Process

- Description of proposed surgery including anesthesia
  - Who will conduct surgery and provide anesthesia
- Diagnosis
- Surgical procedure to be performed including benefits, risks and alternatives
- Time involved for procedure and recovery
  - Ride home with responsible adult
- Restrictions on resuming normal activities
- Requirements for follow up care

9

The Legal Perspective

- Informed Consent: purpose and legal risk overview
- What the jury hears
- Real life experiences: joy through the pain of others

10

Purpose of Informed Consent

- Enable the patient/patient representative to make an informed, and educated, decision as to the care to undergo
  - Surgical procedure
  - Anesthesia- intubation and type of anesthesia
- Confirm the authorization of patient/patient representative to proceed
- Legal Defense: provide record of acknowledgment of risks, and agreement to proceed
  - Defense of lack of informed consent claims + battery claims
  - Defense of negligence claims for occurrence of a known complication (bleeding, infection, nerve injury, neurologic injury, death etc.)

11

What the Jury hears…

Definition of informed consent

12

CACI 532. Informed Consent - Definition

A patient's consent to a medical procedure must be "informed." A patient gives an "informed consent" only after the [insert type of medical practitioner] has adequately explained the proposed treatment or procedure. A [insert type of medical practitioner] must explain the likelihood of success and the risks of agreeing to a medical procedure in language that the patient can understand. A [insert type of medical practitioner] must give the patient as much information as he/she needs to make an informed decision, including any risk that a reasonable person would consider important in deciding to have the proposed treatment or procedure, and any other information skilled practitioners would disclose to the patient under the same or similar circumstances. The patient must be told about any risk of death or serious injury or significant potential complications that may occur if the procedure is performed. A [insert type of medical practitioner] is not required to explain minor risks that are not likely to occur.

13

Elements Required for Consent

- Explanation of proposed treatment or procedure
- Explanation of the risks, benefits, and alternatives
  - In language the patient/patient rep can understand
  - Disclosure of any serious risk of injury
  - Disclosure of any risk of death
  - Disclosure of risks SOC community require
  - Generally <u>not</u> required to disclose "minor" risks not likely to occur
  - Generally <u>not</u> required to disclose alternative treatments that not recommended for that patient

14

Legal Risk of Failure to Obtain Consent

- Why should I care?
  1. Failure to obtained informed consent = typically negligence claim
  2. Failure to obtain consent = "battery" claim

- Monumental difference in LOIC vs. Battery claims:
  - Lack of informed consent ("LOIC") covered by insurance
  - LOIC typically covered by favorable state statutes and damages limits (e.g., MICRA)
  - Battery = intentional act + typically not covered by insurance
  - Battery exposes ASC to punitive damages (not covered by insurance)
  - Battery typically not covered by favorable state statutes and damages limits

15

Understanding Lack of Informed Consent vs. Battery

LACK OF INFORMED CONSENT

- Patient consented to the particular procedure, but wasn't provided enough info to be "informed"
  - **Example:** agreed to R knee surgery, not told of risk of infection, gets infection following right knee surgery

BATTERY (2 SCENARIOS)

1. Patient never consented to the procedure done – e.g., patient agreed to R knee, you did L
2. "Conditional consent"- e.g., patient only agreed to fiberoptic intubation

16

What the Jury hears…

Lack of informed consent claim

PROGRESSIVE SURGICAL SOLUTIONS

17

CACI 533. Failure to Obtain Informed Consent
Essential Factual Elements

Plaintiff claims that Defendant was negligent because he/she performed a medical procedure on Plaintiff without first obtaining his/her informed consent. To establish this claim, Plaintiff must prove all of the following: 1. That Defendant performed a medical procedure on Plaintiff; 2. That Defendant did not disclose to Plaintiff the important potential results and risks of, and alternatives to, the medical procedure; 3. That a reasonable person in Plaintiff's position would not have agreed to the medical procedure if he or she had been adequately informed; and 4. That Plaintiff was harmed by a result or risk that Defendant should have explained.

PROGRESSIVE SURGICAL SOLUTIONS

18

What the Jury hears…

Battery based on lack of any consent

PROGRESSIVE SURGICAL SOLUTIONS

19

CACI 530A. Medical Battery

Plaintiff claims that [name of defendant] committed a medical battery. To establish this claim, Plaintiff must prove all of the following: 1. That Defendant performed a medical procedure without Plaintiff's consent; [or] 1. [That Plaintiff consented to one medical procedure, but Defendant performed a substantially different medical procedure;] 2. That Plaintiff was harmed; and 3. That Defendant's conduct was a substantial factor in causing Plaintiff's harm. A patient can consent to a medical procedure by words or conduct.

PROGRESSIVE SURGICAL SOLUTIONS

20

What the Jury hears…

Battery based on conditional consent

PROGRESSIVE SURGICAL SOLUTIONS
A DIVISION OF BBM CONSULTING

21

CACI 530B. Medical Battery

Conditional Consent Plaintiff claims that Defendant committed a medical battery. To establish this claim, Plaintiff must prove all of the following: 1. That Plaintiff consented to a medical procedure, but only on the condition that [describe what had to occur before consent would be given]; 2. That Defendant proceeded without this condition having occurred; 3. That Defendant intended to perform the procedure with knowledge that the condition had not occurred; 4. That Plaintiff was harmed; and 5. That Defendant's conduct was a substantial factor in causing Plaintiff's harm. A patient can consent to a medical procedure by words or conduct.

PROGRESSIVE SURGICAL SOLUTIONS
A DIVISION OF BBM CONSULTING

22

Who’s duty is it to obtain Informed Consent?

- Generally it is the physician…why?
  - Physicians diagnose, formulate treatment plans, recommend the treatment, and are required to know the risks and benefits to make informed recommendations to patient
  - Some states (including CA), the physician stands in a fiduciary relationship with the patient, whereas generally the ASC does not
    - Moore v Regents of Univ. of California (1990) 51 C.3d 120, 133
    - Cobbs v. Grant (1972) 8 C.3d 229
    - Derrick v. Ontario Community Hospital (1975) 47 CA3d 145,154
- Exceptions:
  - Registered nurse anesthetist, RNP, other?

23

Real World Experience

“war stories”

joy through the pain of others

24

Consent Lawsuit

So you want to spend 2 months in trial?

- Patient = 45 Year-old female physician with former privileges at our ASC
- Contends only consented to surgery with fiberoptic intubation- alleged “conditional consent”
- Writes difficult intubation on Pre-anesthesia Questionnaire
- Pre-op discussions with nurse and anesthesiologist
- Anesthesia consent form makes no mention of fiberoptic intubation
- Nasal-tracheal intubation without use of fiberoptics
- Claims “traumatic” intubation, resulting in hypoxic event
- Claims brain damage, unable to return to work as physician and $15 million in damages
- Sues anesthesiologist, ASC Medical Director, and ASC for battery and negligence
- Trial involves 31 witnesses, lasts 2 months, with ASC rep and physicians present every day
- Result: Jury verdict for defense, ASC seeks costs $250k+

25

Anesthesia and Surgical Consent Forms

Dob:
Dos:
Dr.
Age:
Id:
Sex:

PATIENT CONSENT FOR ANESTHESIA/SEDATION

I Understand that:

I will need anesthesia services for the surgical procedure(s) to be done on 11-27-13 (date), and that the type of anesthesia to be used will depend upon the procedure and my physical condition.

Anesthesia is a specialty medical service which manages patients who are rendered unconscious or with diminished response to pain and stress during the course of a medical, surgical, or obstetrical procedure.

During the course of a surgical procedure, conditions may require additional or different anesthetic monitoring or techniques, and I ask that the anesthesiologist provide any other necessary services for my benefit and well-being.

In addition to the anesthesiologist whose name appears on this document, my anesthetic services may be provided by other anesthesiologists who are members of the anesthesia departments at La Veta Surgical Center.

No guarantees have been made by anyone regarding the anesthesia services which I am agreeing to have.

TYPES OF ANESTHESIA AND DEFINITIONS

A. GENERAL ANESTHESIA
1. Endotracheal Anesthesia: Anesthetic and respiratory gases are passed through a tube placed in the trachea (windpipe) via the nose or mouth.
2. Mask Anesthesia: Gases are passed through a face mask which covers the nose and mouth on a laryngeal mask (LMA) which is inserted inside the mouth and covers the larynx (windpipe opening).
3. Other forms of Inhalation anesthesia as indicated.

B. REGIONAL ANESTHESIA
1. Epidural Anesthesia: A small catheter is inserted into epidural (outer spinal) space so that anesthetizing agents may be given to produce anesthesia.
2. Spinal Anesthesia: The anesthetic agent is injected into the spinal subarachnoid space to produce anesthesia (loss of sensation).
3. Nerve Blocks: Local anesthetizing agents are injected into specific areas to inhibit nerve transmission.

C. MONITORED ANESTHESIA CARE (MAC): Includes the monitoring of at least blood pressure, oxygenation, pulse and mental status, supplementing sedation and analgesia as needed.

D. CONSCIOUS SEDATION: Includes the monitoring of blood pressure, pulse and mental status, oxygenation, supplementing sedation and analgesia as needed. These services may be provided by a Registered Nurse who has demonstrated competency in conscious sedation. The Registered Nurse will be acting upon orders directed by the surgeon. Conscious sedation may also include local anesthesia as described below.

E. LOCAL ANESTHESIA
1. Local Anesthesia: Anesthetizing agents are injected or infiltrated directly into a small area of body; for example, the surgical site.
2. Topical Anesthesia: Surface anesthesia is produced by direct application of anesthetizing agents on skin or mucous membranes.

RISKS AND COMPLICATIONS may include but are not limited to: Allergic/adverse reaction, aspiration, backache, brain damage, coma, dental injury, headache, inability to reverse the effects of anesthesia, infection, localized swelling and/or redness, muscle aches, nausea, eye injury, pain, paralysis, pneumonia, positional nerve injury, recall of sound/noise/speech by others, seizures, sore throat, wrong site for injection of anesthesia and death.

I have been given the opportunity to ask questions about my anesthesia and feel that I have sufficient information to give this informed consent. I agree to the administration of the anesthesia prescribed for me. I recognize the alternative to acceptance of anesthesia might be no anesthesia for the procedure(s).

(Patient's/Guardian's Signature) (Date) (Time) (Witness Signature) (Date) (Time)

(Anesthesiologist's Signature) (Date) (Time)

201-35

PROPOSED PROCEDURE(S) (1) BILATERAL TEMPOROMANDIBULAR JOINT ARTHROSCOPY.

CONSENT TO OPERATION AND OTHER MEDICAL SERVICES INCLUDING TRANSFUSION(S)

1. The facility maintains personnel and facilities to assist physicians and surgeons as they perform various surgical operations and other diagnostic or therapeutic procedures. Generally, such physicians, surgeons and practitioners are not agents, servants or employees of the facility, but independent contractors and, therefore, are the patient's agents or servants. The facility provides nursing and support services and facilities; the facility does not provide medical physician care.
2. The procedure(s) listed to be performed and the advantages and disadvantages, risk and possible complications as well as the alternatives have been explained to me by my physician. The doctor has satisfactorily answered my questions.
3. My consent is given with the understanding that any operation or procedure involves risks and hazards. The more common risks include: infection, bleeding with the need for blood transfusion, nerve injury, blood clots, heart attack, stroke, allergic reaction, damage to teeth or bridgework, and pneumonia. These risks can be serious and possibly fatal.
4. I authorize and direct the above named surgeon to arrange for such additional services for me as he or she may deem necessary or advisable, including but not limited to the administration and maintenance of anesthesia, and the performance of pathology and radiology services, to which I hereby consent.
5. I authorize the pathologist or physician to use his or her discretion in disposing of any member, organ, implant, prosthetic, or other tissue removed from my person during the operation(s) or procedure(s).
6. The facility may participate in residency and other training programs for physicians, allied health professionals and other providers of services. All care rendered by individuals in training will be supervised and reviewed, as appropriate, by appropriate personnel. I hereby consent to care and treatment from individuals in training and to the review of my patient record by same.
7. I DO / DO NOT (circle one) authorize the administration of transfusions of whole blood or blood products to me as may be deemed advisable by the anesthesiologist, my attending physician and/or his associates or assistants. I understand that despite the exercise of due care the transfusion of blood or blood products is always attended with the possibility of adverse effects such as the transmission of hepatitis, HIV or certain other diseases, accidental transmutation, or allergic reaction. (If the Patient circles DO NOT, obtain the patient/guardian signature on the Refusal to Permit Blood Transfusion form)
8. In the event of an accidental exposure of my blood or bodily fluids to a physician, contractor or employee of the facility, I consent to testing for HIV and Hepatitis.
9. I understand that it is my responsibility and I have arranged for a responsible adult to drive me home and remain with me following my surgery. I acknowledge that I have been advised by facility personnel not to drive until the effects of any medications have worn off. I understand this to mean that I should not drive until the day after my surgery/procedure or as directed by my physician.
10. I hereby consent to the presence of other person(s) for the sole purpose of observation and/or education. I understand that this individual(s) will not participate in the actual procedure.
11. I consent to the use of video-taping or photography that may be used for scientific or teaching purposes, and to the review of my medical record for bona fide medical healthcare research providing my name or identity is not revealed.
12. I release the facility from any responsibility for loss and/or damage to money, jewelry or other valuables I brought into the facility. I give consent to the removal of jewelry by the facility staff. I understand that damage to the jewelry may result from the removal process by cutting or physical removal. I acknowledge that I will not hold the facility responsible for expenses necessary to repair or replace the jewelry if indicated.
13. I understand that if I am pregnant or if there is any possibility I may be pregnant, I must inform the facility immediately since the scheduled procedure could cause harm to my child or to myself.
14. I am aware that my physician may have an ownership interest in the facility, and I acknowledge that I have a right to have the procedure performed elsewhere.
15. I understand that in the rare event hospitalization is required during or immediately after surgery, my physician will arrange for my transfer to a local hospital.
16. I have not eaten or taken fluids, not even water, since DATE ____ TIME 0700 1200 AM/PM except for a sip of water taken with medication as instructed by my physician.
17. My signature below constitutes my acknowledgement that (1) I have read or have had read to me the foregoing, I agree to it; (2) the procedure(s) has been adequately explained by my physician; (3) I authorize and consent to the performance of the procedure(s) and any additional procedure(s) deemed advisable by my physician in his or her professional judgment; (4) I authorize and consent to the administration of anesthesia for the said procedure(s).
18. If I am not the patient, I represent that I have the authority of the patient who, because of age or other legal disability, is unable to consent to the matters above. I have full right to consent to the matters above, and I consent to same; (b) I hereby indemnify and hold harmless the facility, its employees, agents, medical staff, partners and affiliates from any cost or liability arising out of my lack of adequate authority to give this consent.

DATE ____ TIME ____ PATIENT'S SIGNATURE ____
DATE ____ TIME ____ WITNESS TO SIGNATURE ____
DATE ____ TIME ____ PLANNED PROCEDURE VERIFIED BY ____

If patient is a minor or unable to sign complete the following:
☐ Patient is a minor ☐ Patient is unable to sign because: ____

DATE ____ TIME ____ SIGNATURE ____
RELATIONSHIP ____
DATE ____ TIME ____ WITNESS TO SIGNATURE ____
DATE ____ TIME ____ PLANNED PROCEDURE VERIFIED BY ____

201-32

PROGRESSIVE
SURGICAL SOLUTIONS
A DIVISION OF BSM CONSULTING

26

Lessons Learned

- Written consent forms were crucial to defense
  - “No guarantees regarding anesthesia services to be provided”
  - “Conditions may require additional or different anesthetic monitoring or techniques…”
  - Others may be provide anesthesia services
  - Disclosure of risks including “brain damage”
  - “I’ve been given the opportunity to ask questions…” and consented to anesthesia and procedure
  - Date and time of patient signature
  - Surgical consent- physicians are independent contractors and agents of patient
- Get the consent in writing
- Use “long form” consent – help us to help you

27

Physician, Facility & Anesthesia

- What is the difference between a physician consent, facility consent and anesthesia consent?
- Do you need separate consents for the procedure and anesthesia? (from a legal standpoint, not accreditation body requirement)
- Do you need to list risks/benefits/alternatives?
- Who gives the anesthesia informed consent information to the patient? Can they sign the consent before this given?

28

Physician, Facility & Anesthesia

- Must give consent prior to agreeing to surgery
  - GI
  - Vascular
  - Facility must ensure that the practitioner responsible for the care obtained consent
- Should give consent prior to agreeing to administration anesthesia
- Anesthesia consents should contain:
  - Explanation of the anesthesia, benefits, risks, alternatives, blood and blood product information
  - Who can give anesthesia information? CRNA ? MDA? Surgeon?
  - If not the provider, it raises the risk that a non anesthesia provider is not equipped to give information for informed consent

29

Physician, Facility & Anesthesia

- AANA: American Association of Nurse Anesthetisits
- https://www.aana.com/docs/default-source/practice-aana-com-web-documents-(all)/informed-consent-for-anesthesia-care.pdf
- Pre anesthesia evaluation imperative and time must be allowed to obtain anesthesia consent

Informed Consent for Anesthesia Care
Policy and Practice Considerations

The following considerations are solely for informational purposes, are not intended to provide legal advice, and should not be considered or relied upon as legal guidance. Federal, state, local, and accreditation requirements vary and are subject to change. Please seek all necessary legal and expert assistance regarding the requirements specific to your practice.

Table of Contents	
Purpose	1
Introduction and History	2
Anesthesia Informed Consent Process: Background and Considerations	2
Consideration - Separation of Anesthesia Informed Consent Process from Surgical/Procedural Informed Consent Process	3
Elements of Anesthesia Informed Consent Process	3
Timing of Anesthesia Informed Consent Process	7
Emergencies	7
Withholding Information	7
Informed Consent Policy Considerations	8
Informed Consent Practice Considerations	8
Patient Communication and Health Literacy	8
Considerations	8
Informed Consent Form	9
Patients Requiring Special Assistance	10
Special Additional Considerations: Informed Consent for Obstetric Patients	12
Prenatal Education, Communication, and Timing of Informed Consent	12
Anesthesia Consultation with At-Risk Parturients	13
Pregnancy in Minors	13
Maternal-Fetal Conflict	13
Conclusion	14
Appendix: Additional Resources - Patient Communication, Health Literacy, and Cultural Competency	15
References	17

Purpose
This document summarizes the ethical and legal concepts of informed consent for anesthesia, describes the elements of informed consent, and provides recommendations for engaging in the informed consent process for anesthesia services. It serves as a resource document for anesthesia professionals, healthcare professionals, and healthcare facilities for development of anesthesia informed consent policy and practice considerations. Anesthesia professionals, including Certified Registered Nurse Anesthetists (CRNAs), are responsible for following the informed consent requirements specified in federal, state, and local law, accreditation standards, and facility policies.

1 of 22

American Association of Nurse Anesthetists | 222 South Prospect Ave | Park Ridge, Illinois 60068-4001 | AANA.com
Professional Practice Division | 847-655-8870 | practice@aana.com

30

Physician, Facility & Anesthesia

Do you need a copy of the physician's consent form?	No
Does the surgeon need to sign your facility consent form?	No

31

Physician, Facility & Anesthesia

- Issues to consider for facility consent process
  - If witness is utilized, they are only ensuring the patient is signing
  - Facility consent discussion should be in a private location and before the patient has received any sedation
  - Ask patient to state the procedure to you
  - Ask patient if they have any questions
  - If a patient expresses unanswered questions or concerns, he or she should not sign the form until the physician has addressed all concerns

32

Informed Consent Format

- **Long Form:** Lists the benefits, risks, alternatives
- **Short Forms:** General with a statement that the patient is agreeing they have been given information about the above

Legal Perspective: Long form provides greater protection – express ultimate risk of death

33

Informed Consent in Other States (Similar)

TEXAS PHYSICIAN CONSENT

"…for a patient to recover against a provider for lack of informed consent, the patient must show that the provider was negligent in failing to disclose the risks or hazards that could have influenced a reasonable person in making a decision to give or withhold consent."

- §601.2 Procedures Requiring Full Disclosure of Specific Risks and Hazards—List A
- §601.3 Procedures Requiring No Disclosure of Specific Risks and Hazards--List B
- §601.4 Disclosure and Consent Form
- §601.5 Disclosure and Consent Form for Radiation Therapy
- §601.6 History
- §601.7 Informed Consent for Electroconvulsive Therapy
- §601.8 Disclosure and Consent Form for Hysterectomy
- §601.9 Disclosure and Consent Form for Anesthesia and/or Perioperative Pain Management (Analgesia)

34

Surgical Procedure

- Does the procedure have to be spelled out completely?
  - **YES**, procedure should be worded in medical jargon
  - No acronyms or abbreviations should be used
  - Verbal description should be given in a manner the patient can understand

35

Guardianship

- Who can sign a consent form for the patient and in what circumstances?
- Minors
  - Parents or guardian parent
  - Legal Guardians
  - Know your state laws. "Mature Minor" or "Emancipated Minor"
  - May be procedure specific
- Patients deemed incompetent
  - Legal Guardian previously chosen by patient
  - Medical Power of Attorney
  - Legal procedure to assign court appointed guardian
  - States addressing issues of growing elderly population
    - NC: "Two Physician Rule"; N.C.G.S. 90-21.13

36

Consent Time Limit

- Is there a time limit on consents?
  - **NO** (Other than sterilization permits)
  - Should be based on changes in patient history which would alter the risks, benefits and alternatives
  - Should have a policy indicating a time limit if you allow facility consent forms signed prior to date of service

Legal Perspective: If you set a limit, make sure you follow it to avoid admitted battery!

37

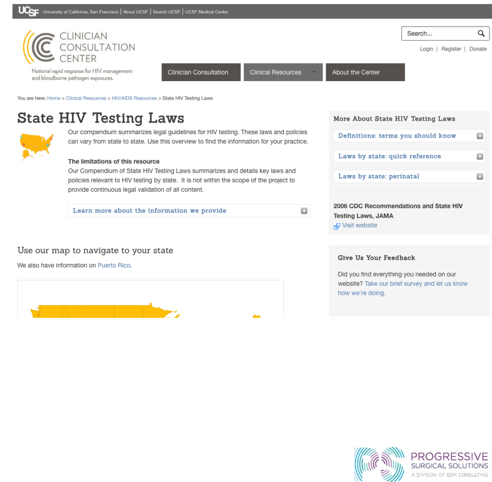
HIV Testing

- Do you need a separate consent for HIV testing?
  - **NO, BUT**…
- Old law: required a separate consent
- 2006: CDC recommended routine HIV testing focused on adults, adolescents and pregnant women. Anyone between 13 and 64 y.o.
- Issues: Who does counseling? Who discusses HIV testing benefits or positive test results?

38

HIV Testing

- HRET (The Health Research Education Trust) recommends including consent for HIV testing as part of consent form rather than a separate form.
- NCCC provides tool for state laws: http://nccc.ucsf.edu/clinical-resources/hiv-aids-resources/state-hiv-testing-laws/
  - Use as starting point



39

Reproductive Consents

- Sterilization procedures
  - Failed sterilization
  - Complications
  - Spousal consent (Not required)
  - Consent Time Limits
- Abortions
  - Parental consent of minors
  - Waiting period
  - Spouse notification

40

Consent Additions

- ASC items that require informed consent and should be disclosed to patients include:
  - Students
  - Outside representatives or other non-employees
  - Photographs, videotaping or the production of slides
  - Tissue Disposal
  - Research
  - Use of blood or blood products
- Additional consent item
  - Pt Rights, AD policy, Ownership interest of physicians in ASC

Available on Progressive eSupport

- eSupport/Compliance/Policy & Procedure Update/Administration

PROGRESSIVE
SURGICAL SOLUTIONS

HOME ESUPPORT BLOG FORUM ACCOUNT

P&P: ADMINISTRATION

CLICK LINKS BELOW TO DOWNLOAD

- Advance Directives
- Changing Providers
- Compliance with HHS 1557
- Computer Access and Security
- Dismissal: Patient and Visitor
- Employee Add/Edit/Delete
- Governance
- Impaired Healthcare Professional
- Informed Consent
- Institutional Review Committee
- Mandatory Notification to AAAHC of Significant Changes

SEARCH

POLICY AND PROCEDURE UPDATE

- Overview
- Recent Updates
- **Administration**
- Anesthesia/Medication Management
- HIPAA
- Human Resources
- Infection Control
- Nursing
- OSHA

Informed Consent Policy to download and customize

Available on Progressive eSupport

- eSupport/Operations/Sample Forms/Consents

PROGRESSIVE SURGICAL SOLUTIONS

HOME ESUPPORT BLOG FORUM ACCOUNT

SAMPLE FORMS: CONSENTS

CLICK LINKS BELOW TO DOWNLOAD

- Anesthesia Consent 1 (MAC, Local)
- Anesthesia Consent 2
- Facility Consent 1
- Facility Consent 2
- Facility Consent 3
- Facility Consent 4
- Observer in OR Consent
- Photography and Publication Consent

SAMPLE FORMS

- Sample Forms Overview
- Anesthesia
- Business Office
- Consents
- History and Physical
- Laser Procedures (Ophthalmology)
- Nursing
- Patient Satisfaction Survey
- Physician Orders

CONSENT FOR ANESTHESIA SERVICES

FACILITY CONSENT

Consent for Surgery

CONSENT FORM

Consent for Anesthesia

CONSENT TO SURGERY OR SPECIAL DIAGNOSTIC OR THERAPEUTIC PROCEDURES, ADMINISTRATION OF ANESTHETICS AND OTHER MEDICAL SERVICES

Anesthesia and Facility Consent Templates to customize

43

Can you say this?

"You'll feel like your old self after surgery"

"reassuring statement" vs. guarantee

You must have _______ procedure.

Coercion

PROGRESSIVE SURGICAL SOLUTIONS A DIVISION OF BSM CONSULTING

44

Withdrawal of Consent/Refusal of Treatment

- Leaving AMA
  - Develop a policy on AMA
  - Have a form for the patient to sign
  - Document conversations leading up to the withdrawal of consent

45

Real World Solutions

- Consider the informed consent a process
- Encourage patients to ask questions
  - If the patient has procedural questions, stop the process and notify the surgeon or anesthesiologist
  - If questions or concerns are raised- make sure they are answered/addresses
- Consent signed only <u>after</u> chance to speak with the physicians
  - Sounds simple, but do you practice that?
  - Patient speaking with physician can help exonerate ASC

46

Real World Solutions

- Provide appropriate interpretation services, as needed
- Ensure patients can legally give consent- minor, incompetent, etc.?
- Thorough written consent provides significant defense
  - Scope of procedure
  - Type of anesthesia
  - Risks of procedure including death – creates argument lesser risk consented to
  - Physician right to exercise clinical judgment
- Elective procedure generally- if in doubt, delay or reschedule case

47

Real World Solutions

- Understand "witness" vs. "obtain" informed consent
  - Generally, the physician obtains, we witness patient attest they provided informed consent
- Extremely useful reference materials:
  - California- "The Consent Manual" by CA Hospital Association (CHA)
  - Other states- similar hospital or ASC association publications

48

Resources

- Rozovsky, Fay A., *Consent to Treatment: A Practical Guide*, 4th edition, New York, Wolters Kluwer Law & Business, 2014, Print
- CMS www.cms.gov
- AAAHC www.aaahc.org
- TJC www.Jointcommision.org
- CACI California Civil Jury Instructions

49

Questions?

Debra Stinchcomb, MBA, BSN, RN

debra@pss4asc.com

Will Miller

wmiller@higgslaw.com

50

Continued Education

1 CE CONTACT HOUR PER ATTENDEE.
(LICENSED NURSES)

COMPLETE COURSE EVALUATION SENT VIA EMAIL BY FRIDAY 12/27.

ALLOW 2 WEEKS FOR PROCESSING OF YOUR CERTIFICATE.

ANY QUESTIONS REGARDING CE CREDIT, CONTACT LYN@PSS4ASC.COM

51

Join the eSupport Community!

Request your free web demo today
www.progressivesurgicalsolutions.com/esupport

Email us at info@pss4asc.com

Or call us! (855) 777-4272

52

Join our Private Facebook Group

- A place to connect, support, and network with other ASC managers all over the country

www.facebook.com/groups/ascmanagers/

53

The ASC Nurse Leadership Conference

ASC NURSE

LEADERSHIP CONFERENCE

FEB 6-7 • 2020

DALLAS, TEXAS

ASCNURSELEADERSHIP.COM

Join us!

54

The 2020 Webinar Line Up!

DATE	🕒	CE	WEBINAR TOPIC	SPEAKER
January 27	20 min		ASC Quality Reporting Update	Gina Throneberry
February 28	60 min	✓	Physical Environment Checklist/How to Talk to an Engineer	John L. Crowder, Jr.
March 30	20 min		Anesthesia Services	Chris Caldwell
April 24	60 min	✓	Credentialing Review	Crissy Benze
May 26	20 min		Medical Record Audit Walkthrough	Debra Stinchcomb
June 26	60 min	✓	Current Trends in HIPAA and Cybersecurity	Kurt Bratten, Esq.
July 27	20 min		Customer Service	Vanessa Sindell
August 28	60 min	✓	Sterile Processing Department Best Practices	Dave Walles
September 28	20 min		How to Make a Performance Appraisal Effective	Regina Boore
October 30	60 min	✓	Leadership Panel	TBD
November 30	20 min		Annual Survey Watch Report	Leanne Gallegos
December 28	60 min	✓	Problem Employees: How to Manage, How to Win	Abtin Mehdizadegan

www.ProgressiveSurgicalSolutions.com/webinars

55