

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



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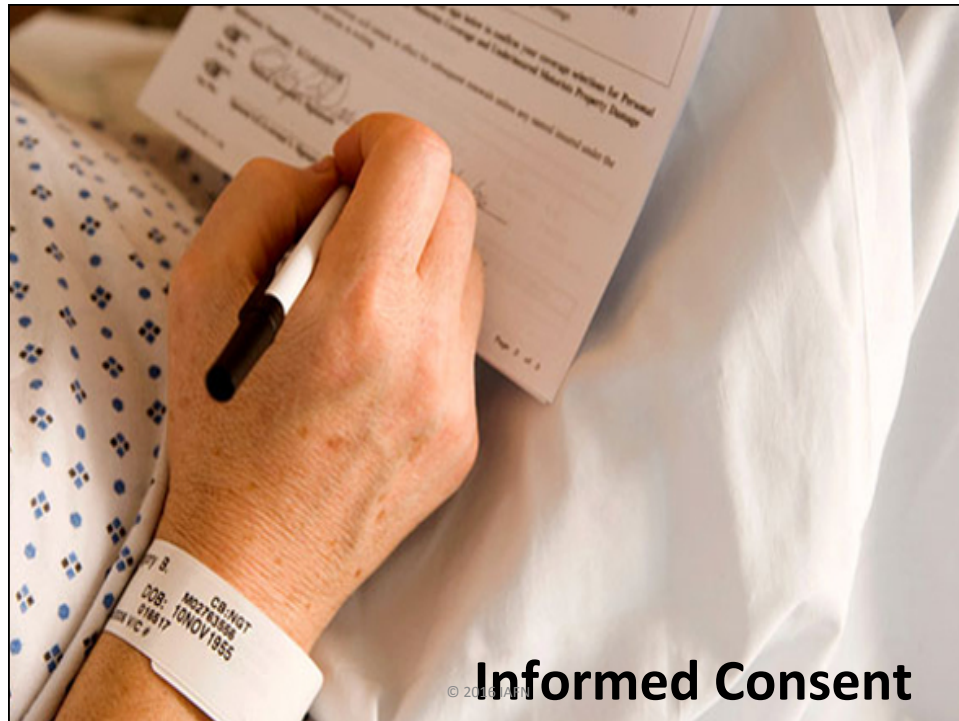
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Objectives

- 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 does informed consent mean to you?

“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



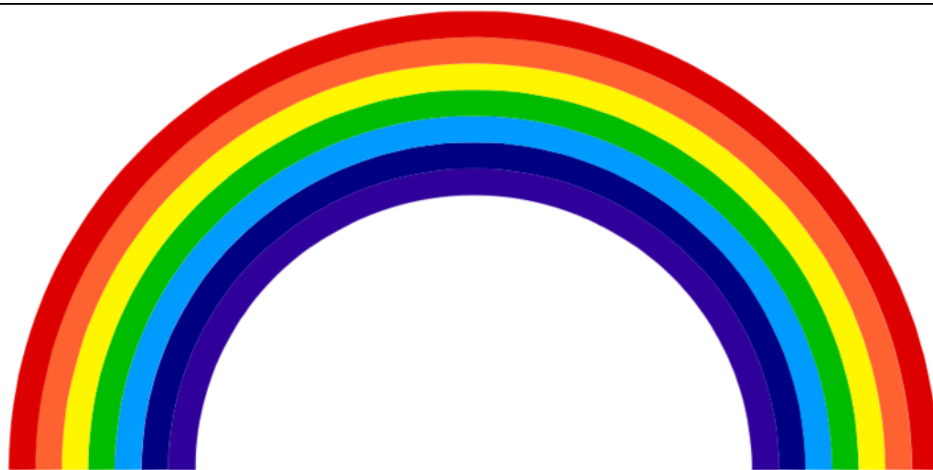
“Patients have a moral and legal right to determine what will be done with their own person; to be given accurate, complete, and understandable information in a manner that facilitates an informed judgment; to be assisted with weighing the benefits, burdens, and available options in their treatment, 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)

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Informed consent is one of the overarching issues that affect all patients whom advocates and forensic nurses see.

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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

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Victim Advocates' Role in consent



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

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Neurobiology of Trauma

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

Language



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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

Rebecca W. Carman, *The Sexual Assault Forensic Examiner Coordinator's Handbook: Lessons Learned in Queens*, NY STATE COALITION AGAINST SEXUAL ASSAULT (2010)

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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”

Rebecca W. Carman, *The Sexual Assault Forensic Examiner Coordinator’s Handbook: Lessons Learned in Queens*, NY STATE COALITION AGAINST SEXUAL ASSAULT (2010)

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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

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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

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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

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Capacity to Consent – Incapacitated Patients

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Capacity to Consent – Vulnerable Populations



Legal Implications of Consent



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

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Limited Waivers

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

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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

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Informed Refusal



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Photography – Medical Issues

- Photographer
- Storage
- Handling
- Release



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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

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Consent for Information Release



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Role of Victim Advocates

- System-based v. community-based
- Privilege
 - Presence of third parties
- Medical provider **CAN NOT** delegate the responsibility of informed consent to a victim advocate

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SOME RECOMMENDATIONS



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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

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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

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Recommendations for Practice

- Photos
- Records
- Testimony



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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

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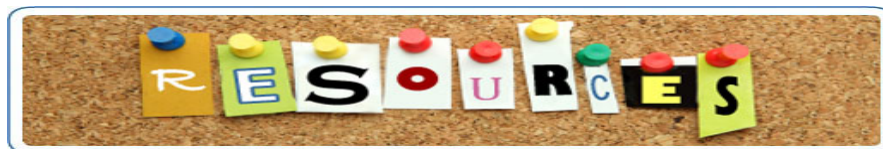
Recommendations for Practice – Victim Advocates

- 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

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- Resource materials provided
- SAFEta Project – International Association of Forensic Nurses
www.safeta.org

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