PRINCIPLES OF CONSENT AND ADVANCE DIRECTIVES
A handbook on patient consent for treatment and other health care decisions

2014 Edition
PUBLICATIONS
Several helpful publications are available through CHA including:

California Health Information Privacy Manual
California Hospital Compliance Manual
California Hospital Survey Manual
Consent Manual
EMTALA — A Guide to Patient Anti-Dumping Laws
Guide to Release of Patient Information
Hospital Charity Care & Discount Policies
Mental Health Law
Minors & Health Care Law
Model Medical Staff Bylaws & Rules
Principles of Consent and Advance Directives
Record and Data Retention Schedule
The California Guide to Preventing Sharps Injuries

Plus numerous web seminar recordings available on CD, human resource and volunteer publications.

ORDERING INFORMATION
For more information, visit CHA online at www.calhospital.org/publications

This publication is designed to produce accurate and authoritative information with regard to the subject matter covered. It is sold with the understanding that CHA is not engaged in rendering legal service. If legal or other expert assistance is required, the services of a competent professional person should be sought.


All rights reserved. First edition 1960. 41st edition 2014.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise (with exception of the forms, tables and appendices), without the prior written approval of:

California Hospital Association
ATTN: Publishing
1215 K Street, Suite 800
Sacramento, CA 95814

Mary Barker, Vice President, Publishing and Education
Lois J. Richardson, Esq., Vice President, Privacy and Legal Publications/Education
Sheryl Hurner, Director, Publishing and Marketing
Emily Stone, Publishing Specialist

It is the intent of CHA to strictly enforce this copyright.

Published by the California Hospital Association.
Printed in the United States of America.
QUICK REFERENCE GUIDE

- Introduction
- Where to Find Laws Referenced in the Manual
- Numerical Listing of Forms and Appendixes

Chapter 1 .......... The Basic Principles of Consent
Chapter 2 .......... Who May Give Consent
Chapter 3 .......... Advance Health Care Directives
Chapter 4 .......... Procedures That Require Special Consent
Chapter 5 .......... Refusal of Treatment and End-of-Life Issues

- Index
INTRODUCTION

Welcome to *Principles of Consent and Advance Directives* — a handbook on patient consent for medical treatment and other health care decisions.

The California Hospital Association publishes this manual for use by the health care community as they assist patients in making informed decisions about their medical care. The manual takes complicated laws and explains them in clear and concise language. *Principles of Consent and Advance Directives* tells you exactly what the law requires and what you need to do to comply.

The manual can be used by a wide range of personnel: administrators, risk managers, health care attorneys, physicians and nurses, emergency room staff, health information and admissions staff, privacy officers, clinic managers, social workers, quality managers and others within a hospital or health care facility. It also is a useful tool for those who develop health care policy and provide counsel to health care facilities.

This edition of *Principles of Consent and Advance Directives* reflects changes in state and federal legislation, regulations and judicial decisions through March 2014.

The text of *Principles of Consent and Advance Directives* is taken from CHA’s *Consent Manual*. The *Consent Manual* goes beyond the basics, covering topics such as mental health law, consent for human subject research, health information privacy law, hospital reporting requirements, and other related health care law. Readers who have mastered the basics and are faced with more complicated consent questions may wish to consult the *Consent Manual*.

We are pleased to produce this publication as a service to our members and others. We hope you find it useful.

Lois J. Richardson, Esq.
Vice President, Privacy and Legal Publications/Education
Editor, *Principles of Consent and Advance Directives*

Information contained in *Principles of Consent and Advance Directives* should not be construed as legal advice or used to resolve legal problems by health care facilities or practitioners without consulting legal counsel. A health care facility may want to accept all or some of *Principles of Consent and Advance Directives* as part of its standard operating policy. If so, the hospital or health facility’s legal counsel and its board of trustees should review such policies.
WHERE TO FIND LAWS REFERENCED IN THE MANUAL

All of the laws discussed in the *Principles of Consent and Advance Directives* can be found on the Internet.

I. FEDERAL LAW

A federal statute is written by a United States Senator or Representative. It is voted on by the United States Senate and the House of Representatives, and then signed by the President. A federal statute is referenced like this: 42 U.S.C. Section 1395. “U.S.C.” stands for “United States Code.” Federal statutes may be found at www.gpo.gov/fdsys.

A federal regulation is written by a federal agency such as the U.S. Department of Health and Human Services or the U.S. Food and Drug Administration. The proposed regulation is published in the *Federal Register*, along with an explanation (called the “preamble”) of the regulation, so that the general public and lobbyists may comment on it. The federal agency must summarize and respond to each comment it receives on the proposed regulation. The agency may or may not make changes to the proposed regulation based on the comments. The final regulation is also published in the *Federal Register*. A federal regulation is referenced like this: 42 C.F.R. Section 482.1 or 42 C.F.R. Part 2. “C.F.R.” stands for “Code of Federal Regulations.” Federal regulations may be found at www.gpo.gov/fdsys. The preamble, however, is only published in the *Federal Register* and not in the Code of Federal Regulations. The *Federal Register* may be found at www.gpo.gov/fdsys.

The Centers for Medicare & Medicaid Services publishes its Interpretive Guidelines for surveyors on the internet. They may be found at www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo. There are several appendices that hospitals will find useful, for example, A (hospitals), AA (psychiatric hospitals), V (EMTALA), and W (critical access hospitals).

A federal law must be obeyed throughout the United States, including in California, unless the federal law expressly states otherwise. As a general rule, if a federal law conflicts with a state law, the federal law prevails, unless the federal law expressly states otherwise.

If there is no conflict, such as when one law is stricter but they don’t actually conflict with each other, both laws generally must be followed. For example, under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the federal law states that providers must conform to whichever provision of federal or state law provides patients with greater privacy protection or gives them greater access to their medical information.

II. STATE LAW

A state statute is written by a California Senator or Assembly Member. It is voted on by the California Senate and Assembly, and then signed by the Governor. A state statute is referenced like this: Civil Code Section 56 or Health and Safety Code Section 819. State statutes may be found at www.leginfo.ca.gov. Proposed laws (Assembly Bills and Senate Bills) may also be found at this website.

A state regulation is written by a state agency such as the California Department of Public Health or the California Department of Mental Health. A short description of the proposed regulation is published in the California Regulatory Notice Register, more commonly called the Z Register, so that the general public and lobbyists may request a copy of the exact text of the proposed regulation and comment on it. The state agency must summarize and respond to each comment it receives on the proposed regulation. The agency may or may not make changes to the proposed regulation based on the comments. A notice that the final regulation has been officially adopted is also published in the Z Register. The Z Register may be found at www.oal.ca.gov/notice.htm.

A state regulation is referenced like this: Title 22, C.C.R., Section 70707. “C.C.R.” stands for “California Code of Regulations.” State regulations may be found at www.calregs.com.

A state law must be obeyed in California only. As a general rule, if a California law conflicts with a federal law, the federal law prevails, unless the federal law expressly states otherwise. (If there is no conflict, such as when one law is stricter but they don’t actually conflict with each other, both laws generally must be followed.)
## NUMERICAL LISTING OF FORMS AND APPENDIXES

### 1. THE BASIC PRINCIPLES OF CONSENT
- 1-1<sup>S</sup> Consent to Surgery or Special Procedure
- 1-2<sup>S</sup> Informed Consent to Surgery or Special Procedure
- 1-A<sup>S</sup> Patient Rights (Combines Title 22 and other California laws, The Joint Commission and Medicare Conditions of Participation requirements)
- 8-1<sup>S</sup> Conditions of Admission

### 2. WHO MAY GIVE CONSENT
- 2-1<sup>S</sup> Self-Sufficient Minor Information
- 2-2<sup>S</sup> Caregiver’s Authorization Affidavit
- 2-3<sup>S</sup> Authorization for Third Party to Consent to Treatment of Minor Lacking Capacity to Consent
- 2-A Consent Requirements for Medical Treatment of Adults
- 2-B Consent Requirements for Medical Treatment of Minors
- 2-C Selection of Health Care Surrogates with the Assistance of Health Care Professionals — Sample Policy
- 2-D Health Care Decisions for Unrepresented Patients
- 10-1<sup>S</sup> Authorization for Release of a Minor
- 10-2<sup>S</sup> Acknowledgment of Release of a Minor

### 3. ADVANCE HEALTH CARE DIRECTIVES
- 3-1<sup>S</sup> Advance Health Care Directive

### 4. PROCEDURES THAT REQUIRE SPECIAL CONSENT
- 4-1 Transfusion Information Form
- 4-3<sup>S</sup> Authorization for and Consent to Hysterectomy
- 4-4 Employee or Medical Staff Member Statement
- 4-5<sup>S</sup> Release from Responsibility for Treatment of Miscarriage or Partial Abortion
- 4-6<sup>S</sup> Consent to Reuse of Hemodialysis Filters
- 4-7<sup>S</sup> Consent to Receive Antipsychotic Medications
- 4-8<sup>S</sup> Consent to Donation of Sperm, Ova or Embryos
- 4-9<sup>S</sup> Consent to Implantation of Sperm, Ova or Embryos
- 4-11<sup>S</sup> Directive Regarding Embryo Disposition
- 4-A<sup>S</sup> A Patient’s Guide to Blood Transfusion
- 4-B<sup>S</sup> Be Informed (Breast Cancer)
- 4-C<sup>S</sup> Be Informed (Prostate Cancer)
- 23-1<sup>S</sup> Consent for the HIV Test

### 5. REFUSAL OF TREATMENT AND END-OF-LIFE ISSUES
- 5-1<sup>S</sup> Refusal to Permit Medical Treatment
- 5-2<sup>S</sup> Refusal of Blood Products
- 5-3<sup>S</sup> Leaving Hospital Against Medical Advice
- 5-4<sup>S</sup> Request Regarding Resuscitative Measures
- 5-A Guidelines for Policies Pertaining to Withholding and Withdrawing Life-Sustaining Treatment
- 5-B<sup>S</sup> Physician Orders for Life-Sustaining Treatment

---

“S” denotes that the form is provided in English and Spanish. Spanish forms can be found on the included CD. * Indicates forms that are new or revised in this edition.
CHAPTER 1

THE BASIC PRINCIPLES OF CONSENT

I. WHY CONSENT IS NECESSARY 1.1
A. The Patient’s Right to Consent to, or Refuse, Medical Treatment ................................................ 1.1
   Failure to Obtain Consent: Battery ........................................ 1.1
   Failure to Obtain Informed Consent: Malpractice .................. 1.1
   Informed Refusal .................................................................. 1.1
B. The Patient’s Right to Consent to Hospital Services ............................................. 1.2
   False Imprisonment ................................................................ 1.2

II. WHEN CONSENT IS NECESSARY 1.2
A. General Rule ........................................................................ 1.2
B. Emergency Treatment Exception ........................................... 1.2
   Statement of Principle .......................................................... 1.2
   Limitations ........................................................................... 1.3
   Immunity From Liability ........................................................ 1.3
   Recommended Procedure for Providing Care Pursuant to the Emergency Medical Treatment Exception .................................................................. 1.3
C. Other Circumstances in Which a Physician is Not Required to Obtain Informed Consent ............ 1.4
   Circumstances ....................................................................... 1.4
   Procedure ............................................................................. 1.4

III. INFORMED CONSENT 1.4
A. Elements of Informed Consent .................................................. 1.4
B. Identifying Procedures That Require Informed Consent .............................................................................. 1.5
C. The Role of the Physician in Obtaining Informed Consent .............................................................................. 1.5
   Process by Which Physician Informs Patient ......................... 1.6
   Informed Consent Forms That Contain Medical Information ......................................................................... 1.6
   Physician Documentation ...................................................... 1.7
D. The Role of the Hospital in the Informed Consent Process .............................................................................. 1.7
   Verification That Informed Consent Has Been Obtained .......... 1.7
   Obtaining Verification ............................................................ 1.7
   Recommended Procedure for Completing the Hospital’s Form .................................................................. 1.7
   Procedure When Physician Uses Informed Consent Forms That Contain Medical Information 1.8
E. Two-Doctor Consent ............................................................... 1.8
F. Duration of Informed Consent ................................................ 1.8
G. Patient Doubt or Confusion Concerning Informed Consent .............................................................................. 1.8

IV. HOW CONSENT SHOULD BE OBTAINED 1.9
A. Consent Must be Knowingly Made and Freely Given ................................................................................. 1.9
B. The Nature of Consent ........................................................... 1.9
C. Consent Evidenced in Writing .................................................. 1.9
   Recommended Forms ............................................................ 1.9
   Principles Guiding Completion of Forms ................................. 1.9
D. Consent by Telephone, E-mail and Facsimile 1.10
   Consent by Telephone ............................................................ 1.10
   Consent by E-mail .................................................................. 1.11
   Consent by Facsimile ............................................................... 1.11

FORMS & APPENDIXES
1-1S  Consent to Surgery or Special Procedure
1-2S  Informed Consent to Surgery or Special Procedure
1-A5  Patient Rights (Combines Title 22 and other California laws, The Joint Commission and Medicare Conditions of Participation requirements)
8-1S  Conditions of Admission

“S” denotes that the form is provided in English and Spanish. Spanish forms can be found on the included CD.
CHAPTER 1

THE BASIC PRINCIPLES OF CONSENT

State and federal laws grant patients certain rights. Foremost among these is the right for a competent adult to make his or her health care decisions. This chapter discusses the basic principles of consent, including when consent is necessary, the difference between “simple” consent and informed consent, how consent may be obtained, and penalties for failure to obtain consent. This chapter also discusses state and federal requirements to inform patients of their rights.

I. WHY CONSENT IS NECESSARY

Every competent adult has the fundamental right of self-determination over his or her body and property. Individuals who are unable to exercise this right, such as minors and incompetent adults, have the right to be represented by another person who will protect their interests and preserve their basic rights. (See chapter 2 regarding appropriate legal representatives.)

A. THE PATIENT’S RIGHT TO CONSENT TO, OR REFUSE, MEDICAL TREATMENT

A person does not give up the right to control what is done with his or her body and property when seeking care at a hospital. Indeed, a physician has both a legal and an ethical duty to obtain the patient’s consent, or the consent of the patient’s legal representative, to medical treatment. Failure to obtain the proper consent to treatment in accordance with applicable legal standards may result in a charge of battery, professional negligence (malpractice), and/or unprofessional conduct against the physician, nurses, or other health care providers, for even the simplest of procedures.

If the nature of the treatment involved is complicated, the recognition of the patient’s right to self-determination may require that “informed” consent be obtained. [Cobbs v. Grant, 8 Cal.3d 229 (1972)] The distinction between “simple” consent and “informed” consent is described in III. “Informed Consent,” page 1.4.

FAILURE TO OBTAIN CONSENT: BATTERY

“Battery” is defined legally as an intentional touching of a person in a harmful or offensive manner without his or her consent. Consequently, a claim of battery may be made against a physician or other health care provider who performs a medical procedure on a patient without the patient’s consent. A battery may also arise if the patient consents to a particular procedure and the provider either exceeds the scope of the consent or performs a different procedure for which consent was not obtained. It is important to note that no wrongful intent need be present; a physician may sincerely intend to aid the patient, but still be liable for committing a battery. A medical procedure may be considered to be a “harmful touching” (a battery) even if it is performed competently with no adverse outcome.

FAILURE TO OBTAIN INFORMED CONSENT: MALPRACTICE

A patient’s right to decide whether or not to submit to medical treatment establishes the physician’s corresponding duty to inform the patient about the recommended care so that the patient’s decision is meaningful. The physician’s duty of disclosure arises from the fiduciary quality of the physician-patient relationship, which is based upon the patient’s dependence on the physician’s specialized knowledge. [Cobbs v. Grant, supra, at 242]

A physician who fails to adequately disclose the nature of the procedure and its risks and alternatives may be liable for negligence (malpractice). In Cobbs v. Grant, the California Supreme Court established guidelines regarding the physician’s duty of disclosure that are explained at length in III. “Informed Consent,” page 1.4. If the recommended treatment involves the performance of a “complicated” procedure, a physician must explain the nature of the treatment, the risks, possible complications, and expected benefits or effects of the treatment, as well as the alternatives to the treatment and their risks and benefits. The physician must also inform the patient of any potentially conflicting interests he or she may have, such as research or financial interests. (See II. “Use of Organs, Tissues and Fluids,” page 4.1, regarding potentially conflicting interests.) Informed consent is not required for the performance of “simple and common” procedures, where the related risks are commonly understood.

INFORMED REFUSAL

The California Supreme Court has specifically ruled that the physician’s duty of disclosure includes the responsibility to inform the patient of the risks of refusing to undergo a simple and common procedure that has been recommended [Truman v. Thomas, 27 Cal.3d 285 (1980)] (see chapter 5). In the Truman case, the court held that the defendant doctor breached his duty to his patient by failing to inform her of the risks resulting from her failure to authorize and undergo a Pap smear test. The court stated:
If a patient indicates that he or she is going to decline a risk free test or treatment, then the doctor has the additional duty of advising of all material risks of which a reasonable person would want to be informed before deciding not to undergo the procedure … If the recommended test or treatment is itself risky, the physician should always explain the potential consequences of declining to follow the recommended course of action. [Id. at 292]

Consequently, depending upon the type of procedure involved, a physician may be liable for professional negligence (malpractice) if he or she fails to secure the patient’s “informed refusal.”

B. THE PATIENT’S RIGHT TO CONSENT TO HOSPITAL SERVICES

The patient’s personal and property rights may also be affected by certain activities conducted by the hospital and its personnel (as distinct from activities conducted by the physician). Examples include the release of patient-identifiable information, the transfer of a patient to another health facility, and the submission of patient claims to arbitration. These activities and related consent requirements are discussed in detail in subsequent chapters.

Although a hospital is not subject to the physician’s fiduciary duty to the patient and is not directly responsible for obtaining the patient’s informed consent to medical treatment, the hospital is responsible for the care of its patients and for obtaining their consent, or the consent of their legal representatives, to those hospital activities, which, without such consent, would impinge on patients’ rights. Examples of hospital activities that require consent (although not necessarily informed consent) include routine blood tests, chest X-rays and nursing services. Consent to these activities is included in the model “Conditions of Admission” form (CHA Form 8-1).

A hospital’s failure to obtain a patient’s consent may raise allegations of battery (as discussed above), false imprisonment (as discussed below) and possibly other charges.

FALSE IMPRISONMENT

Obtaining the patient’s consent to hospitalization will help protect the hospital and physician from the charge that they falsely imprisoned the patient, that is, compelled the patient to remain in the hospital against his or her will.

In summary, the patient’s consent to medical treatment and hospital services is necessary because, as a general rule, without such consent, the physician and the hospital have no authority to subject the patient to medical treatment or hospitalization and related services. Failure to obtain the consent of the patient or the patient’s legal representative may violate the patient’s common law rights discussed above as well as other patients’ rights established by the state and federal laws discussed in VI. “Patients’ Rights,” page 1.17.

II. WHEN CONSENT IS NECESSARY

The general rules for determining when consent is required are presented below. Subsequent chapters address the requirements that apply in specific situations. The exceptions to the general rule are described below.

A. GENERAL RULE

The hospital may not permit any treatment, without the risk of liability, unless the patient, or a person legally authorized to act on the patient’s behalf, has consented to the treatment.

B. EMERGENCY TREATMENT EXCEPTION

STATEMENT OF PRINCIPLE

Treatment of a medical emergency may be provided without consent where the provider reasonably believes that a medical procedure should be undertaken immediately, and that there is insufficient time to obtain the consent of the patient or of a person authorized to consent for the patient. The law implies consent in these circumstances on the theory that if the patient were able, or if a qualified legal representative were present, the consent would be given. This exception applies to minors as well as to adult patients.

The location of the patient is not relevant to the determination of whether the patient has a medical emergency. A patient may be in the emergency department, yet may not have a medical emergency that obviates the necessity to obtain consent. Similarly, the patient may be located in a medical/surgical unit or outpatient department and develop a medical emergency that requires treatment to be provided without consent.

California law defines a medical emergency for certain purposes, such as the provision of immunity to physicians who provide treatment in emergency situations [Business and Professions Code Section 2397(c)(2) and (3)], the rendering of care to incompetent adults without court authorization [Probate Code Section 3210(b)], and the rendering of care to minors in the custody of the juvenile court [Welfare and Institutions Code Section 369(d)]. According to these statutes, a medical emergency exists when:

1. Immediate services are required for the alleviation of severe pain; or
2. Immediate diagnosis and treatment of unforeseeable medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.
LIMITATIONS

It is important to note that only the emergency condition may be treated. Treatment that exceeds the necessary response to that needed for the emergency condition may not be rendered without consent from someone authorized to consent to treatment on a nonemergency basis.

As a general rule, if a patient or the patient’s legal representative has validly exercised his or her right to refuse particular medical treatment (see chapter 5), the treatment may not be provided. Since the emergency treatment exception is based on the theory of implied consent, it is not applicable when a patient has validly refused medical treatment, and the emergency arises from the fact that treatment was not given. However, if the medical emergency is the result of a condition or injury that is not specifically related to the condition or injury for which the patient previously refused treatment, the emergency treatment exception generally applies.

If evidence exists to indicate that the patient (or the patient’s legal representative) would refuse the treatment — such as a wallet card stating that the patient is a Jehovah’s Witness and refuses blood products — legal counsel should be consulted. (See chapter 5 regarding refusal of treatment.)

IMMUNITY FROM LIABILITY

The emergency treatment exception has been recognized in several statutes that provide immunity to a physician who does not inform a patient and obtain his or her consent to treatment under certain emergency circumstances. Business and Professions Code Section 2397 provides that a physician is not liable for civil damages for injury or death caused in an emergency situation occurring in his or her office or in a hospital on account of a failure to inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:

1. The patient was unconscious.
2. The medical procedure was undertaken without the consent of the patient because the physician reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient.
3. A medical procedure was performed on a person legally incapable of giving consent, and the physician reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

This law is applicable only to actions for damages for injuries or death arising because of a physician’s failure to inform, and not to actions for damages arising because of a physician’s negligence in rendering or failing to render treatment. Business and Professions Code Section 1627.7 provides similar protections for dentists.

In addition, Health and Safety Code Section 1317 provides immunity from liability for an act or omission (which includes the failure to obtain consent) that occurs while a rescue team established by a licensed health facility (or operated by the state or federal government, a county, or the Regents of the University of California) attempts to resuscitate a person who is in immediate danger of loss of life or serious injury or illness, if the rescue team acts in good faith. This immunity extends to the facility, its officers, staff, and employees, including members of the rescue team.

RECOMMENDED PROCEDURE FOR PROVIDING CARE PURSUANT TO THE EMERGENCY MEDICAL TREATMENT EXCEPTION

Determination of Existence and Nature of Emergency

The physician must initially determine whether the patient has the capacity to give consent, since the emergency exception applies only when consent cannot be given. In addition, the scope of the emergency must be determined, and any treatment provided must be limited to that necessary to alleviate the severe pain, or to prevent the patient’s severe disability or death. The treatment provided may be a matter of first aid, temporary medical care in lieu of surgery, or actual surgical procedures. However, only the emergency medical condition may be treated under this exception, since it is the existence of the emergency condition that establishes the implied consent.

Consultation

There is no legal requirement that the physician consult a second physician to confirm the existence of an emergency. However, such consultation may be required by hospital or medical staff policy. Otherwise, it is a matter of discretion for the treating physician to determine if consultation is advisable to confirm the existence of the emergency.

Otherwise Obtaining Consent

The possibility of obtaining the necessary consent from the patient, if he or she is able to give consent (e.g., a conscious adult with capacity), or another person legally capable of consenting, should be assessed and weighed against the possibility that a delay in treatment in order to secure such consent would result in the patient’s severe disability or death, or continuing severe pain. If a delay in treatment for purposes of obtaining consent would not jeopardize the condition of the patient, treatment must be delayed and consent obtained pursuant to the guidelines contained in this manual.
INDEX

A

Abandoned minors—See Minor patients, abandoned, See also Safe surrender of newborn
Abortion
  Agent may not consent to, 3.9
  Child abuse, 5.18
  Consent to, 4.13 to 4.14
  Partial-birth, 4.12
  Refusal to participate in, 4.12
  Release from responsibility for treatment of miscarriage or partial abortion, 4.14
  Signage, 4.12
Absence from facility—See Leaving hospital against medical advice
Abuse
  Alcohol—See Alcohol or drug abuse
  Child—See Child abuse
  Drug—See Alcohol or drug abuse
  Refusal/withdrawal of life-sustaining treatment, 5.18
  Sexual—See Child abuse, See Sexual assault treatment
Substance—See Alcohol or drug abuse
Acquired Immune Deficiency Syndrome (AIDS)—See Human Immunodeficiency Virus (HIV)
Admission to facility
  Advance directives—See Patient Self-Determination Act
  Information to be given to patient, 3.1 to 3.2
  Patient Self-Determination Act, 3.1
Adopted minors—See Minor patients, adopted
Advance directives, 3.1 to 3.14, 5.10—See also Patient Self-Determination Act, See also Surrogate decision maker
  Anatomical gift, 3.9, 3.11
  Consent for autopsy, 3.9
  Declining to comply, 3.10
  Divorced spouse as agent, 3.7
  Documentation, 3.1, 3.11
  Duration, 3.6
  Electronic, 3.5
  Font size, 3.2
  Forgoing life-sustaining treatment, 3.11, 5.14
  HIV/AIDS, 4.42
  Limitations, 3.9
  Military, 3.5
  Notarization, 3.4
  Psychiatric, 3.13
  Registration with Secretary of State, 3.7
  Revocation, 3.6
  Witnessing, 3.4

AIDS—See Human Immunodeficiency Virus (HIV)
Alcohol or drug abuse, 2.24
Alternative dispute resolution—See Arbitration
Anatomical gift, 3.9, 3.11
  Minor, 2.25
Antipsychotic medications—See Psychotropic medications
Arbitration, 3.9
Assault
  Sexual—See Sexual assault
  Assisted reproduction procedures, 4.34 to 4.36

B

Battery, unconsented treatment as, 1.1
Bills, 2.11
Birth control—See Contraception
Blood—See also Human Immunodeficiency Virus (HIV)
  Donation, 2.25
  Paul Gann Blood Safety Act, 4.2
  Refusal of, 5.4
  Tests requested by law enforcement officers, 4.43
  Blood transfusions/products
    Consent to, 4.1 to 4.2
    Refusal of, 5.4
  Body piercing, minors, 2.25
  Born-Alive Infants Protection Act, 5.18
  Breach of privacy or security, 2.12, 2.24
  Breast cancer, consent to treatment for, 4.16

C

Capacity, 2.1 to 2.11, 2.20, 3.3, 3.8
Caregiver authorization affidavit, 2.15
Cells—See Tissue
Child abuse, 2.19
  Refusal/withdrawal of life-sustaining treatment, 5.19
Children—See Minor patients
  Chronic intractable pain, 4.37
  Collagen injections, consent to, 4.18
  Common law marriage, 2.22
  Competency—See Capacity
  Complaint procedure—See Grievance procedure
  Consent
    Abortion, 4.13 to 4.14
    Adult patient, 1.1, 2.1 to 2.11
    Anatomical gift, 3.9—See Anatomical gift
    Assisted reproduction procedures, 4.34 to 4.36
    Autopsy, 3.9
    Blood transfusion, 4.1 to 4.2
    Breast cancer treatment, 4.16
    Capacity to consent, 2.1 to 2.11, 2.20, 3.3, 3.8
Cells, organs, tissue and fluids, 4.1, 4.33 to 4.34
Closest available relative, 2.8
Coerced, 1.9
Collagen injections, 4.18
Complicated procedures, 1.5
Consent by telephone, e-mail and facsimile, 1.10
Consent to sterilization, 2.10, 4.5
Consent to treatment, 1.1, 2.2 to 2.5, 4.5, 5.15
Developmentally disabled adult, 2.5
Electroconvulsive therapy, 2.10, 4.28 to 4.31
Emergency, 4.32
Minor consent to, 2.22
Convulsive therapy
Agent may not consent to, 3.9
Consent to, 4.28 to 4.31
Conservator may not consent to, 2.10
Minor may not consent to, 2.24
Documented, 4.6, 4.16
Durbin-Maxon act, 2.3
Emergency, 2.10, 4.28 to 4.31
Involuntary admission to facility, 2.10
Voluntary admission to facility, 2.10
Gynecological exam, annual, 4.16
HIV testing, 2.22, 4.41 to 4.44
Hospital role, 1.7
How to obtain, 1.9 to 1.11
Immunization, 4.19 to 4.21, 5.5
Implantation of cells, tissue, organs, 4.1, 4.33 to 4.34
Informed consent, 1.2 to 1.4, 1.9
Incompetent patient, 2.2 to 2.11, 4.5, 5.10 to 5.11, 5.15 to 5.16
Infertility procedures—See Assisted reproduction procedures
Informed, 1.1, 1.4 to 1.9
Insulin coma treatment, 4.28 to 4.31
Investigational drugs and devices—See Experimental treatment
Mastectomy, length of stay, 4.17
Mental health treatment, 2.18, 2.23
Not required, 1.2, 1.4
Oral, 1.10
Organs, cells, tissues and fluids, 4.1, 4.33 to 4.34
Pelvic exam while unconscious, 4.39
Physician role, 1.5, 1.7, 4.1, 5.13, 5.17, 5.20
Prisoner, 2.2—See also Prisoners
Prostate cancer, 4.16
Prostate exams, 4.17
Psychosurgery, 4.25 to 4.27
Request to forgo resuscitative measures, 3.13
Reuse of hemodialysis filters, 4.14 to 4.16
Role of the hospital, 1.7
Role of the physician, 1.5, 1.7, 4.1, 5.13, 5.17, 5.20
Silicon implants, 4.18
Simple and common procedures, 1.5
Sterilization, 4.2 to 4.9
Telephone, e-mail and facsimile, by, 1.10
Therapeutic privilege, 1.4
Two-doctor consent, 1.8
Vaccines, 4.19 to 4.21, 5.5
Written, 1.6 to 1.9
Conservatorship—See also Guardianship
AIDS/HIV testing, 4.41 to 4.44
Consent to experimental treatment, 2.10
Consent to sterilization, 2.10, 4.5
Consent to treatment, 1.1, 2.2 to 2.5, 4.5, 5.15
Developmentally disabled adult, 2.5
Electroconvulsive therapy, 2.10, 4.28 to 4.31
Forgoing of life-sustaining treatment, 5.15
Lanterman-Petris-Short Act, 2.4, 3.6
Limitations, 2.10
Mental health patient
Conservatorship, 2.10
Involuntary admission to facility, 2.10
Voluntary admission to facility (adult), 2.10
Permanent, 2.8
Probate Code, 2.2
Public guardian, 2.5
Relationship to agent designated in power of attorney for health care, 3.9
Temporary, 2.8
Contraception
Emergency, 4.32
Minor consent to, 2.22
Convulsive therapy
Agent may not consent to, 3.9
Consent to, 4.28 to 4.31
Conservator may not consent to, 2.10
Minor may not consent to, 2.24
Court order authorizing medical treatment, 2.6, 3.12, 5.3, 5.23
D
Death
Do not resuscitate, 5.12 to 5.13, 5.21 to 5.22, 5.23 to 5.24
Request to forgo resuscitative measures, 5.12 to 5.13, 5.21 to 5.22, 5.23 to 5.24
Uniform Anatomical Gift Act—See Anatomical gift
Dental restorative materials, 4.37
Dependent child of juvenile court, 2.17, 5.4, 5.7
Developmentally disabled adults, 2.5
Discharge of patient
Against medical advice, 5.5
Mastectomy patient, 4.17
Minor patient, 2.25 to 2.27
Disposition of embryos, 4.35
Domestic partners, 2.9, 2.13 to 2.14
Do not resuscitate order, 5.12 to 5.13, 5.21 to 5.22, 5.23 to 5.24
Drug abuse—See Alcohol or drug abuse
Drug orders—See also Psychotropic medications
    Severe chronic intractable pain, 4.37
Drug substitutions, 4.32
Duration of consent, 1.8
Dying patients—See Terminally ill patients

Electroconvulsive therapy
    Agent may not consent to, 3.9
    Consent to, 4.28 to 4.31
    Conservator under Probate Code may not consent to, 2.10
    Minor may not consent to, 2.24
Electronic advance directives, 3.5
Elements of informed consent, 1.4
E-mail, 1.11
Emancipated minor, 2.21
Embryos—See Assisted reproduction procedures
Emergency contraception, 4.32
Emergency exception to consent requirement, 1.2 to 1.4, 2.7, 3.9
End-of-life care options, 5.16
Ethics committees, 5.22
Evidentiary exam, 2.22
Experimental treatment, 4.44
    Embryos, 4.35
    Who may consent, 2.10

Facsimile transmission
    Of consent forms, 1.11
False imprisonment, 1.2
Fertility treatment—See Assisted reproduction procedures
Financial interest, 1.5, 4.1
Financial responsibility of parents, 2.11, 2.21
Font size on documents, 3.2
Foster parent—See Minor patients, foster parents

Generic drugs, 4.32
Grievance procedure
    Advance directive complaint, 3.2
Guardianship
    AIDS/HIV, 4.42
    Consent for minors, 2.14, 5.11, 5.15 to 5.16
    Leaving against medical advice, 5.5 to 5.6
    Refusal of treatment, 5.18 to 5.19
    Release of minor, 2.25 to 2.27
    Release of records
        Minor, 2.12
        Sterilization, 4.7

Health Insurance Portability and Accountability Act
    (HIPAA) of 1996—See Medical record
    Disclosure of health information—See Medical record, release of information from
Hemodialysis filters, consent to reuse, 4.14 to 4.16
HPV, 4.19
Human experimentation—See Experimental treatment
Human Immunodeficiency Virus (HIV)
    Consent to HIV test, 4.41 to 4.44
    Deceased patients, 4.42
    Minors, 2.22, 4.42
    Prisoners, 4.43
    Testing by health care provider, 4.41 to 4.44
    Without consent of patient, 4.44
Human Papillomavirus (HPV)—See HPV
Hypodermic needles, 4.39
Hysterectomy, consent to, 4.9 to 4.12

Identification of practitioners, 1.8
Immunization
    Advance directives, 3.13
    Do not resuscitate, 5.13, 5.21
    Emergency treatment, 1.3
    Health Care Decisions Law, 3.13
    Immunizations, 4.21
    POLST, 5.24
    Prehospital do not resuscitate, 5.23 to 5.24
    Request regarding resuscitative measures, 5.12 to 5.13, 5.20, 5.21 to 5.22, 5.23 to 5.24
    Rescue team, 1.3
    Vaccines, 4.21
Immunizations—See Vaccines
Implantation of cells, tissues, organs—See Tissue
Implied consent to treatment—See Consent
Infant—See Minor patients
Infertility—See Assisted reproduction procedures
Informed consent, 1.1, 1.4 to 1.9, 4.1—See also Consent
Inmates—See Prisoners
Insulin coma therapy—See Electroconvulsive therapy
Interdisciplinary team consent, 2.9 to 2.10
Interpreter
    Sterilization consent, 4.7
Interpretive Guidelines, 1.8
Investigational drugs and devices—See Experimental treatment
Joint Commission, The
Advance directive policy, 3.1
Juvenile court—See Minor patients, minors in custody of juvenile court

Lanterman-Petris-Short Act, 2.4

Law enforcement officers—See also Probation officer
Patient in custody of, 2.2
Release of information to, 4.43
Leaving hospital against medical advice, 5.5 to 5.6
Length of stay
Mastectomy patient, 4.17
Life support—See Refusal of treatment
Life-sustaining treatment—See Refusal of treatment
Living will—See Advance directives

Malpractice, unconsented treatment as, 1.1
Marriage, common law, 2.22
Married minor—See Minor patients, married minor
Mastectomy patient, 4.17
Maternity patient
Minor, 2.17, 2.22
Mature minor doctrine, 2.20
Mediation—See Arbitration
Medical devices
Consent to use of, in skilled nursing facility, 4.21
Experimental, 4.44
Proposition 65, 4.37 to 4.39
Medical record
Deceased patient, 4.42
Minors—See Minor patients
Patient Self-Determination Act, 3.1 to 3.2
Psychiatric patient—See Medical record, See Mental health patient
Release of—See Medical record, release of information from
Medical record, release of information from
Deceased patient, 4.42
Minors’ records, 2.12
Medications
Antipsychotics—See Psychotropic medications
Consultation, 4.31 to 4.33
Discharge, 4.31
Drug substitutes, 4.32
Drug used as a restraint, 4.24
Emergency contraception, 4.32
Outpatient, 4.31
Psychotropic—See Psychotropic medications
Mental health patient—See also Convulsive therapy, See also Psychosurgery, consent to, See also Psychotropic medications

Conservator consent—See Conservatorship
Immunity for detaining—See Immunity
Minors, 2.18, 2.23
Psychiatric advance directives, 3.13
Mental health treatment, 2.10, 2.23, 3.8, 4.21 to 4.30
Mercury in vaccines, 4.21
Military advance directives, 3.5
Minor patients
Abandoned minors, 2.17
Abortion, 4.13 to 4.14
Access to medical record of, 2.12
Adopted, 2.13, 2.16
AIDS, 2.22, 4.42
Alcohol or drug abuse, 2.24
Anatomical gift, 2.25
Blood donation, 2.25
Body piercing, 2.25
Born-Alive Infants Protection Act, 5.18
Capacity to consent, 2.20
Caregiver authorization affidavit, 2.15
Children of domestic partners, 2.13
Children of minor parents, 2.16
Communicable disease, 2.22
Consent, 2.11 to 2.12
Contraception, 2.22, 4.32
Disagreement with parents, 2.19
Discharge from hospital, 2.25 to 2.27
Divorced parents, 2.12
Drug- or alcohol-related problems, 2.24
Emancipation, 2.21
Financial responsibility, 2.11
Foster parents, 2.18
Guardian consent, 2.14
Married minor, 2.22
Medical record, 2.12, 2.13
Mental health treatment, 2.18, 2.23—See Mental health patient
Minors born out of wedlock, 2.13
Minors in custody of juvenile court, 2.17, 4.25, 5.4, 5.7
Minors in custody of probation officer, 2.18
Minors in custody of social worker, 2.18
Minors on active duty with U.S. armed forces, 2.22
Minors placed for adoption, 2.16
Nonabandoned minors, 2.17
Parental consent, 2.12 to 2.14
Parental financial responsibility, 2.11
Parents unavailable, 2.14 to 2.16
Piercing, 2.25
Pregnancy care, 2.22
Privacy rights, 2.12
Pupils, 2.17
Rape victims, 2.22
Refusal of treatment, 5.1, 5.3, 5.3 to 5.5, 5.11, 5.15, 5.18 to 5.20
Release from hospital, 2.25 to 2.27
Release of infants, 2.25 to 2.27
Self-sufficient minors, 2.21
Sexual assault victims, 2.23
Stepparent, 2.13
Substance abuse, 2.24—See also Alcohol or drug abuse
Suffering from a communicable reportable disease, 2.22
Third party consent, 2.15 to 2.16
Transfer, 2.25
Victims of abuse, 2.19
Withdrawal or withholding of life-sustaining treatment, 5.3, 5.6, 5.18
With legal capacity to consent to medical treatment, 2.20

*Moore v. Regents of the University of California*, 4.1

N

Newborn—See Minor patients
No code order—See Do not resuscitate order
Noncustodial parent, 2.12
Notary public, 3.4

O

Occupational injuries
  Exposure to blood or bodily fluids, 4.43
Organ donation—See Anatomical gift
Organs—See Tissue
Outpatient and discharge medications, consent to, 4.31
Ova—See Assisted reproduction procedures

P

Pain, severe, 1.3, 4.37
Partial birth abortion, 4.12
Patient consent—See Consent
Patient death—See Death
Patient records—See Medical record
Patient rights
  Grievance procedure, 3.2
  Pain patient, 4.37
  Reuse of hemodialysis filters, 4.14
Patient Self-Determination Act, 3.1 to 3.2—See also Advance directives
Paul Gann Blood Safety Act, 4.2
Peace officers—See Law enforcement officers
Pelvic exam, 4.16, 4.39
Pesticide injuries—See Occupational injuries
Pharmacy, 4.31 to 4.33
Physician
  Agent of hospital, 1.6
  Obligation to obtain consent, 1.1 to 1.2
  Physician Orders for Life-Sustaining Treatment (POLST), 5.24 to 5.27
  Relationship to hospital, 1.6 to 1.9
  Transfer responsibilities, 3.11
  Piercing, minors, 2.25
  Police—See Law enforcement officers
  POLST, 5.24 to 5.27
  Power of attorney—See Advance directives
  Prefrontal sonic treatment, 4.25, 4.28
  Pregnancy—See Maternity patient
  Prehospital do not resuscitate, 5.23
  Prenatal care patient—See Maternity patient
  Prisoners, 2.2—See also Law enforcement officers
  Privacy right, 2.12, 2.24—See also Health Insurance Portability and Accountability Act (HIPAA) of 1996
  Privacy rights of minors, 2.12, 2.24
  Probation officer, 2.18
  Proposition 65, 4.37 to 4.39
  Prostate cancer, 4.16 to 4.17
  Prostate exam, 4.16 to 4.17
  Protected health information—See Health Insurance Portability and Accountability Act (HIPAA) of 1996
  Psychiatric advance directives, 3.13 to 3.14
  Psychosurgery, consent to, 4.25 to 4.27
    Agent may not consent to, 3.9
    Minor may not consent to, 2.24, 4.26
  Psychotherapeutic drugs—See Psychotropic medications
  Psychotropic medications, 2.18, 2.24, 4.21 to 4.25
    Involuntary patient, 4.23 to 4.25
    Minor, 2.18, 2.24, 4.25
    Skilled nursing facility patient, 4.21 to 4.25
    Voluntary patient, 4.22
  Public guardian, 2.5

R

Rape—See Sexual assault
Records, medical—See Medical record
Refusal of treatment, 5.1 to 5.27
  Antipsychotic medication—See Psychotropic medications
  Blood products, 5.4 to 5.5
  Convulsive treatment, 4.28
  Court authorization of treatment, 2.7, 3.12, 5.23
  Documentation, 5.2, 5.21
  Effects of anticipated refusal on admission policy, 3.10 to 3.11, 5.27
  Electroconvulsive treatment, 4.28
  Ethics committees, 5.22
  Forms, 5.2
  Incident report, 5.3
  Incompetent patient, 5.10 to 5.11, 5.15 to 5.16
  Infant, 5.18
  Informed, 1.1
  Leaving hospital against medical advice, 5.5 to 5.6
  Life-sustaining treatment, adults, 5.1 to 5.28
Life-sustaining treatment, infants, 5.18 to 5.20
Minor, 5.1, 5.3, 5.3 to 5.5, 5.5, 5.11, 5.15, 5.18 to 5.20
Patient’s right, 5.1
Psychosurgery, 4.27
Psychotropic medications—See Psychotropic medications
Recommended procedure, 5.5
Right to, 5.1
Vaccines, 4.19, 5.5
Withholding or withdrawing life-sustaining treatment, 5.6 to 5.23
Registry for advance directives, 3.7
Release of a minor from hospital, 2.25 to 2.27
Release of information—See Medical record, release of information from
Religious beliefs, 1.9, 5.4
Reporting
  Convulsive therapy, 4.31
  Psychosurgery, 4.27
  Sterilization, 4.11
Request regarding resuscitative measures, 5.12 to 5.13, 5.21 to 5.22, 5.23 to 5.24
Rescue team immunity, 1.3
Research—See Experimental treatment
Riese v. St. Mary’s Hospital and Medical Center, 4.23
Rights—See Patient rights
S
School, injury or illness at, 2.17
Self-sufficient minor, 2.21
Severe pain, 1.3
Sexual assault, 2.23—See also Emergency contraception
Sexually transmitted disease, 2.22
Shackles—See Prisoners
Sheriff—See Law enforcement officers
Silicon implants, consent to, 4.18
Social worker, 2.18
Sperm—See Assisted reproduction procedures
Spouse, 2.2, 3.7, 5.14, 5.16
Stepparents, 2.13, 2.15
Sterilization, consent to, 4.2 to 4.9
  Agent may not consent to, 3.9
  Conservator consent to, 2.10
Student, 2.17
Substance abuse patient—See Alcohol or drug abuse
Surrogate decision maker, 2.1, 3.3, 5.10 to 5.16—See also Advance directives
Syringes, 4.39
T
Telemedicine/telehealth, 4.36
  Consent, 4.36
Telephone, e-mail, facsimile
  Consent by, 1.10
Terminally ill patients, 3.11, 5.6 to 5.28
Therapeutic privilege, 1.4
Third party consent, 2.14 to 2.16
Tissue
  Anatomical gift, 3.11
  Consent for transplant, 4.40
  Consent from living donor, 4.40
  Release of medical information regarding, 4.44
  Use for research or commercial purposes, 1.1, 1.5, 4.1, 4.33 to 4.34, 4.44
Transfusion—See also Blood transfusions/products
Transplantation—See Tissue
Treatment, consent for—See Consent
Tubal ligation—See Sterilization, consent to
Two-doctor consent, 1.8
U
Unconscious patient, 1.3, 4.39
Unrepresented patient, 2.5
V
Vaccines
  Consent to, 4.19 to 4.21
  Mercury in, 4.21
  Refusal of, 4.19, 5.5
Vasectomy—See Sterilization, consent to
W
Ward of the court, 2.17
Withholding or withdrawing life-sustaining treatment, 5.6 to 5.23—See also Refusal of treatment
Witnessing of patient signature, 1.10, 3.4
Workers’ compensation—See Occupational injuries
X
X-rays
  Consent to, 1.2, 2.19