Informed Consent: Patient-Professional Relationships

Jackie Glover, PhD
Patrick O’Rourke, J.D.
Nicole Townsend, M.D.
University of Colorado Center for Bioethics and Humanities

Informed Consent (The eight elements are numbered in CAPS)

PRECONDITIONS AND THRESHOLD ELEMENTS

1. **ONE** - Patient has *decisional capacity* to understand and decide
   
   (1) Three Elements of capacity (possession of a set of values and preferences, the ability to communicate and understand information and the ability to reason and to deliberate)

   (2) Possible Limits to capacity
   (a) Mental status, age
   (b) Any court order that expressly limits capacity

   (3) Difference between capacity / competency
   (a) Colorado Law uses these terms interchangeably
   (b) Most jurisdictions say that capacity refers to a clinical judgment and competency refers to a judicial judgment
   (c) You can determine capacity clinically and not go to court – court rulings regarding competency should be reserved for very complex and contentious cases
   (d) When you go to court to get a guardian – establishing incapacity will be part of the process

2. **TWO** - Patient must be *free from coercion* and decision must be *voluntary*

3. **THREE** - Patient’s *language and cultural beliefs* pertaining to health care must be recognized and considered
   
   (1) Balancing legal and ethical values in cases of unique family, cultural or religious values
   (2) Resolving tension between patient’s values and your own
INFORMATIONAL ELEMENTS

4. **FOUR** - Health care professional must *disclose legally required and ethically appropriate information* about treatment, available alternatives, risks and benefits (Special attention to risk of death, physical disability and impact on sexual function)

The Reasonable Physician and Reasonable Patient standards

5. **FIVE** - Health care professional should determine that the patient *understands* both the disclosure and the recommendation

6. **SIX** - Make a recommendation

CONSENT ELEMENTS

7. **SEVEN** - Patient makes a *decision* with support from health care professional
8. **EIGHT** - Patient provides *authorization* to health care professional for chosen plan

(1) Procedure for obtaining valid informed consent (signature, documentation etc.)

Consent by Minors

**Mature Minor:** THERE IS NO GENERAL MATURE MINOR STATUTE IN COLORADO. But ethically, health care professionals are obligated to involve mature minors in decision making in so far as they are able. A mature minor is a person under 18 who has the capacity to make informed health care decisions – based on a clinical assessment of the person’s emotional maturity, age, experience, intelligence, and the decision to be made. In so far as they are autonomous, all the reasons to respect autonomy in adults would apply. But when? Generally in the law there is a concept known as the “Rule of 7’s” in regards to the general maturity of children for other matters in the law. Under the age of 7 it is assumed that children are not mature; ages 7-14 it is assumed that children are not mature, but this is a rebuttable presumption and they CAN be shown to have maturity depending on the circumstances; over the age of 14 it is assumed that children are mature, but this is a rebuttable presumption and they can be shown to lack maturity depending on the circumstances. Health care professionals cannot judge an adolescent strictly on age – a clinical assessment of other factors is always necessary.

**Emancipated Minor:** IN COLORADO a person under 18 who

- Has sole or primary responsibility for his own support
- is married and living away from parents or guardians
- is in the armed services
Other Decision Making by Minors: IN COLORADO a minor can consent to

- treatment for addiction to or use of drugs
- treatment for sexually transmitted diseases
- contraception and pregnancy

**Abortion**: Colorado is a so-called notification state that requires notification before a minor can have an abortion. That law prohibits providing an abortion to an unemancipated minor until 48 hours after written notice. If the minor's parents live together, only one has to notified, but if they are separated, both do -- unless the minor prefers only one. If the minor lives with a non-parent relative, the relative or a parent must be notified.

Notice has to be made by the attending physician or staff, a sheriff or deputy, a clergy member, or any other adult who is not related to the minor. Notice must be delivered in a sealed envelope marked "Personal and Confidential," with the contents known only to the physician.

There is a procedure called “Judicial Bypass” for an adolescent to appeal directly to a judge to determine that she is mature enough to make the decision to have an abortion without letting parents know, or alternatively, that it is in the adolescent’s best interest not to let them know.

**Confidentiality**: A large part of treating adolescents involves the issue of confidentiality. In order to promote adolescents coming in to even be treated for such conditions as addiction, STD’s and contraception, privacy and confidentiality must be assured. The principles of beneficence and nonmaleficence seem to require it, as well as the principle of respect for them as persons. When adolescents can consent for these treatments, they do so without the knowledge of their parents. But this can be challenging in at least two respects. First, adolescents are rarely able to pay for their own health care and billing the parents could constitute a violation of confidentiality. Secondly, respect for confidentiality is not unqualified. When the person himself or herself is at risk of great and immediate harm; or this person is a risk to others, confidentiality can be violated. This obligation to breach confidentiality to prevent serious harm is called the “duty to warn”. The concept of “notification” of parents seems to try to balance the adolescent’s interests with assistance from trusted others to help reduce the risk of harm. But is there a real difference between consent and notification? Whatever the requirement to involve others, it risks reducing the adolescent’s willingness to come in for health care.