

# **What Every Physician and PA Needs to Know About Consent**

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While physicians are familiar with informed consent, there are actually three types of consent - general consent, limited consent and informed consent which are distinct, but equally important legal concepts that all physicians (MD's) and physician assistants (PA's) should understand. The failure to obtain both general consent, whether limited or not, and informed consent may lead to liability exposure for MD's and PA's.

## **GENERAL CONSENT**

Simply put, general consent is the patient's permission to be touched.

General consent can be implied or explicit. Health care providers routinely obtain implied consent when treating a patient. For instance, a health care provider may ask a patient to turn their head in order to exam the ear. If the patient turns his or her head, this is implied consent to examine the ear. Whether implied or explicit, obtaining general consent is necessary.

Arizona recognizes the tort of medical battery. A battery is the offensive or harmful touching of another person without consent. While medical battery is not a new concept in Arizona, it was only applied when there was no consent for a particular procedure; for instance, when a physician performed a hysterectomy without the patient's consent. This was obvious enough.

## **LIMITED CONSENT**

However, in 2002 the Arizona Supreme Court extended medical battery to cases where there was limited consent.

In *Duncan v. Scottsdale Medical Imaging, LTD*, the Arizona Supreme Court held that injecting a patient with a drug that the patient specifically refused constituted a battery not malpractice.

In this case, the patient stated that she would only consent to the use of Demerol or morphine. Initially, the nurse was preparing to use fentanyl, but the patient told the nurse she did not consent to fentanyl. Still, the nurse, allegedly, knowingly injected fentanyl. The patient sued for the ensuing damages.

The court concluded that the patient suffered a battery because there was no consent for the use of fentanyl. Even though the patient consented to an injection, that consent was limited to the type of medication being injected. The court concluded that because the patient placed a limitation on her consent, there was no general consent for the fentanyl; thus the intentional touching of the patient with fentanyl constituted a battery. It is

important to remember that the Court's decision was predicated on the assumption that the nurse knowingly administered fentanyl, not that the nurse negligently administered the wrong medicine.

This case illuminates the importance for health care providers to obtain general consent before treating a patient and to adhere to any limitations placed upon that consent.

This principle also extended to other types of limitations placed upon consent. Patient may also limit who can touch them.

If the patient consents to one particular surgeon touching him or her, no other surgeon may touch that patient without the patient's consent, except in emergencies.

Further, a patient may want to condition consent to exclude particular individuals, females, males, medical students or residents.

This does not mean; however, that the health care provides must necessarily acquiesce to all limitations requested by a patient. If the physician finds the limitations unacceptable or impractical, then, barring other extenuating circumstances, the physician may choose to terminate the physician-patient relationship.

## INFORMED CONSENT

General consent by itself may not be enough to begin a course of treatment.

Health care providers must also obtain informed consent for treatments and procedures that have risks. Informed consent has several elements. The health care provider should explain to the patient the risks and benefits of the treatment, alternative treatments and their risks and benefits, the risks of no treatment and any risks involved with discontinuing treatment prematurely.

The actual content of the information provided to the patient depends upon the circumstances of each case.

Beyond providing information regarding the risks of a procedure, it may be prudent to provide additional information so the patient can make a fully informed decision. Occasionally, the health care provider may wish to provide the patient with information necessary for the patient to choose the location of a procedure or treatment. For instance, in the Arizona Medical Board's proposed office based surgery rules, the physician must obtain the patient's consent for a surgical procedure being performed in an office rather than at an ambulatory surgical center or hospital. Also, it is helpful to explain the differences between specialties before a patient chooses one.

For instance, a patient may need information to decide between an interventional radiologist and a cardiologist or between a dermatologist and a plastic surgeon.

Obtaining consent is fundamental to the practice of medicine. Patients have a right to be informed before making health care decisions. Consent can be tricky, so it is wise when treating a patient to get consent for person, place and thing.

*The intent of this article is to make physician and physician assistants aware of consent issues. This article is not intended to be legal advice or to establish the standard of care for obtaining consent. As consent can be a tricky legal issue, physicians and physician assistants should obtain legal advice for any legal questions they may have.*