



**Progressive  
HUDDLE**

A webinar series that keeps you in the know  
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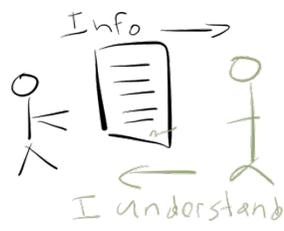
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**Informed Consent in the ASC**



Debra Stinchcomb, RN, BSN, CASC  
Progressive Huddle  
November 17, 2014

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**Emergence of Participatory Healthcare**

- 1847: AMA Code of Medical Ethics for Patient Rights
- Prior to 1900s, physicians had unchallenged power regarding patient care.
  - Research
  - Legal testimony and patient injuries and deaths
  - Physician statements about patient injuries and deaths.



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### Emergence of Participatory Healthcare

- 1905 Court opinion
  - "rights as free citizens prohibited a physician or surgeon, however skillful or eminent...to violate without permission the bodily integrity of his patient...and [to operate] on him without his consent or knowledge."
- 1914 Supreme Court decision.
  - Justice Benjamin Cardozo, "A surgeon who performs an operation without his patient's consent commits an assault."



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### Emergence of Participatory Healthcare

- Late 1950s: Patients to be told benefits and risks
- 1960s: Social changes increased patient participation
- 1972: Physicians were required to specifically disclose the risks in a language the patient was able to understand



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### Informed Consents in ASCs

- State Licensure Regulations
- CMS Conditions for Coverage
- Accrediting Body Standards
- Risk Management



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### 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



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### American College of Surgeons

- Instructions to patients: .....but you should seek the answers to questions such as:
  - What are the indications that have led your doctor to the opinion that an operation is necessary?
  - What, if any, alternative treatments are available for your condition?
  - What will be the likely result if you don't have the operation?
  - What are the basic procedures involved in the operation?
  - What are the risks?
  - How is the operation expected to improve your health or quality of life?
  - Is hospitalization necessary and, if so, how long can you expect to be hospitalized?
  - What can you expect during your recovery period?
  - When can you expect to resume normal activities?
  - Are there likely to be residual effects from the operation?



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### Physician, Facility, & Anesthesia

- What is the difference between a physician consent, facility consent and anesthesia consent?
- Must give consent prior to agreeing to surgery
  - GI
  - Vascular
  - Facility must ensure that the practitioner responsible for the care obtained consent



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## Physician, Facility, & Anesthesia

- Do you need separate consent forms for the procedure and anesthesia? (from a legal standpoint, not accreditation body requirement)
- Must give consent prior to agreeing to anesthesia administration
- Anesthesia consent process should contain:
  - Explanation of the anesthesia, benefits, risks, alternatives, blood and blood product information
  - Who can obtain anesthesia consent? CRNA ? MDA? Surgeon?
  - If not the provider, it raises the risk that a non anesthesia provider is not equipped to obtain an informed consent




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## Physician, Facility, & Anesthesia

- AANA
  - <http://www.aana.com/resources2/professionalpractice/Pages/Informed-Consent-in-Anesthesia.aspx>
  - Pre anesthesia evaluation imperative and time must be allowed to obtain anesthesia consent




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## Gail Van Norman, MD Assistant Professor, Anesthesiology Faculty Associate, Medical History and Ethics

- Article: Ethics in Medicine: <https://depts.washington.edu/bioethx/topics/infrc.html#ques8>
- Is the surgical consent sufficient to cover anesthesia care?
  - Principles involving the [informed consent process require that the best available information about procedures and risks be provided to patients. Just as anesthesiologists lack the expertise to discuss risks of surgery, surgeons lack expertise to discuss the nature and risks of anesthesia. While the surgical consent form does contain a phrase regarding consent for anesthesia care, the informed consent process requires that a separate discussion of anesthesia risks be carried out by the anesthesia provider.](#)




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### Sample Verbiage

- **Consent to Surgical or Diagnostic Procedure.** I acknowledge that I have authorized and directed my physician (named above) and/or associates or assistants of his/her choice to perform the following operation and/or procedure on me \_\_\_\_\_.
- **Risks and Alternatives.** My physician or his/her designee has explained to me the nature of the operation or procedure, the expected benefits or effect and the associated risks of such operation or procedure, and the risks of not performing the proposed operation or procedure. I certify that, based upon the information provided by my physician or his/her designee, I have a general understanding of the operation or procedure to be performed on me and that no warranty or guarantee has been made as to the result or cure.
- **Consent to Administration of Anesthetics.** I acknowledge that I have authorized and directed \_\_\_\_\_ to administer anesthetics to me in connection with the operation or diagnostic procedure described above. The physician has explained to me the nature of these anesthetics, the way they will be given to me, their usual effects, and the hazards and risks in connection with their use.



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### Informed Consent Forms

- **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 procedure, benefits, risks and alternatives



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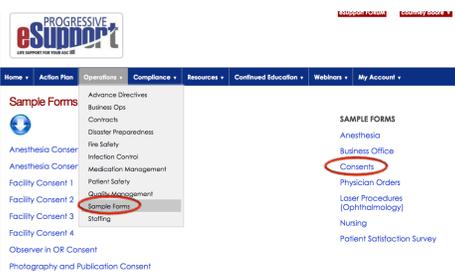
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### Available on eSupport

- **Operations\_Sample Forms\_Consents**



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### Physician, Facility, & Anesthesia

- Facility consent is only to ensure the patient gave an informed consent to the provider (s)
- Do you need a copy of the physicians consent form?
  - No
- Does the surgeon need to sign your facility consent form?
  - No



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### 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



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### 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



"The Doctor will see you now. Here's your medical jargon dictionary."



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## Consent Witness

- Do you have to have a witness to a consent?
  - **No**
- Who can witness a facility consent?
  - **Staff**




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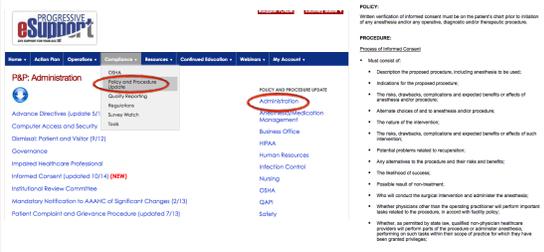
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## Available on eSupport

- *Compliance\_Policy and Procedure*  
*Update\_Administration\_Informed Consent Policy*



The screenshot shows the eSupport website interface. The 'Policies and Procedures' menu is expanded, and 'Informed Consent' is highlighted. The main content area displays the 'INFORMED CONSENT' policy document, including sections for 'POLICY' and 'PROCEDURE'.

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## 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
      - WV: MD or NP can select health care surrogate
      - NC: "Two Physician Rule"




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### Consent Time Limit

- Is there a time limit on consents?
  - No (other than reproductive 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





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### HIV Testing

- Do you need a separate consent for HIV testing?
  - Old law: required a separate consent
- 2006: CDC recommended routine HIV testing focused on adults, adolescents and pregnant women. Anyone between 13 and 64 years.
- Issues:
  - Who does counseling? Who discusses HIV testing benefits or positive test results?





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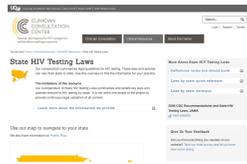
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### HIV Testing

- 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/>





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### Reproductive Consents

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



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### 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



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### Lack of Informed Consent

- Assault and battery
  - Assault: placing someone in fear of being touched
  - Battery: Touching of another without express consent
- Negligence theory of consent
  - Proof of fraud, misrepresentation, or breach of contract with the informed consent process



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Can you say the following?

- You'll feel like your old self after surgery?
  - "reassuring statement" vs. guarantee
- You must have \_\_\_\_\_ procedure.
  - Coercion (legal) and manipulation (ethical)



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Patient Responsibilities

- Inform staff of all medical conditions
- Provide accurate information
- Ask questions about procedure
- Follow directions
  - Responsible adult for a ride home
  - Keep follow up appointments



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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



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Available on eSupport

- Compliance\_Policy and Procedure Update\_Nursing\_Release against Medical Advice policy and form

The screenshot shows the Progressive eSupport website interface. The main navigation menu includes 'Home', 'Action Plan', 'Operations', 'Compliance', 'Resources', 'Continued Education', and 'Webinars'. Under the 'Compliance' menu, 'Policy and Procedure Update' is highlighted with a red circle. The page content area is titled 'RELEASE AGAINST MEDICAL ADVICE' and contains a 'POLICY:' section with text regarding patient consent and discharge forms. A 'Nursing' link is also circled in red at the bottom of the page.

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Remember.....

- Consider the informed consent a process
- Encourage patients to ask questions
- Provide appropriate interpretation services, as needed
- Ensure patients can legally give consent
- If the patient has procedural questions, stop the process and notify the surgeon

The illustration shows a hand with the index finger pointing upwards, indicating a key point or reminder. The Progressive eSupport logo is visible in the bottom left corner.

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Resources

- Rozovsky, Fay A., *Consent to Treatment: A Practical Guide*, 4<sup>th</sup> edition, New York, Wolters Kluwer Law & Business, 2014, Print
- [http://www.medscape.com/viewarticle/770392\\_4](http://www.medscape.com/viewarticle/770392_4)
- <http://www.templehealth.org/ICTOOLKIT/html/ictoolkitpage1.html>

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Still not on Progressive eSupport?

- Request your free web demo today!
  - Visit [www.progressivesurgicalsolutions.com/esupport](http://www.progressivesurgicalsolutions.com/esupport)
  - Email us at [info@pss4asc.com](mailto:info@pss4asc.com)
  - Or call us! (855) 777-4272



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Mark your calendars!

Join us next time for:  
**Life Safety Code**  
**January 12, 2014**  
**11AM PT/2PM ET**

William Lindeman, AIA  
WEL Designs



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