POLICY
It is the policy of the Hospital to obtain informed consent for Hospital-provided medical care consistent with legal requirements. This policy defines informed consent, the persons who are responsible for obtaining informed consent and the persons who have the legal authority to give informed consent.

SCOPE
This policy applies to all Hospital employees, members of the Hospital’s Medical Staff and other caregivers whose job duties require them either to obtain informed consent for medical care or to participate in the process of obtaining informed consent with respect to patients receiving care at The Children’s Hospital of Philadelphia (the “Hospital”).

RELATED POLICIES
- Patient Care Manual TX-2-01: Advance Directives for Health Care
- Patient Care Manual TX-1-01: Withholding Cardiopulmonary Resuscitation
- Patient Care Manual TX-5-01: Sedation Policy
- Patient Care Manual TX-9-01: Transfusion/Infusion of Blood and/or Blood-derived Products
- Patient Care Manual TX-16-01: Care of the Forensic Patient
- Patient Care Manual IC-2-01: HIV
- Patient Care Manual IM-1-01: Privacy of Patient Information
- Patient Care Manual IM-1-04: Patient/Personal Representative Access to Patient Information
- Patient Care Manual IM-2-04: Storage and Release of Mental Health Records and Psychotherapy Notes, Pennsylvania
- Patient Care Manual IM-2-05: Storage and Release of Mental Health Records and Psychotherapy Notes, New Jersey
- Patient Care Manual PE-3-01: Suspected Child Abuse or Neglect
- Patient Care Manual CC-1-01: Inpatient Passes
- Patient Care Manual CC-1-03: Therapeutic Community Outings
- Patient Care Manual RI-4-01: Interpreter Services: Limited English Proficiency
- Patient Care Manual RI-4-02: Interpreter Services: Deaf and Hard of Hearing
- Administrative Policy Manual A-4-2: Admission of Patients
- Administrative Policy Manual A-4-1: Administrator On-Call
- Administrative Policy Manual A-3-5: Confidentiality of Patient and Institutional Information

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An Index to this policy is set forth at the end of the policy.

IMPLEMENTATION
It is the duty of the Attending Physician (which includes the Attending Dentist where applicable) to assure that informed consent is obtained and documented for all medical care requiring consent. Although the task of obtaining consent may be delegated to other health care workers, the Attending Physician ultimately remains responsible for ensuring that informed consent is obtained.
Where the patient does not have an Attending Physician (e.g., care is provided independently by a psychologist, nurse practitioner or physician assistant) and a Hospital policy requires consent with respect to an aspect of the care being provided, as set forth in I.B. below, the caregiver who is responsible for the patient’s care is responsible for assuring that informed consent is obtained. The Attending Physician (or Attending Dentist where applicable) is responsible for assuring informed consent is obtained in all other situations, including with respect to the procedures and treatments set forth in I.A. below.

DEFINITIONS

A. Adult: An Adult is a person who is 18 years of age or older.

B. Competent: Competent has the meaning set forth in Section I.F of this policy below.

C. Hospital Lawyer: A lawyer in the Hospital’s Office of the General Counsel.

D. Minor: A person who is younger than 18 years of age.

E. Patient Representative: A person who, under state law, has the authority to act on behalf of an individual in making decisions related to health care. The parent of a Minor is generally treated as a Minor’s Patient Representative as is any person designated by Court Order as the Minor’s legal guardian or as a person who can otherwise make medical decisions on behalf of the Minor. A person designated by Court Order as the legal guardian of an Adult is treated as the Adult’s Patient Representative, as are an Adult’s Health Care Agent and an Adult’s Health Care Representative (See Sections II.K, II.L and II.M, below).

GUIDELINES

I. Informed Consent

A. Under Pennsylvania law, except in emergencies (See Section II.C., below), a physician owes a duty to obtain informed consent prior to conducting any of the following procedures:

1. Performing surgery, including the related administration of anesthesia;
2. Administering radiation therapy or chemotherapy;
3. Administering a blood transfusion;
4. Inserting a surgical device or appliance; or
5. Administering an experimental medication, using an experimental device or using an approved medication or device in an experimental manner.

B. The Attending Physician, in his/her discretion, may choose to obtain informed consent in other situations, even though it is not legally required. In addition, Hospital policies regarding specific procedures may require informed consent.

C. The Attending Physician has the duty to obtain informed consent for all medical care requiring consent prior to the time such care is provided and to document that consent in the medical record. The Attending Physician may choose to entrust the task to another qualified caregiver, where not prohibited by Hospital policy, but remains responsible for obtaining and documenting informed consent even if he/she so delegates the task.
D. In obtaining informed consent, the Attending Physician must provide an explanation of the nature of the proposed procedure and/or treatment, the attendant risks and benefits, including possible problems related to recuperation, the likelihood of achieving care, treatment and service goals, and the available alternatives to treatment or diagnosis along with their risks and benefits (including the possible results of not receiving care, treatment and services), all to the extent that a reasonable person would deem such information material in making a decision to undergo the procedure and/or treatment. The Attending Physician must obtain informed consent in a manner that is culturally and linguistically appropriate, using the patient’s or the Patient Representative’s primary or preferred method of communication and using interpretive services, such as language interpreters or services for the deaf or hard of hearing, where language or hearing barriers exist.

E. Consent normally should be obtained in person. Where, however, that is not practicable, consent may be obtained by telephone or other electronic means (e.g., fax) pursuant to the procedure outlined in Appendix A: Admissions and Consents by Telephone and Electronic Means.

F. The person consenting must be Competent to do so. Generally, this means that when provided appropriate medical information, communication supports and technical assistance, the person is documented by the Attending Physician to be: (1) able to understand the potential material benefits, risks and alternatives involved in a specific treatment or procedure; (2) able to make the health care decision on his/her own behalf; and (3) able to communicate that health care decision to any other person. A person may be Competent to make some health care decisions but not others.

II. Whose Consent is Valid

A. General Rule
1. Adults may consent for themselves or may designate a Health Care Agent or Health Care Representative to consent on their behalf (See Sections II.L and II.M, below).
2. Patient Representatives may consent for the persons over whom they have legal authority.
3. When the physician/Hospital knows that a Minor is legally able to consent for himself/herself, the Patient Representative normally may not consent for the Minor (See Section II.B., below).

B. When Minors Can Give Valid Consent for Themselves
1. High School Graduates, Married Persons, Women/Girls Who Have Been Pregnant. The following persons may give valid consent for their own medical treatment, even though they are under 18 years of age:
   a. High school graduates;
   b. Married persons; or
   c. Women/girls who have been pregnant.
2. Good Faith Reliance. The consent of a Minor who professes to be, but is not, a Minor whose consent alone is effective for medical, dental and health services is deemed effective without the consent of the Minor’s parent/legal guardian if the physician or other person relied in good faith upon the representations of the Minor. To avoid problems later on, it is recommended that the medical record reflect the information upon which the health care team is relying (e.g., “The patient advised that she had been pregnant, which was consistent with the physical examination.”).
3. **Pregnancy, Venereal Disease, Reportable Disease.** A Minor can give consent to medical and health services to determine the presence of or to treat pregnancy and venereal disease or other diseases reportable under the Disease Prevention and Control Law of 1955.

4. **HIV.** A Minor can give consent to HIV testing or to treatment for conditions relating to HIV. A Minor should be encouraged to discuss the test/treatment with his/her parents or other Patient Representative and/or to provide consent for the physician to discuss the test/treatment with the Minor’s parents or other Patient Representative.

5. **Controlled or Harmful Substances.** A Minor who is suffering from the use of a controlled substance or harmful substance may give consent to medical care or counseling for purposes of diagnosis or treatment.

6. **Outpatient Mental Health Examination and Treatment.** Any Minor 14 years of age or older who believes he/she is in need of mental health treatment and substantially understands the nature of the treatment may submit him/herself to outpatient mental health examination and treatment without the consent of his/her Patient Representative, provided the decision to do so is made voluntarily. A Patient Representative may also consent to voluntary outpatient mental health treatment for a Minor who is younger than 18 without the consent of the Minor. Neither the Patient Representative nor the Minor may invalidate the other’s consent. For example, if only one of a 14 year old and his/her Patient Representative consents to a mental health exam, the other cannot invalidate the consent. If a Minor can otherwise provide consent for his/her own medical care under Section II.B of this policy (e.g., if the Minor has graduated from high school) then only the Minor, and not the Minor’s Patient Representative, can consent for the Minor’s mental health treatment.

C. **Emergencies**

1. **General Rule.** Medical, dental and health services may be rendered without the consent of the patient/Patient Representative when treatment is immediately necessary to preserve the life of the patient or to prevent serious or permanent impairment to the health of the patient. When, in the physician’s judgment, an attempt to secure consent from a patient’s Patient Representative (e.g., an infant requires immediate surgery but his parents cannot be located) would result in delay of treatment immediately necessary to preserve the life of the patient or to prevent serious or permanent impairment to the health of the patient such medical, dental and health services may be rendered to the patient without the consent of the patient/Patient Representative.

2. **Patient Who Refuses Consent.** In general, if a patient can give consent on his/her own behalf (e.g., an Adult) and refuses consent, treatment should not be provided.

3. **Medical Record Documentation.** The medical record should reflect any abortive attempts to contact a Patient Representative and that a notation be made in the chart explaining why a delay in treatment would increase the risk to the patient’s life or health.

D. **Court Orders**

1. **General Rule.** When a physician believes that medical treatment is required to preserve a patient’s life or to prevent serious or permanent impairment to the patient’s health, the patient cannot give consent for him/herself and there is no Patient Representative available (e.g., a Patient Representative cannot be located, cannot be reached or is no longer living) or able (e.g., the Attending Physician has determined that no Patient Representative is Competent to consent) or willing to consent, and therefore consent cannot be obtained, a Court Order permitting treatment (or, for Adult patients, a Court Order to appoint a
guardian who can authorize treatment) should be sought, unless there is insufficient time to obtain a Court Order (See Section II.C, above), or a Court Order is inappropriate (See Section II.D.2, below). It is generally inadvisable to provide treatment without a Court Order if a Patient Representative is available and has refused to consent and there is time to obtain a Court Order.

2. **Court Order Inappropriate.** In general, it is not appropriate to obtain a Court Order to treat either a Competent patient who can legally consent for his/her own treatment (such as a Competent Adult) and who has refused treatment or an incompetent Adult whose Patient Representative has appropriately refused treatment consistent with his/her legal authority (e.g., a Health Care Agent who refuses to consent for a blood transfusion for a patient whose health care power of attorney states that she is not to receive blood/blood products) (See Section III.K-M, below). For questions regarding the propriety of a Court Order when a patient or Patient Representative has refused treatment, contact a Hospital Lawyer.

3. **Time for Obtaining Court Orders.** If there is reason to believe that a Court Order might be necessary, the Attending Physician should contact a Hospital Lawyer at the earliest feasible time so that the Hospital Lawyer can evaluate the propriety of obtaining a Court Order and, if appropriate, begin the process so as not to create an unnecessary emergency situation. It often is not possible to obtain a Court Order in less than three hours for Minor patients (Court Orders for Adult patients may take longer). The Hospital Operator and the Risk Management Department have contact information for the Hospital Lawyers outside of business hours.

4. **Alternatives to Hospital-Obtained Court Order.** The Hospital will seek a Court Order only after it has (a) exhausted all reasonable steps to obtain consent from the patient, if legally permissible, or Patient Representative; and (b) ruled out appropriate alternatives to its obtaining a Court Order (e.g., where a child and youth agency has custody of a Minor, it has the responsibility to obtain the Court Order; or where a relative of a Minor is willing to give consent, and there is sufficient time for the relative to obtain temporary legal custody of the Minor in Court, that person should seek legal custody so that he or she can give consent).

5. **Procedures for Court Orders.** The procedures to be followed to obtain a Court Order are attached as Appendix B.

### E. Blood Transfusions

1. **Minors Who Cannot Consent for Themselves.** Whenever surgery has been/is to be scheduled for a Minor, or the possible need for blood/blood products can otherwise be anticipated, and the Minor’s Patient Representative has advised the physician that he/she will not consent to the administration of blood/blood products, a Court Order should be sought unless the possibility of needing blood/blood products is remote (See Section II.D., above).

2. **Patients Who Can Consent for Themselves or Adult Incompetent Patients.** In general, a Court Order for blood/blood products is not appropriate for a Competent patient who can legally consent for his/her own treatment (such as a Competent Adult) and who has refused blood/blood products or an incompetent Adult patient whose Patient Representative has appropriately refused blood/blood products consistent with his/her legal authority (e.g., a Health Care Agent who refuses to consent for a blood transfusion for a patient whose health care power of attorney states that she is not to receive blood/blood products) (See Section
II. D.2, above). For questions regarding the propriety of a Court Order when a patient or Patient Representative has refused to consent to blood/blood products, contact a Hospital Lawyer.

F. Children and Youth Agencies/Foster Care – Minors Who Cannot Consent for Themselves

1. A Pennsylvania Child and Youth Agency (such as the Philadelphia Department of Human Services (DHS)) (Pennsylvania Agency) generally may consent to routine medical treatment for Minors in its custody. Foster parents of children in the custody of a Pennsylvania Agency cannot give valid consent even for routine medical treatment and such consent should be obtained from a Pennsylvania Agency social worker.

2. It is not always clear what constitutes “routine medical treatment.” Treatment requiring informed consent under Section I.A above (e.g., involving surgery) is not routine medical treatment. In grey areas (e.g., broken bones), where it is unclear whether treatment is routine medical treatment or non-routine medical treatment, the Pennsylvania Agency should make the initial decision as to whether it is able to give consent. The description of the proposed treatment as presented to the Pennsylvania Agency should be recorded in the medical record.

3. Where parental rights have been terminated, the Pennsylvania Agency may give consent for medical treatment for Minors in its custody, regardless of whether the medical treatment is routine.

4. In cases where the Pennsylvania Agency has custody of the Minor, parental rights have not been terminated and non-routine treatment is necessary, normally consent can only be given by a parent, a Court-appointed legal guardian or the Court. If a parent or legal guardian is not available or will not provide consent, and treatment is not emergent, the Pennsylvania Agency is responsible for obtaining a Court Order that authorizes the medical care. Care providers should anticipate, to the extent possible, the need for consent to non-routine treatment for a Minor in the custody of a Pennsylvania Agency and engage the Agency case worker at the earliest point in time either to obtain parental/legal guardian consent or a Court Order as applicable. If such a situation arises outside of normal business hours for a child in DHS custody, an emergency attorney may be contacted through the DHS Child Welfare Hotline by calling (215) 683-6100 and asking to be connected with the emergency attorney. The Hospital Social Work Department has after hours contact information for other Pennsylvania Agencies. If the child’s condition is an emergency for which there is not time to obtain consent, the guidelines set forth in Section III.C regarding emergencies apply regardless of the involvement of the Pennsylvania Agency.

5. A New Jersey Department of Youth and Family Services (DYFS) District Office Manager or his/her designee may give consent for both routine and non-routine medical care for Minors in DYFS custody.

6. The Delaware Department of Services for Youth and Their Families (DSCYF) may give consent for both routine and non-routine medical care (other than inpatient psychiatric treatment) for Minors in its custody.

G. Who is Considered a Parent Able to Consent

1. Legal Parent. A legal parent (i.e., a biological parent whose parental rights have not been terminated or an adoptive parent who has completed the adoption process) may give consent for his/her Minor child, even though the child may not be living with that parent. There are occasional situations where a parent’s right to consent has been taken away by a
Court, but absent information that a parent is not able to give consent to medical treatment for his/her child, the Hospital may obtain valid consent for treatment from any legal parent.

2. Adoption. If an adoption process has been initiated but not yet legally approved by the Court (such as newborns being placed for adoption), consent should be obtained from a biological parent. If the biological parents are unavailable or unable or refuse to give consent, contact a Hospital Lawyer for assistance.

3. Divorce. In the case of divorced parents, either parent can give consent unless the physician/Hospital knows that a Court has given sole legal custody or medical decision-making authority to one parent. In such cases, consent must be sought from the parent who has sole legal custody of, or sole medical decision-making authority for, the Minor. If any disagreement arises between the parents regarding who may consent to treatment, legal documentation of the custody arrangement should be requested and a Hospital Lawyer should be consulted. A photocopy of the documentation should be placed in the medical record.

4. Unmarried Parent. A biological parent may consent to medical treatment for his/her child even where the parents did not marry and the child only lives with one parent. Consent should not be accepted from the father if the biological mother denies he is the father. If this situation arises, Social Work or a Hospital Lawyer should be contacted for assistance.

5. Minor Parent. A Minor parent may consent to treatment for his/her child.

H. Conflicting Parent Desires

1. When both parents are able to give valid consent to medical care for their Minor child and the parents disagree as to whether to give consent, consent typically may be accepted from the parent who in is agreement with the recommended medical care. When these circumstances arise, Social Work should be contacted to address the concerns of the dissenting parent. If the dissenting parent states his/her intention to seek Court intervention and it is not medically necessary to administer treatment immediately, initiation of treatment should be withheld for a brief period of time to permit the dissenting parent to seek legal assistance. In cases of withholding of life support systems, withdrawal of life support systems or Do-Not-Resuscitate orders, if one parent refuses consent, life support systems should not be withheld/withdrawn and Do-Not-Resuscitate orders should not be written. (See Patient Care Policy TX-1-01 Withholding Cardiopulmonary Resuscitation). Medical staff personnel should contact Social Work or the Ethics Committee for further consultation and advice.

I. Substitute Consent for Minors – Extended Family Members

1. Extended Family Members. An extended family member, such as an aunt, uncle, sibling or grandparent, typically cannot give valid consent for medical care of a Minor unless a Court has appointed him/her the legal guardian of the Minor. Social Work should be contacted where an extended family member who does not have legal representation has physical custody of a Minor and wishes to obtain legal custody.

2. Authorization to Consent. Under Pennsylvania law, a parent or Court appointed legal guardian may confer upon an Adult who is a relative or family friend the power to consent to medical, surgical or mental health care unless the Minor is in the custody of a child and
youth agency such as DHS or can otherwise provide consent for him/herself (See Section II.B., above). Authorization to consent to medical, surgical or mental health care must be made in writing and contain the following:

a. The name of the person upon whom the power is conferred;
b. The name and date(s) of birth of the Minor(s);
c. A description of the scope of powers being conferred;
d. A statement that the parent or legal guardian is unaware of any Court Orders that would prohibit him/her from conferring the power to consent to medical, surgical or mental health treatment for the Minor(s);
e. The signature of the parent or legal guardian and the person upon whom the power to consent is being conferred, in the presence of and with the signature of two witnesses who are both at least 18 years of age (the person upon whom the power to consent is conferred may not also serve as a witness). The authorization need not be notarized.

3. Standby Guardian. Also under Pennsylvania law, a custodial parent or legal guardian may designate a Standby Guardian to act as a co-guardian or guardian of the Minor upon the occurrence of a triggering event (such as the death of a parent or a determination that the parent is incapacitated). The Standby Guardian can make decisions on behalf of the Minor, including medical decisions.

a. A designation of standby guardianship must be made in writing and contain the following:
   1) The name of the parent, legal guardian or legal custodian making the designation;
   2) The name of the Minor(s);
   3) The name of any other parent;
   4) The triggering event or events upon which the Standby Guardian will become the guardian or co-guardian;
   5) The signed consent of the Standby Guardian and any other parent, legal custodian or legal guardian; and
   6) The signatures of the designating parent, legal custodian or legal guardian, in the presence of and with the signatures of two witnesses who are both at least 18 years of age and not otherwise named in the designation. The designation of standby guardianship need not be notarized.

b. The designation of Standby Guardian must be approved by the Court unless:
   1) The person designating the Standby Guardian is the sole surviving parent; or
   2) The parental rights of any non-custodial parent have been terminated or relinquished; or
   3) All parties (listed above in Section 3.e-f) have consented to the entry of the Order approving the designation of the Standby Guardian.

c. A designation of standby guardianship is not valid if the Minor has another parent or adoptive parent:
   1) Whose parental rights have not been terminated or voluntarily relinquished; and
   2) Whose whereabouts are known; and
   3) Who is willing and able to make and carry out the day-to-day child-care decisions, including medical decisions, for the Minor.
J. Consent by Director of Mental Health Facility
   1. The director of a mental health or mental retardation facility may consent to medical care for a mentally disabled person admitted or committed to the facility if:
      a. The mentally disabled person does not have a living parent, spouse, issue, next of kin or legal guardian;
      b. The mentally disabled person does not affirmatively object to the proposed medical care; and
      c. In the case of elective surgery, the medical care is on the advice of two physicians not employed by the facility.
   2. If the person affirmatively objects to the proposed medical care, a Court Order should be obtained.

K. Guardian of the Person
   1. A person appointed by the Court as guardian of the person to make health care decisions on behalf of an Adult (See Section II. A.1 above) patient, may give valid consent for that Adult patient’s medical care.

L. Designated Health Care Agent (Health Care Power of Attorney)
   1. In general, a Competent Person may execute a health care power of attorney designating another individual as the Person’s Health Care Agent to make health care decisions on the Person’s behalf.
      a. Definition of Person. A Person for this purpose (a) is 18 years of age or older, (b) has graduated from high school, (c) has married, or (d) is emancipated by Court Order.
      b. When Operative. The health care power of attorney becomes operative when (a) a copy is provided to the Attending Physician, and either (b) the Attending Physician determines that the Person is incompetent or (c) at some other point designated by the power of attorney.
   2. Where there is a question as to the validity or scope of a health care power of attorney the health care provider should contact a Hospital Lawyer for assistance.
   3. Countermand. A Competent Person may countermand any health care decision made by his/her Health Care Agent at any time and in any manner by personally informing the Attending Physician or other health care provider. Regardless of a Person’s mental or physical capacity, a Person may countermand a health care decision made by his/her Health Care Agent that would withhold or withdraw life-sustaining treatment at any time and in any manner by personally informing the Attending Physician. A countermand of a particular health care decision will not affect the authority of the Health Care Agent to make other health care decisions in accordance with the health care power of attorney.
   4. Medical Record. A copy of the health care power of attorney, and any amendments to such, must be placed in the patient’s medical record.
M. **Health Care Representative (No Health Care Power of Attorney or Health Care Agent Not Available)**

1. In general, the following Competent individuals may make health care decisions on behalf of an incompetent Person (See Section II.L.1, above) as the Person’s Health Care Representative where (a) either the Person does not have a health care power of attorney or has a Health Care Agent that is not reasonably available or is unwilling to act and no alternate Health Care Agent is reasonably available; and (b) there is no Court appointed guardian of the Person (See Section II.K, above):
   a. An individual the Person designated, when Competent, to make health care decisions, either by a signed writing or by personally informing the Attending Physician or other health care provider; or
   b. In the absence of a designation or if no designee is reasonably available, any Competent member of the following classes, in descending order of priority who is reasonably available (i.e., “1)” is first and “6)” has authority only if no one else on the list is reasonably available):
      1) The spouse (unless an action for divorce is pending) and the Adult children of the Person who are not the children of the spouse.
      2) An Adult child.
      3) A parent.
      4) An Adult brother or sister.
      5) An Adult grandchild.
      6) An Adult who has knowledge of the Person’s preferences and values, including, but not limited to, religious and moral beliefs, to assess how the Person would make health care decisions.

2. **Conflict Among or Between Decision-Makers.** Where there are multiple persons in the same priority class (e.g., spouse and Adult children of the patient who are not the children of the spouse) who are reasonably available and do not agree on a health care decision, the Attending Physician or other health care provider may rely on the decision of a majority of the members of that class who have communicated their views to the Attending Physician or other health care provider. If the members of the class are evenly divided concerning the health care decision, no decision may be made until the parties resolve their disagreement provided that such delay does not interfere with the administration of health care treatment in accordance with accepted standards of medical practice (e.g., in an emergency, the Attending Physician should provide the appropriate health care treatment, See Section II.C. above). Where multiple individuals in the same priority class cannot agree, the Attending Physician or other health care provider should contact Social Work or the Ethics Committee for further consultation and advice.

3. **Limitation on Authority.** A Health Care Representative may only object to health care necessary to preserve the life of a patient if that patient either has an end-stage medical condition or is permanently unconscious.

4. **Countermand.** A Competent Person may countermand any health care decision made by his/her Health Care Representative at any time and in any manner by personally informing the Attending Physician or other health care provider. Regardless of the Person’s mental or physical capacity, a Person may countermand a health care decision made by the his/her Health Care Representative that would withhold or withdraw life-sustaining treatment at any
time and in any manner by personally informing the Attending Physician. A countermand of a particular health care decision will not affect the authority of the Health Care Representative to make other health care decisions.

5. Medical Record. The designation of a patient’s Health Care Representative, and any amendments to that designation, must be placed in the patient's medical record or, if the designation or amendment is not in writing, recorded by note in the patient’s medical record.

III. Other Consent Issues

A. Protective Custody by Hospital of a Minor – Suspected Child Abuse or Neglect

1. In cases of suspected child abuse or neglect, Pennsylvania’s “Child Protective Services Law” permits an examining or treating physician, the Director of the Hospital (in this Hospital, the President & Chief Executive Officer or Executive Vice President & Chief Operating Officer) or a person specifically designated in writing by such Director (in this Hospital, the Administrator On-call) to take a child into protective custody if, and only if, protective custody is immediately necessary in the physician's judgment to protect the child from further serious physical injury, sexual abuse or serious physical neglect. Once a child has been taken into protective custody, the physician must immediately begin the sequence of reporting. In no case may a child be retained in protective custody for more than 24 hours unless a Court Order has been obtained.

a. The need for protective custody might occur, for example, where a parent plans to take his/her child out of the Hospital against medical advice in a situation that could jeopardize the child’s life or health.

b. A Hospital Lawyer must be notified immediately if a child is taken into protective custody.

c. Hospital Security should be called, if appropriate.

d. See Patient Care Policy PE-3-01 Suspected Child Abuse or Neglect for more information regarding the process for reporting abuse and/or neglect. Appendix A to that policy explains the process for taking a child into protective custody.

2. Emergency treatment may be rendered to a child in protective custody in accordance with the guidelines set forth in Section II.C. above (Emergencies). Where non-emergent treatment is required for a child in protective custody, a parent or Court-appointed legal guardian must provide consent as set forth in Section II.F. above (Children and Youth Agencies/Foster Care). If no parent/Court-appointed legal guardian is available or willing to consent, the Pennsylvania Agency should be contacted so that it can obtain a Court Order authorizing treatment.

B. Discharge Against Medical Advice

1. If a Patient Representative insists on removing a patient against the advice of the medical staff, but there is no life/health threatening emergency created by the discharge, the patient must be discharged. A Patient Representative of an in Competent Adult patient may remove that patient against the advice of the medical staff, even if such removal creates a life or health threatening emergency provided that the Patient Representative is acting within the scope of his/her legal authority (e.g., as directed in the patient’s healthcare power of attorney) as explained in Sections II.K, II.L and II.M, above. Questions about whether a Patient Representative is acting within the
C. Law Enforcement and Other Governmental Agents

1. Pennsylvania law requires emergency room personnel treating victims of vehicular accidents to comply with requests to obtain blood samples from such victims, where such requests are made by police officers who have determined that probable cause exists to believe that the person who operated or was in actual physical control of the vehicle was illegally driving under the influence of alcohol or a controlled substance. In addition, test results can be released upon request of the person tested, his/her attorney, his/her physician, governmental officials (including law enforcement) or agencies.

2. In general, except as provided in Section III.C.1 above, law enforcement and other governmental agents cannot require patients to undergo treatment or procedures without consent unless they obtain legal process. A Hospital Lawyer should be consulted if questions arise.

RESPONSIBILITY FOR MAINTENANCE OF THIS POLICY

GENERAL COUNSEL

Approved by the Executive Committee of the Medical Staff (ECMS) 9/14/09

APPENDICES/ATTACHMENTS

APPENDIX A: Admissions and Consents by Telephone and Electronic Means
APPENDIX B: Summary of Procedures for Obtaining Court Orders
APPENDIX C: Court Order Fact Sheet

Supersedes: 2/2/04

Approved By

Signature: __________________________________________

Madeline Bell, Executive Vice President and Chief Operating Officer
Admissions and Consents by Telephone and Electronic Means

If no Patient Representative can be present, permission to admit and/or treat a patient who cannot give consent for him/herself may be obtained over the telephone. The Attending Physician is responsible for assuring that informed consent is obtained and documented. The conversation between the physician and Patient Representative should be witnessed by another physician or an employee of The Children’s Hospital of Philadelphia (this may be a nurse, telephone operator or clerk). The physician must explain to the Patient Representative the reasons for the proposed procedure and/or treatment, the attendant risks and benefits, including possible problems related to recuperation, the likelihood of achieving care, treatment and service goals and the available alternatives to admission/procedure/treatment along with their risks and benefits (including the possible results of not receiving care, treatment and services), all to the extent that a reasonable person would deem such information material in making a decision to undergo the procedure and/or treatment.

The following information must be recorded in the patient's medical record:

1. Date;
2. Time;
3. Name of the Patient Representative with whom staff spoke;
4. Relationship to the patient;
5. A description of the information given to the Patient Representative with respect to the proposed procedure/treatment, its risks and benefits, and available alternatives and their risks and benefits;
6. Whether or not consent was given;
7. Person making the call (signature); and
8. Person witnessing the call (signature).

In the case of patients being admitted, this information must be supplemented by the Hospital’s admission form, which the Patient Representative should sign as soon as he/she arrives at the Hospital.

If the Patient Representative has the ability to receive and convey document images electronically, such as by fax or by a PDF attachment to an email, the physician/Hospital may seek to verify the consent by sending the Hospital’s admission and/or consent form to the Patient Representative electronically. An executed copy of the admission and/or consent form should be returned to the Hospital electronically and placed in the patient’s medical record. The electronic image of the consent form is not a substitute for, but is in addition to, the informed consent discussion by the Attending Physician as described above.
Summary of Procedures for Obtaining Court Orders

The following procedures generally apply when the Attending Physician believes a Court Order is needed consistent with Section II.D. of the Consent Policy:

1. The Attending Physician calls a Hospital Lawyer. The Hospital Operator and the Risk Management Department have contact information for the Hospital Lawyers outside of business hours.

2. The Attending Physician provides the Hospital Lawyer with the pertinent information about the need for treatment and the unavailability, inability or unwillingness of the Patient Representative to consent.

3. The Attending Physician should consider and share with the Hospital Lawyer all treatment that may be necessary during the Hospital stay so that, where appropriate, the Hospital Lawyer can seek a Court Order that gives the Attending Physician or his/her physician designee the ability to make treatment decisions throughout the Hospital stay (in the case of an Adult patient, the Hospital would ask the Court to appoint a guardian to make those decisions). A sample “Fact Sheet” (Appendix C) is attached to help the physician summarize the necessary information. The physician should have the patient’s medical record with him/her when speaking to the Hospital Lawyer.

4. In circumstances in which the Patient Representative is available but has refused to give consent or is unable to do so, the physician, social worker or nursing supervisor should advise the Patient Representative of the intention to seek a Court Order authorizing treatment of the patient (in the case of an Adult patient, the Hospital would ask the Court to appoint a guardian to authorize such treatment). This step should only occur once the Hospital Lawyer has concluded that a Court Order is legally advisable.

5. Once the Hospital Lawyer has been advised of the pertinent facts, he/she, or an outside attorney the Hospital retains, contacts the judge and sets up a hearing, which is normally held by telephone but may be held in Court depending on how the judge would like to proceed. Typically the judge will want to speak with the Attending Physician as well as the Patient Representative if the Patient Representative is available and has refused consent.

6. The Attending Physician should give the Hospital Lawyer telephone and/or pager numbers where he/she can be reached, as well as where the Patient Representative can be reached, in the event the judge wishes to speak directly with any of them.

7. The Hospital Lawyer advises the Attending Physician when the judge issues the Court Order (which the Judge may issue orally followed by a written Order at a later time). As soon as the physician is notified that an Order (oral or written) authorizing treatment has been obtained, or guardian appointed, he/she should record the pertinent information (time of Order, nature and scope of authorization) on the patient’s medical record. When the written Order is obtained, the Hospital Lawyer forwards two copies to the Attending Physician or designee. One copy is placed in the patient’s medical record and the other is given to the patient’s Patient Representative, if available.

8. In the unlikely event that a Hospital Lawyer cannot be reached outside of business hours and the Attending Physician believes he or she must begin the process of obtaining a Court Order without delay, the Attending Physician should contact the Court directly by calling 215-686-1776 and asking for the emergency judge on duty. The city operator will connect the Attending with the emergency judge. In such a case, the Attending Physician should be prepared to summarize for the judge the need for the Court Order as explained above.
Court Order Fact Sheet

**Patient’s Background Information**

Patient’s full name
Address
Telephone number
Date of birth
Date of admission to Hospital (if relevant)

**Patient Representative Background Information**

Patient Representative
Patient Representative(s’) full name(s)
Relationship to patient (e.g., parent or health care agent appointed in power of attorney)
Address(es)
Telephone number(s)

**Hospital Contact Information**

Attending Physician
Telephone number/pager
Board certifications

Other Hospital contact (e.g., resident, social worker)
Telephone number/pager
Board certifications (for physicians)

**Medical Information**

Patient’s diagnosis
Reasons consent cannot be obtained
For Adult patient, reason he/she cannot consent for him/herself (i.e., Attending Physician determined patient cannot understand nature of procedure, risks and alternatives)
Reason for recommended treatment
Benefits of recommended treatment
Risks of recommended treatment
Alternatives to recommended treatment
In matters in involving refusal of blood/blood products, whether the procedure can be performed without administering blood/blood products; if bloodless procedure is not recommended, reasons why not
Timing of recommended treatment (i.e., when it should occur)
Risks of delay in treatment

**Outreach to Patient Representative**

Efforts to obtain consent from Patient Representative
Efforts to notify Patient Representative of Hospital’s intent to obtain a Court Order
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