

3. Informed Consent

Recommendations at a glance for health care providers and other responders for requesting patients' consent throughout the exam process:

- Seek the informed consent of patients as appropriate throughout the exam process.
- Make sure policies exist to guide the process of seeking informed consent from specific populations.

Seek the informed consent of patients as appropriate throughout the exam process. There are two essential but separate consent processes—one for overall medical evaluation and treatment and a second for evidence collection and release. Patients should understand the full nature of their consent to each procedure, whether it is medical or evidentiary (e.g., what the procedure entails, possible side effects, limits of confidentiality, and potential impact). The only way to put patients in the position of being able to make informed decisions about whether to allow a procedure is by presenting them with all relevant information in a language they understand. Patients can decline any part or all of the examination. However, the informed consent process includes making patients aware of the impact of declining a procedure, as it may negatively affect the quality of care and the usefulness of evidence collection. It may also have a negative impact on a criminal investigation and/or prosecution both because evidence not collected may have been useful and because defense attorneys in a civil or criminal case may use the fact that the victim declined a procedure to claim that the victim is hiding something that would have been revealed by that procedure. They should understand that declining a procedure might also be used by opposing counsel to discredit the victim at trial.

Before making any disclosures, patients should be advised whether their communications are confidential and whether the confidentiality of the statements is covered by a privilege. Understanding what will happen to the information provided and the extent to which it may be protected is an important component of informed consent.

Health care providers and other responders must refrain from any judgment or coercive practice in seeking patients' consent. It is contrary to ethical and professional practices to influence their decisions.

Seek both verbal and written consent as required by policy. In addition to verbally providing information and seeking consent throughout the exam process, written consent of patients may be needed in order to carry out specific procedures. Verbal and written consent from patients who are limited English proficient may require the use of foreign language interpreters for verbal consent and for written consent to have the interpreters provide a sight translation of written documents and the translation of consent forms and other documents into non-english languages.⁸⁵ It is important that jurisdictions, agencies, and exam facilities make it very clear to responders when written consent is necessary, how it should be sought, and provide appropriate checklists and forms to facilitate obtaining written consent in a consistent manner.

Methods to inform patients verbally and seek their consent vary significantly across jurisdictions and individuals requesting consent. For example, some examiners ask patients to voice their consent to each exam procedure while others explain from the start that they need patients to tell them if they want to stop at any time. While respecting the individual communication styles of responders, the process of obtaining consent can be enhanced when they are educated on how to seek verbal consent logistically in a way that is consistent across patients and helps facilitate the exam process as specified by the jurisdiction and facility.

Verbal and written information given to patients to facilitate the consent process should be complete, clear, and concise. This information, along with consent forms, should be tailored to the communication skill level/modality and language of patients. Responders should be aware of verbal and nonverbal cues from patients and adjust their methods of seeking consent to meet patients' needs. Encourage patients to ask questions and to inform relevant responders if they need a break or information repeated or do not want a particular part of the exam process done. Make sure all signatures and dates needed are obtained on written

⁸⁵ See The Joint Commission on Accreditation of Healthcare Organizations (Joint Commission) New & Revised Standards & EPs for Patient-Centered Communication, Accreditation Program: Hospital, RI, 01.01.03, effective January 1, 2011.

consent forms and document consent or reasons for declining to consent as appropriate (either on the medical record or forensic report forms).

Seek consent for medical evaluation and treatment in a language that the patient understands. Follow facility policy for seeking patients' consent for medical evaluation and treatment. Any written medical consent forms developed for the purpose of the exam may need to be reviewed and approved by facility administration. Documentation on consent for medical evaluation and treatment becomes part of the medical record. Informed consent of patients for medical evaluation and treatment typically is needed for the following:

- General medical care.
- Pregnancy testing and care.
- Testing and prophylaxis for STIs.
- HIV prophylaxis.
- Photographs, including colposcopic images.
- Permission to contact the patient for medical purposes.
- Release of medical information.

Seek consent for evidence collection and release in a language that the patient understands. Follow jurisdictional procedure for obtaining informed consent for the exam and evidence collection. Informed consent of patients typically is needed for:

- Notification to law enforcement or other authority (depends upon reporting requirements).
- Evidence collection and release.
- Toxicology screening.
- Release of information and evidence to criminal justice system personnel, SART/SARRT members, and partnering service providers.
- Contact with patients for reasons related to their criminal sexual assault case.
- Patient notification in case of a DNA match or additional victims.

Patients should be informed that data without patient identity can be collected from the report for health and forensic purposes by health authorities or other qualified persons with a valid educational or scientific interest for demographic and/or epidemiologic studies.

Responders should coordinate efforts to seek patients' consent. On a jurisdictional level, SART/SARRTs (or involved responders if a SART/SARRT does not exist) can identify all procedures where consent is needed during the exam process. They can make sure appropriate written consent forms are developed as well as procedures for requesting verbal and written consent. They should determine which responder has the knowledge needed to provide patients with information about each procedure and consider from whom patients might feel the most comfortable receiving this information. For example, while each responder may provide discipline-specific information to patients, advocates may provide a broad overview of all components of the exam process. Checklists that clarify discipline-specific roles in obtaining consent may be useful.

Make sure policies exist to guide the process of seeking informed consent from specific populations.

In order to provide informed consent, patients should be able to weigh the risks and benefits of different treatment and evidence collection options. It is always important for examiners to assess patients' ability and legal capacity to provide informed consent.⁸⁶ Providers should be aware of jurisdictional laws governing the ability of specific populations to provide consent (e.g. minors, individuals with cognitive disabilities, etc.).

In addition, facilities should have internal policies based on applicable jurisdictional statutes governing consent for treatment of vulnerable adult patients. The medical provider will generally need to assess whether the patient has the cognitive capacity to give consent for the examination, and, if not, the provider should follow these internal policies and jurisdictional statutes. Policies should include procedures to

⁸⁶ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p.82.
<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>

determine whether or not patients are their own guardians; if there is a guardian, to determine the extent of the guardianship; to obtain consent from a guardian if needed; and what to do if the guardian is not available or is suspected of abuse or neglect. Exam facilities should also have policies in place to address consent for treatment in cases in which patients are unconscious, intoxicated, or under the influence of alcohol or drugs, and are therefore temporarily incompetent to give consent.

In cases of adolescent patients, jurisdictional statutes governing consent and access to the exam should be followed. For instance, a state statute may allow minors to receive care for STIs and pregnancy, but not a medical forensic examination without parental or guardian consent. In some jurisdictions, a minor may consent to the examination but not keep the results private from a parent or legal guardian. Exceptions to parental consent requirements also exist when the parent or guardian is the suspected offender or where the parent or guardian can't be found and the collection of evidence needs to be done quickly. In such cases, the law generally specifies who may give consent in lieu of the parent or guardian, such as a police officer, representative from the jurisdiction's children's services department, or judge.⁸⁷

It should be clarified whether policies and statutes regarding consent for medical evaluation and treatment for the above populations encompass consent for the forensic component of the exam. If not, additional guidance from the jurisdiction is needed to develop the appropriate policies. Also, jurisdictional statutes regarding mandatory reporting to law enforcement or protective services in cases of vulnerable adult and minor sexual assault victims must be observed.

Examiners should develop policies and procedures for providing sexual assault care to the unconscious patient. Such care should respect the autonomy of the individual and be consistent with jurisdictional interpretations of emergency exceptions to informed consent. Policies should ideally be approved by hospital ethics committees. Similarly, examiners should have policies for patients that present with altered mental status, which could be from alcohol or drug intoxication or for other reasons. At a minimum, if serious problems are ruled out, the patient will likely need to be observed until consent and cooperation can be obtained which will delay the start of the examination.

In all cases, the medical forensic examination should never be done against the will of patients. Responders should not touch patients or otherwise perform exam procedures without their permission.

⁸⁷ Drawn partially from L. Ledray, *SANE Development and Operation Guide*, 2000, p. 97.
<http://www.ojp.usdoj.gov/ovc/publications/infores/sane/saneguide.pdf>