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## INFORMED CONSENT

### POLICY

Lakeview Surgery Center recognizes a patient's right, absent extenuating circumstances, to exercise control over his or her body by making an informed decision concerning whether to submit to or refuse a particular medical procedure. Consequently, a physician recommending a particular course of treatment has the duty to disclose to the patient all material risks involved in the procedure.

### PURPOSE

To provide a mechanism for the patient to participate in making informed decisions involving health care, written consent is obtained in multiple circumstances. General consent is obtained at the time of admission to authorize routine outpatient services, diagnostic procedures and medical treatment. Additional special consents are obtained according to physician orders.

- Consent for operation - procedure specific
- Administration of anesthesia
- Authorization to release medical records and authorization to obtain medical records
- Refusal of treatment/procedures - Discharge against medical advice (AMA)
- Consent for Sterility
- Photography
- Billing Consent - authorizing Lakeview to secure and use any necessary medical or billing information attendant to the procedure from any provider which shares in the treatment.

### PROCEDURE

#### Determining Mental and Legal Capacity of the Patient

A competent adult patient has the authority to consent to or to refuse recommended health care procedures. An individual patient's mental capacity and legal majority are to be determined as follows:

Mental Capacity - Mental capacity or competency for purposes of this policy means that the patient, though somewhat senile, debilitated or physically or mentally ill or sedated, can nevertheless generally understand the diagnosis, prognosis, alternatives and risks, and then articulate a choice and probable consequences of that choice. It is not necessary for purposes of competency that the patient be competent for all purposes.

a. **Court Order**

If a patient is under guardianship or court order, which expressly transfers health care decision-making authority to a designated representative, the patient is deemed to lack mental capacity.

b. **Medical Determination**

The determination of mental capacity is a medical determination. The determination should be made by the attending physician, with such assistance from consultants as the attending physician deems necessary under the circumstances.

c. **Assistance**

The general counsel are available to assist the attending physician to coordinate the legal definition of mental capacity for purposes of exercising the right of informed choice with the medical realities of the particular case.

d. **Presumption**

There is no presumption that the patient lacks mental capacity simply because the patient is elderly, debilitated, confused or sedated. There must be an individual determination of the patient's mental capacity in such cases. There is no presumption that the patient lacks mental capacity simply because the patient refuses recommended care or exercises his or her right of informed choice in an unpopular manner.

e. **Raising the Issue**

The attending physician, any member of the care staff, or a member of the patient's family may raise the issue of the patient's mental capacity.

f. **Documentation**

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In cases in which an issue has been raised regarding a patient's mental capacity and in all cases in which a patient is refusing emergency, life-saving or life-prolonging care, a determination of mental capacity should appear in the patient's medical record.

Legal Capacity - Adults

Except in limited circumstances discussed below, legal capacity to exercise the right of informed choice is limited to adults. In Iowa an individual reaches legal adulthood upon his/her 18th birthday or upon marriage, whichever occurs first. Therefore, a patient who is 18 years of age or older or who is married will be treated as an adult.

Legal Capacity – Minors

Even though minors do not have the capacity to consent to medical care, the law provides that there are a number of specific health care decisions which minors may make without regard to reaching majority. Any minor may sign for him/herself in case of:

- a. Minors in active duty with any branch of the U.S. Armed Forces.
- b. Minors, 15 years of age or older, living separate and apart from his/her parents and managing his/her own financial affairs (An "emancipated" minor") An emancipated minor form will be completed and retained in the chart.
- c. Pregnancy
- d. Venereal Disease
- e. Drug or Substance Abuse.

Legal Capacity - Other

There may be other narrow circumstances in which a patient with mental capacity and appearing to have legal capacity has his or her right to make informed choice limited.

Individuals with Authority to Consent to or Refuse Care

The following individuals have the authority to consent to or refuse health care treatment:

Competent Adult

The competent adult, meaning one with both mental and legal capacity, has the authority to make informed choice on his/her own behalf. The physician's duty to provide information and obtain a decision runs directly to the patient in such cases.

- a. Family and Representatives  
When dealing with a competent adult patient, it is permissible to involve the patient's family or other close representatives in the exchange of information and the decision-making process if the patient consents. However, the duty to provide the information necessary for informed consent runs directly to the competent adult patient. There is no duty to involve family or close representatives, and the patient may absolutely prohibit it.
- b. Binding Instructions  
The competent adult who, while competent, executes a written refusal or other instrument clearly articulating a choice will be treated as a competent adult patient even though he or she subsequently lapses into unconsciousness or incompetence, absence a clear indication that the patient has changed his/her mind. This may take the form of a declaration or "living will" under the Iowa Life-Sustaining Procedures Act.

Minors - On Their Own Behalf

Minors may request and consent to the types of care as stated above.

Surrogates for Minors or Incompetents: Determining Priority

Surrogate decision-makers are individuals who, by virtue of appointment or relationship to the patient are authorized to exercise the patient's right of informed choice (with limitations) when the patient is unable to do so. Only the individual(s) in the highest priority function as surrogates and exercise the patient's right of informed choice. The order of priority for surrogates, while not always clear, appears to be:

- a. Minors - In the case of minors:
  - (1) The Court, if a court has taken jurisdiction and entered specific treatment orders;
  - (2) A legal guardian appointed by the Court with authority to make health care decisions. Legally appointed guardians must prove the validity of their guardianship in writing.;

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- (3) The parents, or either of them, natural or adoptive, providing that there has been no relinquishment or termination of parental rights and no award of authority to make health care decisions to one to the exclusion of the other;
- (4) A licensed adoption agency in the case of a minor duly relinquished to such adoption agency;
- (5) Adult brothers and sisters;
- (6) Grandparents;
- (7) Other members of the immediate or extended family;
- (8) A local county emergency medical board, comprised of medical professional and lay persons appointed pursuant to the guidelines established by the state emergency medical board.

b. Incompetents - In the case of adults lacking mental capacity:

- (1) The Court, if a court has taken jurisdiction and entered specific treatment orders;
- (2) The attorney-in-fact appointed by the patient under a durable power of attorney for health care to make health care decisions on behalf of the patient in the event of legal incapacity.
- (3) A legal guardian appointed by the Court with authority to make health care decisions. Legally appointed guardians must prove the validity of their guardianship in writing;
- (4) The patient's spouse;
- (5) Adult children of the patient;
- (6) The parents of the patient;
- (7) The adult siblings of the patient;
- (8) Other immediate or extended family members;
- (9) A local county emergency medical board, comprised of medical professional and lay persons appointed pursuant to the guideline established by the State Emergency Medical Board.

4. Standards for Surrogate Decision-Making

The surrogate decision-maker should be provided with the same information, which the physician would provide to the patient and is entitled to the same consideration and assistance in exercising the patient's right of informed choice as the patient would receive.

a. Substituted Judgment

The surrogate should be encouraged to base his/her choice on what he/she believes the patient would choose if the patient were competent and conscious to choose. Statements made by the patient while competent may be evidence of the patient's wishes or intent.

b. Best Interest

If the surrogate has no indication of what the patient would choose under the circumstances, he/she should base his/her choice on what is in the best interest of the patient, given the patient's diagnosis and prognosis, the recommendations of the patient's physician(s) and the likely benefits and burdens to the patient of new or continued treatment.

5. Surrogate Decision-Makers -- Limitations

A surrogate does not have the same range of authority to consent or refuse that a competent adult patient has. This is primarily an issue when a surrogate is refusing care on behalf of a minor or incompetent in the face of a strong medical consensus that the care should be rendered. Specifically, a surrogate may not have authority to refuse emergency care or life-saving care on behalf of a minor or incompetent. Such cases require individual consideration and should be brought immediately to the attention of the Executive Director. Even where the surrogate lacks authority, it may be necessary to turn to the courts for authority to render the care, or to render it over the objection of the surrogates.

**RESPONSIBILITIES FOR OBTAINING INFORMED CONSENT**

Physician

Since nearly all treatments at Lakeview Surgery Center are ordered and supervised by physicians who are licensed and privileged to order and supervise such care, and because Iowa law clearly provides, the responsibility for obtaining informed choice rests principally with the attending or other treating physician. Efforts by Lakeview Surgery Center to assist the physician to discharge his or her responsibility or document such efforts are not to be interpreted as an assumption by Lakeview Surgery Center of the physician's responsibility to obtain informed consent.

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1. Medical Care - Lakeview Surgery Center encourages an environment in which the patient's right of informed choice is respected, and the decision-making process, including the informed choice itself, is routinely documented.
2. Patient - In most cases, the patient has the sole right to consent to or refuse recommended treatment. This informed choice, however, will be exercised by a surrogate if the patient is a minor or is incompetent.
3. Obtaining Verification of Consent by Lakeview Surgery Center Staff - The nurse and/or other designated health professional, facilitates obtaining consent for surgical and/or specific diagnostic procedures according to the physician's specific order for the procedure. The nurse and/or health professional further assists in providing for informed consent by the following:
  - A. Identify patient
  - B. Assess and validate the orientation of the patient, and if he/she is able to grant valid consent or requires consent from another authorized individual.
  - C. Assess and document the patient's general understanding of the instructions given.
  - D. Inform the physician, anesthesiologist, or other physician of any change in attitude or question of the patient, relative to the contemplated surgical procedure, whether it be prior to or following consent being signed.

#### **CONSENTS AND RELEASES – PROCEDURE**

1. The nature and extent of the operation and the performing surgeon's name are legibly recorded in ink without any abbreviations on the form.
2. The form is read, signed by the patient, dated, timed, and a staff member witnesses the signature, prior to the administration of any medication, any treatment or any surgical intervention. Consent forms are not valid if signed after the administration of any medication.
3. The correct surgeon's name is entered on the consent. If a group of surgeons is involved, it is acceptable to place the individual names of the group members in the surgeon's blank with each name separated by "or" or by "and".
4. It is the surgeon's responsibility to explain the type of procedure being performed to the patient's satisfaction and understanding. The physician is responsible for explaining:
  - a. the diagnosis
  - b. the nature and purpose of the procedure
  - c. the known risks involved—including but not limited to death; brain damage; quadriplegia; paraplegia; the loss of function or loss of any organ or limb; disfiguring scars
  - d. the prospects of success or failure
  - e. the prognosis if the procedure is not performed or the treatment not given
  - f. available alternative forms of treatment, if any
5. The patient, signifying that they have received sufficient information from the physician, will initial any changes or modifications on the consent form. This is witnessed by a staff member.
6. If a patient indicates that they are unsure of or have questions regarding their plan of care, then the physician will be notified. The patient will be given an opportunity to discuss their plan of care again prior to signing the consent.
7. Consents are considered to be valid for a 30 day period after signing. Consents may be revoked at any time prior to undergoing treatment or a procedure. A new consent needs to be signed for every date of service.
8. If the patient is mentally fit but physically unable to sign his/her name, a verbal consent may be obtained or the patient may place an "x" on the appropriate line; either must be witnessed by two persons affiliated with the Facility.
9. Parent(s) or legal guardian must sign consent for a minor unless legally declared an emancipated minor. If anyone other than the patient signs the consent, the relationship must be stated in the designated area.

#### **CONSENTS - ANESTHESIA**

All patients undergoing procedures requiring anesthesia, which will be administered by anesthesia personnel, will be required to read and sign a consent for anesthesia prior to receiving any medication or undergoing the procedure.

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1. It is the responsibility of a member of the anesthesia department, to explain the type of anesthesia being given to the patient, assuring that the patient agrees, understands the explanation, and answers any questions the patient may have.
2. Anesthesia personnel are responsible for providing informed consent to the patient regarding anesthesia. After the patient signs the consent, facility staff will witness it.

### **OTHER CONSENTS**

#### Consents Signed by Legal Guardians Outside of the Facility

If a patient has a legal guardian that will not accompany them to the facility on the date of service, arrangements can be made to obtain consent ahead of time. The consents (including procedure, anesthesia, advance directive and billing release) will be mailed or faxed to the facility that the patient resides or directly to the guardian so that the signature on the consent can be obtained. Another legal adult will witness consents signed by guardians outside of the facility at the time they are signed.

#### Telephone Consents:

When it is necessary to obtain a consent over the telephone, it should be heard, signed and witnessed by two RNs or a physician and an RN. The necessity in getting the consent by the telephone should be noted on the form.

#### Release of Responsibility:

##### AMA

Leaving the Facility against medical advice (AMA):

- a. Before the patient leaves, the explanation of the risks and consequences involved in leaving should be explained by his/her physician. Also, the benefits of continued treatment and care, and the alternatives, if any, to continued treatment and care should be explained to the patient.
- b. If a competent patient persists in their decision to leave the facility, the patient's decision must be respected.
- c. Present Leaving Facility Against Medical Advice form to patient and ask patient to sign form in the presence of one witness.
- d. If patient refuses to sign, note "patient refuses to sign" and sign your name with the time, date and a brief note concerning the circumstances of refusal.
- e. Any person present, but at least one, when the form was presented and refusal was made, should sign as a witness of the refusal.
- f. The facility should take proper precautions to assure that the patient leaves the facility in a safe manner. It may be necessary that the patient have transportation arranged whenever it appears likely that a patient would be harmful to himself or others in the process of leaving the facility. No employees will accompany the patient once they leave the premises.
- g. The facility staff should carefully document the facts surrounding a patient's departure and note the actions taken to assure the patient's safety and the basis for the determination that the actions were appropriate.
- h. An occurrence report should be completed including a description of the nature of the incident, documentation that the attending physician explained the risks involved, and that the patient or his representative refused to sign the release.
- i. The original form is retained with the chart and a copy is attached to the occurrence report.

#### Consent to Photograph:

When photographing or videotaping is requested, a consent form must be obtained. This has been incorporated into the facility's consent form. Photographs will be stored in the patient chart after patient discharge, considered part of the medical record and fall under all applicable laws relative to release of medical information. Videotapes will be sent with the physician.

In those cases where outside persons wish to photograph/videotape the patient for public relations, medical study, research, news or other purpose the following procedures are followed:

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- a. Determine who the requesting person is and the reason for the request.
- b. Notify the Executive Director or the Clinical Director to coordinate the departments affected.
- c. Obtain consent from the patient.

Consent for Sterilization

Is required for all sterilization procedures. It must be witnessed and signed by a staff member before any medication is given. It is not necessary to have the consent signed by the spouse.