

## Getting to NO: Steps to Mitigate Risk When Patients Refuse Care

Renée Bernard, Vice President, Patient Safety

It can be distressing for a health care provider when a patient chooses to not comply with a recommended treatment course, especially when the recommended care is potentially life-saving. In addition to patient safety concerns, patient refusal of recommended medical treatment can also increase provider exposure to malpractice litigation. The following principles and practices are recommended to improve patient safety and reduce malpractice exposure.

- 1. Patient Right to Refuse.** The patient right to refuse treatment arises from their right to consent to treatment. They may even refuse treatment after consenting verbally and in writing (revocation of consent). Providers should not treat (touch) patients without express consent because to do so may lead to successful patient claims of medical negligence and battery.
  - ❖ **Emergency Exception:** Treatment of a medical emergency may be provided without consent where the provider reasonably believes that a medical procedure should be undertaken immediately, and there is insufficient time to obtain the consent of the patient or of a person authorized to consent for the patient.
- 2.** It is important to confirm from the outset who is the decision-maker providing consent for the patient.
  - ❖ **Decision-makers.** Providers should proactively confirm who is responsible for the patient's medical decisions. Generally, the decision-making hierarchy is: the patient, a person the patient chose (surrogate), someone the courts chose (power of attorney, conservator), the closest available relative, or a multi-disciplinary hospital committee (ethics).
- 3. Patient Capacity to Make Medical Decisions.** Physicians have a duty to determine whether a patient has mental capacity to make medical decisions. Patients merely need to be able to show they understand the nature and consequences of the medical decision they are being asked to make.
  - ❖ **Can you say that back to me in your words?** Providers should proactively address any communication barriers by utilizing, as needed, interpreter services and/or legally required ADA accommodating devices for hearing, sight, or speech impairment.
- 4. Provider Documentation.** The hospital AMA form is not an equal substitute for good medical record documentation of consent discussions, especially in light of a patient refusal of treatment.
  - ❖ **Good medical record documentation includes these important legally protective elements:**
    - ✓ Details that evidence the risks were discussed *clearly and directly* with the patient.
    - ✓ Quotes from the patient or decision-maker on important points of their refusal and understanding of the risks and alternatives of leaving AMA.
    - ✓ Details of the discharge plan including efforts to make it as safe as possible under the circumstances.
  - ❖ **Against Medical Advice (AMA) Forms.** Complete the form and include it in the patient's medical record. If the patient refuses to sign, note that on the form.