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CRITICAL CARE MEDICINE BOARD REVIEW MANUAL

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Informed Consent in the Intensive Care Unit

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INTRODUCTION

Informed consent, like confidentiality, is a basic right of patients that deserves recognition and protection by everyone working in the field of health care. Informed consent means that patients have the right to participate in decisions regarding their health care, and thereby receive only those health care services that they truly need and want. Informed consent is a legal doctrine: it is against the law in all US states for health care givers to treat competent patients without the patients' knowledge and choice.

The legal doctrine of informed consent derives from 2 principles: (1) a competent person's right to control what happens to his or her body, and (2) a physician's fiduciary duty to warn the patient regarding risks involved in medical treatment.^{1,2} States vary in their definitions of specific elements of informed consent in determining standards of disclosure, principally in case and tort law.³

Informed consent is also a standard of accreditation by the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) (and other accrediting agencies), compliance with which is a condition of hos-

pitals' maintaining eligibility to receive Medicare and Medicaid insurance payments for services rendered to patients. The JCAHO Patient Rights/Organizational Ethics Standard R.1.2.1 states that the patient (or surrogate of a decisionally incapable patient) ". . . is given a clear, concise explanation of the patient's condition and any proposed treatment(s) or procedure(s), the potential benefit(s) and drawback(s) of the proposed treatment(s) or procedure(s), problems related to recuperation, and the likelihood of success. Information is also provided regarding any significant alternative treatment(s) or procedure(s)."⁴

Informed consent is also an ethical notion, in the sense that it contains several value judgments and implies duties and obligations. Examples of value (or ethical) judgments contained in the notion of informed consent include: (1) patients should have the primary say in what physicians and hospitals do to and with them in hospitals or research protocols; and (2) patients should be told, honestly and with sufficient detail, about their physical problems, the treatments that are being offered or recommended, and the risks and likely outcomes of treatments or experiments, in order to make good (ie, valid) decisions.