CENTRAL CALIFORNIA
EMERGENCY MEDICAL SERVICES
A Division of the Fresno County Department of Public Health

Manual	Emergency Medical Services Administrative Policies and Procedures	Policy Number 546 Page 1 of 7
Subject	Patient Consent for and Patient Refusal of Emergency Medical Care and Transportation	
References	Division 2.5 of the Health and Safety Code; Title 22 of the California Code of Regulations; Business and Professions Code, Section 2397; Welfare and Institutions Code, Section 5150; California Civil Code, Sections 25 et seq; Penal Code, Section 647 (f); CAHHS Consent Manual - 1991	Effective 04/18/83

I. POLICY

A. EMS personnel shall, if the patient's condition allows, obtain the patient's consent for care and/or transport prior to initiating such procedures.

B. In situations where the patient is unable to provide consent, and no authorized legal representative is immediately available, EMS personnel shall, consistent with established policies and procedures, and with consultation from the Base Hospital, provide for necessary emergency care and transportation. This applies to situations where the patient is unable to make a decision due to impairment secondary to illness, injury, alcohol, drugs, age or mental disorder.

C. In situations where the patient is making a decision to refuse emergency medical care and/or transportation, EMS personnel shall, after informing the patient of the potential medical risks of the patient's decision, documenting the incident, and, if applicable under EMS policy, consulting a Base Hospital Physician, honor the patent's refusal of care and/or transportation.

D. If the patient's authorized legal representative is immediately available, EMS personnel shall advise such person pursuant to Sections I.A and I.C and honor that person's consent or refusal of care and/or transportation on behalf of the patient.

II. DEFINITIONS

A. **Authorized Legal Representative** - A parent or guardian of a minor; a conservator who presents letters of conservatorship stating that the patient is not competent to give or withhold consent for medical care; an attorney-in-fact appointed under a durable power of attorney for health care; or, in the absence of any of the above, the patient's closest available relative. Letters of conservatorship need to be specific with regard to the patient's lack of competence to give or withhold consent - if the document is silent on this issue, consult a Base Hospital Physician.

Approved By: EMS Division Manager	**Daniel J. Lynch** (Signature on File at EMS Agency)	Revision **10/01/2024**
EMS Medical Director	**Miranda Lewis, M.D.** (Signature on File at EMS Agency)	

B. Decisional capacity- The ability to understand the nature and consequences of the treatment and/or transportation for which consent is sought and to use that understanding to make a decision based upon the individual's own personal values and priorities. In the absence of evidence to the contrary, an individual is assumed to have "capacity".

C. **Consent** - The consent given by a patient or his/her authorized legal representative (either verbally, written or by voluntarily submitting to treatment) who has capacity to give consent for medical care after having been informed of the nature and purpose of the proposed care and/or transportation.

D. **Consent in a "647 (f)" Hold Situation** - A patient does not need to have capacity to consent (or withhold consent) for treatment when the patient, as a result of being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or combination of the above, is unable to exercise care for his or her own safety and/or the safety of others. In this case, the patient may be held against his or her will on the order of law enforcement, consistent with the provisions of Section 647 (f) of the Penal Code. Consent for care is implied for emergency conditions when a patient does not have capacity.

E. **Consent in a "5150" Hold Situation** - A patient does not need to have capacity to consent (or withhold consent) for treatment when the patient, as a result of mental disorder, presents a danger to himself or herself, a danger to others, and/or is gravely disabled. In this case, the patient is held against his or her will on the order of law enforcement or a County-approved mental health professional, consistent with the provisions of Section 5150 of the Welfare and Institutions Code. Consent for care is implied for emergency conditions when a patient does not have capacity.

F. **Implied Consent** - In an emergency situation, where immediate services are necessary to alleviate severe pain or failure to diagnose and treat the medical condition could lead to serious disability or death, consent is implied when the patient is unable to provide consent due to impairments secondary to illness, injury, alcohol, drugs, minority (patient is a minor) or mental disorder, so long as there is no evidence that the patient would have refused such services if he or she had capacity to do so. Emergency care must be limited only to the condition giving rise to the emergency.

G. **Minor's Consent** - In most cases, a person under the age of 18 does not have capacity to consent (or withhold consent) for medical care. Therefore, consent of a parent or legal guardian is required. Additionally, if the parent or legal guardian cannot be reached, school officials may provide consent for medical care for their minor students who become injured or ill during regular school hours. This provision does not apply to a minor student when their parent or legal guardian has previously filed with the school district a written objection to any medical care other than first aid. If the minor's parents/legal guardian/school officials are unavailable, the minor must be placed under the protection of law enforcement until the parents/legal guardian can be notified.

H. There are exceptions in state law which do allow a person under 18 to be considered as a person to have capacity to give or to withhold consent, including if he or she has been legally married, is in military service, is an emancipated minor, or if she is seeking medical care or treatment related to pregnancy (e.g., pregnancy complications). Additionally, there are some specific types of medical care to which a person under 18 can consent; however, these are generally unrelated to emergency care services.

I. **Refusal of Care and/or Transport** - A patient that has capacity to give consent for medical care also has capacity to refuse medical care or transportation. In the EMS System, this may include the refusal of either or all of the following:

1. Medical care (including specific aspects of care being refused, such as IVs, etc.),
2. Transportation,
3. Destination (transportation to an appropriate facility, e.g., trauma center, nearby emergency department, hospital diversion).

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If a patient refuses transportation or destination, the EMT or EMT-Paramedic will continue to provide care per EMS policies and procedures until the patient signs the refusal of care or transportation form, the ambulance arrives at the alternate facility, or the Base Hospital intervenes.

J. **High Risk Refusal of Care and/or Transport**- Base hospital contact must be made for refusal of medical care or transport for all of the following high-risk patients/complaints:

1. All pediatric patients ≤5 years of age
2. Patients age ≥70 years with any of the following complaints
   -Chest pain
   -Suspected stroke
   -Syncope or hypotension
   -Traumatic mechanism, including ground level fall, with evidence of head trauma, chest trauma, or neurologic deficits

III. PROCEDURE

A. Does the patient have capacity to Give or Withhold Consent for Treatment and/or Transportation?

1. May Give or Withhold Consent	2. May Not Give or Withhold Consent
a. **Adults** - A person with decisional capacity that is 18 years of age or older.	a. **Most Minors** - Minors under the age of 18. Exception: Treat as an adult if the person is or has been legally married, is in military service, is an emancipated minor, or if she is seeking medical care or treatment related to pregnancy (e.g., pregnancy complications).
b. **Guardian/Conservator** - The patient's legal guardian (including parents of a minor patient), attorney-in-fact through durable power of attorney for health care, or conservator - (Note: a conservator may be asked to present a letter of conservatorship stating that the patient lacks the competency to consent to medical care), or temporary guardian of minor patient's (adults who have been given temporary responsibility for a minor).	b. **Altered Mental Status** - An adult patient with an altered mental status [(either permanent (e.g., mentally deficient, senile) or temporary (e.g., head injury, shock)] who lacks the capacity to give or withhold consent (and there is no representative/conservator available to give consent). This may include some 5150 patients who may be declared to not have capacity.
c. **School Officials**- School officials for their minor students who become injured or ill during authorized school functions. (Refer to Section II.G)	c. **Under the Influence of Drugs/Alcohol** - A patient under the influence of drugs and/or alcohol to the degree that such impairment negates that patient's capacity to consent (or withhold consent) for treatment when the patient is unable to exercise care for their own safety and/or the safety of others. (Refer to Section II.D. - Section 647 (f) of the Penal Code)
	d. **Mental Disorder** - A patient who, because of a mental disorder, presents a danger to himself, a danger to others, and/or is gravely disabled (Refer to Section II.E. - Section 5150 of the Welfare and Institutions Code).

3. **NOTE- Determination of capacity**
Decisional capacity is not the same as orientation. A patient may be alert and oriented but still lack decisional capacity. The patient's capacity is evaluated upon his or her ability to understand the nature of the presumed problem, the options available to the patient, as well as the possible consequences if care and/or transportation is refused. It is not based upon whether the patient has made a decision which is consistent with the EMS personnel's and/or Base Hospital Physician's medical advice. In the absence of evidence to the contrary, a person is assumed to have capacity.

4. **NOTE - Uncertain about patient's capacity:** Consult a Base Hospital Physician if there is <u>any</u> question about the patient's or patient's authorized legal representative's ability to give or withhold consent. This would include situations where the closest available relative's motives are questionable; if the relative's request is believed to be contrary to the patient's wishes, if the patient had capacity; if any other close relative objects to the closest relative's request; if the closest relative's refusal to give consent appears to be unreasonable; or there is reason to suspect that the person is not the patient's closest available relative. Confirm the person's relationship to the patient and inquire if there is a closer relative immediately available.

5. **NOTE - Determining capacity if patient has a mental disorder or is under the influence of drugs/alcohol:** For patients with a symptomatic mental disorder or under the influence of drugs/alcohol, EMS Personnel should contact the Base Hospital. EMS Personnel should ask the law enforcement officer to evaluate whether the patient meets one or more of the legal requirements for being held and/or treated against the patient's will (e.g. Section 5150 of the Welfare and Institutions Code, Section 647(f) of the Penal Code).

   If there is reluctance on the part of law enforcement to have the patient treated and/or transported, the Base Hospital Physician should request to speak with the officer's supervisor to have them evaluate the situation. If the law enforcement watch commander/supervisor asserts that the patient should not be held in custody against his or her will, the patient shall sign the refusal of care and or transportation form. EMS personnel shall document on the refusal of care and or transportation form, name and badge number of the law enforcement officer(s) who made the decision that the patient should not be held in custody against his or her will.

6. **NOTE - Consent for Minors:** In non-emergent (non-life threatening) situations, if the patient is a minor (not meeting the noted exceptions) and parents/legal guardian/school officials are unavailable, the minor should be placed under the protection of law enforcement until the parents/legal guardian can be notified. The Base Hospital Physician may speak directly to law enforcement personnel at the scene to determine the appropriate disposition for the minor. Consider transport to a hospital (even if trivial injury) if no other reasonable options exist.

7. **NOTE - Role of Base Hospital Physicians:** Situations in which the patient refuses to consent to medical care are difficult to manage because of the balance between the patient's right to self-determination of his or her body and the goal of the EMS System to provide emergency care to patients in need of such care. The Base Hospital Physician, at times, is in the difficult position of encouraging patients to seek needed emergency care and providing information on the potential risks of not seeking this care in situations where the patient is opposed to such care. In this role, the Base Hospital Physician should attempt to convince the patient of the need to consent to treatment, or if applicable, provide advice to the patient and/or responsible parties (such as family members, law enforcement officers, and mental health workers) on the potential risks to the patient.

   Although this policy attempts to protect both the patient's health and his or her right to self-determination, at times, both may not always be accomplished. In these difficult cases, where the patient has capacity but is displaying some type of potential life-threatening sign or symptom (e.g. hypotension, chest pain, etc.), the Base Hospital Physician should attempt to convince both the patient as well as appropriate outside authorities (e.g. law enforcement) of the importance of prompt medical care. In most cases, this should result in the patient obtaining appropriate care. However, occasional situations may occur where transporting the patient against

his or her will is beyond the legal authority of the EMS personnel, Base Hospital Physician, and involved law enforcement personnel. In these cases, the patient who has capacity and is displaying some type of potential life-threatening sign or symptom should be released by signing the refusal of care or transportation form".

1. Obtain consent and treat

In the prehospital environment, consent is generally obtained verbally at the time that EMS personnel introduce themselves and initiate assessment of the patient's medical condition. EMS personnel shall inform the patient (if such patient has capacity to give or withhold consent) of the nature and purpose of the proposed treatment (including transportation) which are being initiated for the patient, such as medication administration or EKG monitoring.

If the patient has capacity, such information shall be given to the patient's authorized legal representative (e.g., parent or guardian of a minor), if such person is immediately available and it will not delay needed emergency care.

A patient with capacity has the right to determine what shall be done to his or her body. This is true even if the person makes a decision that differs from the advice of the medical personnel involved in the case. EMS personnel have an obligation to provide the patient with information so that the patient can make such a decision. Consent must be freely given (without coercion) and may be expressed either verbally, in writing or by voluntarily submitting to the procedure.

i. If the patient refuses to consent to care and/or transportation

a. Determine if the patient has an injury or illness which, based upon the information available at the time, may pose a significant risk to the patient's health by refusing care and/or transportation.

b. If the patient refuses medical care and/or transport, advise the patient of the potential risks to the patient’s health, if any, and any proposed treatment plan (including transportation).

c. If the patient meets the criteria for Base Hospital contact, contact appropriate Base Hospital. Refer to EMS Policy #544 and Patient Refusal of Care or Transportation Screening Form.

d. Have the patient sign the Release of Responsibility Form (Refusal of Care/Treatment/Transportation - EMS Policy #814) and encourage the patient to follow-up with the physician of their choice or re-contact 911 if s/he changes their mind (and desires medical care) or develops adverse symptoms later.

e. Document the results of all communications along with the history and physical examination on the prehospital care report.

C. If the patient does not have capacity (EMS Policy #544, Patient Refusal of Care or Transportation Screening Form)

1. Treat only for life-threatening emergencies under implied consent and transport to a hospital for assessment of other potential injuries; or

If the patient is uninjured or has a minor injury or illness, determine if the patient can refuse medical care or transportation using the Patient Refusal of Care or Transportation Screening Form (EMS Policy #544).

2. If the patient meets the criteria for Base Hospital contact (EMS Policy #544, Patient Refusal of Care or Transportation Screening Form), advise the patient of the potential risks to the patient’s health, if any, including any proposed treatment plan (including transportation). Contact the

appropriate Base Hospital to discuss the case with the Base Hospital Physician. EMS personnel should advise the Base Hospital Physician if the patient strongly opposes emergency medical care or transportation and if physical restraint will be necessary. The Base Hospital Physician should carefully consider the risks vs. benefits of requesting EMS personnel/law enforcement to use physical restraint on these patients. Follow the instructions given by the Base Hospital and, if indicated, have the patient sign the Release of Responsibility Form (Refusal of Care/Treatment/Transport - EMS Policy #814).

3. Treat and transport the patient, or, have the patient sign the Release of Responsibility Form (Refusal of Care/Treatment/Transportation - EMS Policy #814) and encourage the patient to follow-up with the physician of their choice or re-contact 911 if s/he changes their mind (and desires medical care) or develops adverse symptoms later.

4. Document the results of all communications along with the history and physical examination on the prehospital care report.

D. Physical Restraint

Sometimes it may be necessary to apply physical or chemical restraint to a patient. The least amount of restraint necessary to accomplish the transport safely should be used. When patient restraint is required, the Base Hospital must be informed immediately. Whenever feasible, law enforcement personnel should be involved when physical restraints are required. EMS personnel are not expected to place themselves into situations, which might jeopardize their own personal safety. Refer to EMS Policy #510.34 and #530.27 - Behavioral Emergencies for physical restraint guidelines. EMS personnel shall document on the prehospital care report the indications for and the extent of restraint utilized on the patient.

E. Documentation

1. Consistent with EMS Policy #811, EMS personnel shall ensure that the patient's prehospital medical documentation includes at least the following information:

   a. Patient’s mental status;
   b. The suspicion or known involvement of drugs or alcohol;
   c. Chief complaint;
   d. Vital signs;
   e. Physical exam findings;
   f. If the patient (or his or her authorized legal representative, if applicable) refuses any part of the patient assessment, document the attempts to assess the patient;
   g. A statement that the patient (or his or her authorized legal representative, if applicable) was asked to consent to the proposed treatment or transportation;
   h. The patient's (or his or her authorized legal representative, if applicable) understanding of the potential risks of refusing medical care, and;
   i. The name of the patient's authorized legal representative, if applicable.

   EMS personnel should attempt to include as much relevant information as possible in the patient’s medical documentation concerning the information that was provided to the patient (or his or her authorized legal representative, if applicable) and by whom. Document any information given concerning the nature and consequences of the refused treatment or transportation and the patient's (or his or her authorized legal representative, if applicable) response.

2. Special Situations

   a. Communication Failure

      In the situation where EMS personnel are not able to communicate with the Base Hospital (telephone and radio), they should manage the refusal of care and/or transportation situation according to their best judgment and based upon the information available at the

time. They should consult with law enforcement, if applicable, to determine if the patient meets the criteria to be transported against his or her will. Law enforcement needs to be involved in all potential releases of minor patients when parents or school officials are not available. EMS personnel shall carefully document the case and submit a Quality Assurance Report to the EMS Agency within 72 hours.

b. Patients Who Leave the Scene Prior to Assessment or Call-In Requirements

If a patient leaves the scene of an incident before completing an assessment or call-in, it is not necessary to contact a Base Hospital. EMS personnel confronted in these situations should document thoroughly on the prehospital care report all patient information the EMT or EMT-Paramedic has acquired, including history, vital signs, and assessment information. The prehospital care report then becomes the only documentation of the call and therefore should reflect as much as possible.

IV. SUMMARY

The basic rules for the management of issues involving patient consent are as follows:

A. Patients who have capacity to consent to medical care may accept such care or refuse such care. If the patient refuses medical care and/or transportation, document that the patient had capacity to make the decision using the Patient Refusal of Care or Transportation Screening Form (EMS Policy #544) and the Prehospital Care Report and has been informed of potential risks using the Risks of Refusal of Care or Transport Form (attached).

B. Patients who do not have capacity to consent to medical care should be provided care for life-threatening emergencies under the principles of implied consent. If the patient is provided emergency care or transportation against their wishes, documentation must include that the patient did not have capacity to refuse medical care using the Patient Refusal of Care or Transportation Screening Form (EMS Policy #544) and Prehospital Care Report.

C. Patients who do not have capacity to consent to, or refuse, medical care using the Patient Refusal of Care or Transportation Screening Form (EMS Policy #544), require Base Hospital contact and physician consultation to determine the appropriate course of action.