

# Ask An Attorney

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## Q

***There is more and more emphasis on improving physician communication with patients to provide better outcomes at reduced cost. I am concerned, however, that some of my patients have difficulty understanding my discussion of their diagnoses and possible treatments or simply want me to take charge, saying that because I am the doctor, I know best. What are my risks and options?***

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As you know, under ethical rules and the regulations of the Board of Regents related to professional misconduct, physicians must obtain consent from patients or their representatives for any proposed medical services. Your ability to effectively communicate with your patients is crucial to obtaining their informed consent. That said, many studies indicate that a majority of patients prefer to let their doctors make treatment decisions for them. Therefore, it is important that you document the information you provide the patient about any treatment options, including the risks, efficacy and likely or possible side effects, and the patient's questions or comments.

Patient refusal of treatment deserves extra vigilance on your part, especially when a proposed treatment is widely accepted in the local medical community as appropriate for patients with the same diagnosis. In such circumstances, in addition to thoroughly documenting your consultation, you should reflect on how you handled the discussion with the patient to be certain that your communication style did not contribute to the refusal.

You may also want to suggest to a patient who is having difficulty with a decision that he or she have a family member or trusted friend participate in future consultations. At the earliest opportunity, have your patient sign an authorization that will allow you to communicate directly with this individual. A signed authorization in the chart will avoid any delays or confusion should it become necessary in the future for a member of your staff to contact this person.

Keep in mind that a person covered by a HIPAA-compliant authorization to receive the patient's PHI is not empowered to make health care decisions for the patient. In general, only a health care agent holding a legitimate health care proxy or a surrogate under the Family Health Care Decisions Act has that power. If the patient does not have a health care agent, you should suggest that he or she also appoint someone to act in this capacity. A physician may look to the agent to make decisions for the patient when the patient does not have "capacity to make health care decisions". This phrase is defined by law as "...the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision."

We recommend that you encourage your patients to ask questions and discuss their decisions with close family and friends. This sets the table for better communication and increases the patients' ability to make informed decisions.

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