

Top Malpractice Risks for Oral Maxillofacial Surgeons

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The Doctors Company
TDCGROUP

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Kathleen Stillwell earned Master's Degrees in Public Administration and Health Services Administration. She is a registered nurse and Certified Professional Health Care Risk Manager (CPHRM). Ms. Stillwell is a nationally recognized expert in healthcare risk management with over 39 years of experience in clinical risk management, professional liability claims management, compliance, and high-risk underwriting. Her expertise includes hospitals, medical practices, and integrated healthcare organizations. She is a frequent speaker for conferences, and authors articles for TDC articles and health care publications.

Ms. Stillwell serves on Chapman University, Leadership Council for Crean College of Health and Behavioral Sciences in Irvine, CA. She has served on the University of California Riverside Advisory Board for Women in Leadership Program. Kathleen was a member of Brandman University Nurse Advisory Board, and volunteer coach for physicians and nurses for the California Medical Association Care 4 Caregivers program. She has served as faculty for the American Society for Healthcare Risk Management and is published in the American Hospital Society Risk Management Handbook for Healthcare Organizations.

Kathleen has held numerous leadership positions with national and state risk management and quality organizations, including past Board Member for the American Society for Quality (ASQ), Healthcare Division, President of the CA State Patient Care Assessment Council, Board member for the California League of Nursing, adjunct faculty for Woodbury University and the University of San Francisco. She served on the Advisory Board of King International, Inc., and is a Charter Member of the Business Renaissance Institute.



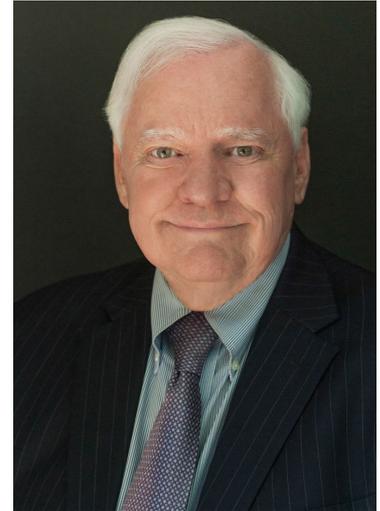
Richard Cahill, Esq.

Vice President and Associate General Counsel

Richard Cahill received his undergraduate degree (*summa cum laude*) from UCLA in 1975 and his Juris Doctorate from Notre Dame Law School in 1978. He served as a deputy district attorney in California at the outset of his career and was subsequently appointed as counsel on the Central Legal Staff of the Nevada Supreme Court before entering private practice in southern California.

Mr. Cahill has specialized in various facets of health care litigation for more than 40 years, including the defense of hospital and physician professional liability claims, managed care contract disputes, network privileges issues and related business torts. His principal clients included Cigna Health Plans, Kaiser-Permanente and Tenet HealthCare. He has completed in excess of 185 trials and binding arbitrations during his career with a combined win-rate of 92% and has been appointed as an arbitrator in more than 350 cases involving complex healthcare issues.

Mr. Cahill is currently Vice President and Associate General Counsel with The Doctors Company and provides legal support to the Claims and Patient Safety Departments, oversees company appellate litigation, researches and submits original content for publication and also lectures frequently around the country on topics related to the health care community. He has a preeminent rating with Martindale-Hubbell, the premiere peer-reviewed attorney rating service in the United States.



**To know what you know and what
you do not know, that is true
knowledge.**

**Confucius 551 BC – 479 BC
Chinese Philosopher**

Is Medical Malpractice Your Biggest Risk?



Why do patients sue?

- Dissatisfaction with care
- Lack of communication and rapport
- Provider attitude
- Feel they have been wronged
- Unrealistic expectations
- Anger

Top Risks: Oral and Maxillofacial Surgeons (OMS)

- Staff and credentialing
- Compliance
 - HIPAA
 - OSHA
 - State laws
- Cyber Security
- Patient Selection
- Informed Consent
- Documentation



Top Malpractice Risks For Your Practice

1. Diagnostic error
2. Inadequate documentation
3. Inadequate informed consent
4. Poor communication with patient
5. Allegations of improper performance of treatment
6. Unrealistic patient expectations may result in emotional trauma

Closed Malpractice Claims Data 2010-2024

227
Case Count

99.56%
% Cases Closed

6%
Cases With Clinical High Severity %

41.2%
Closed Cases With Indemnity Paid %

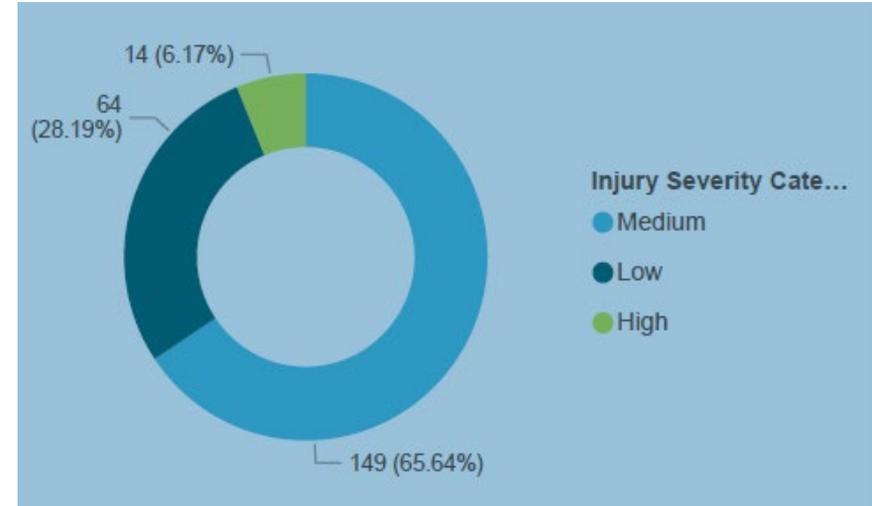
Case Count by Loss Year



TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Injury Severity

Injury Severity Detail Description	Case Count	%GT Case Count
Death	8	3.52%
Emotional Only	18	7.93%
Permanent Grave	1	0.44%
Permanent Major	1	0.44%
Permanent Minor	47	20.70%
Permanent Significant	4	1.76%
Temporary Insignificant	46	20.26%
Temporary Major	26	11.45%
Temporary Minor	76	33.48%
Total	227	100.00%



TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Major Allegation Subcategory Description - Case Count - % of Cases

	Medical Treatment (Non-Ob)	148	65.20%
	Improper Performance Of Treatment/Procedure	72	31.72%
	Improper Management Treatment Course	32	14.10%
	Improper Management Of A Procedural Patient	21	9.25%
	Wrong/Unnecessary Treatment/Procedure	12	5.29%
	Treatment - Other	6	2.64%
	Retained Foreign Body - Medical Treatment	3	1.32%
	Delay In Treatment/Procedure	1	0.44%
	Failure To Treat	1	0.44%
	Surgical Treatment (Non-Anesthesia)	57	25.11%
	Improper Performance Of Surgery	34	14.98%
	Improper Management Of Surgical Patient	19	8.37%
	Retained Foreign Body - Surgical	2	0.88%
	Surgery - Other	1	0.44%
	Unnecessary Surgery	1	0.44%
<input type="checkbox"/>	Diagnosis-Related	7	3.08%
	Diagnosis-Related (Failure, Delay, Wrong)	7	3.08%
<input type="checkbox"/>	Improper Medication Management	6	2.64%
	Improper Management Medication Regimen	6	2.64%
<input type="checkbox"/>	Anesthesia-Related Treatment	5	2.20%
	Improper Management Of Anesthesia Patient	5	2.20%
<input type="checkbox"/>	Ordering Error	2	0.88%
	Ordering - Wrong Medication	2	0.88%
<input type="checkbox"/>	Communication With Patient/Family	1	0.44%
	Failure To Obtain Consent	1	0.44%
<input type="checkbox"/>	Fail To Provide Safety - Safety Related	1	0.44%
	Failure To Ensure Safety - Falls	1	0.44%
	Total	227	100.00%

TDC MPL Patient Safety DATA.

Napa: The Doctors Company 2010-2024. Accessed 2026

Final Diagnosis Description

Final Diagnosis	Cases	% of Cases
Complications	113	49.78%
Disorders Of Teeth And Jaw	58	25.55%
Anxiety Disorders	14	6.17%
Poisoning	9	3.96%
Other Injuries And Conditions Due To External Causes	7	3.08%
Fractures	6	2.64%
Burns	3	1.32%
Cancer; Other Primary	3	1.32%
Open Wounds	3	1.32%
Substance-Related Disorders	3	1.32%
Symptoms; Signs; And Ill-Defined Conditions	3	1.32%
Diseases Of Mouth; Excluding Dental	1	0.44%
Headache; Including Migraine	1	0.44%
Other Endocrine Disorders	1	0.44%
Respiratory Infections	1	0.44%
Superficial Injury; Contusion	1	0.44%
Total	227	100.00%

TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Injury Description Case Count % of Cases

Nerve Damage	37	16.30%
Mouth	14	6.17%
Face	5	2.20%
Tongue	5	2.20%
Jaw	4	1.76%
Lip	4	1.76%
Tooth/Teeth	4	1.76%
Nerve	1	0.44%
Wrong Site Surgery/Procedure	35	15.42%
Tooth/Teeth	35	15.42%
Infection	18	7.93%
Mouth	8	3.52%
Jaw	6	2.64%
Tooth/Teeth	2	0.88%
Skull	1	0.44%
Throat	1	0.44%
Emotional Trauma	15	6.61%
Not Applicable	15	6.61%
Adverse Reaction	13	5.73%
Central Nervous System	6	2.64%
Respiratory	2	0.88%
Skin	2	0.88%
Stomach	2	0.88%
Unknown	1	0.44%
Teeth Damage	13	5.73%
Tooth/Teeth	13	5.73%
Fracture Open/Closed	11	4.85%
Jaw	9	3.96%
Tooth/Teeth	2	0.88%
Loss - Total	9	3.96%
Tooth/Teeth	9	3.96%
Pain	8	3.52%
Mouth	4	1.76%
Face	2	0.88%
Jaw	2	0.88%
Aggravated/Worsened	7	3.08%
Tooth/Teeth	3	1.32%
Endocrine	1	0.44%
Hand (Dominant)	1	0.44%
Total	227	100.00%

TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Contributing Factor Description Case Count % of Cases

→	Technical Skill	169	74.45%
	Technical Performance	165	72.69%
	Retained Foreign Body	6	2.64%
	Medication Error	2	0.88%
	Improperly Utilized Equipment	1	0.44%
→	Behavior-Related	91	40.09%
	Patient Factors	91	40.09%
→	Communication	76	33.48%
	Communication Between Patient/Family And Providers	63	27.75%
	Communication Among Providers	27	11.89%
	Electronic Communication Exchange Tools	4	1.76%
	Other Communication Issues	2	0.88%
→	Clinical Judgment	71	31.28%
	Selection And Management Of Therapy	42	18.50%
	Patient Assessment Issues	39	17.18%
	Failure/Delay In Obtaining Consult/Referral	12	5.29%
	Patient Monitoring	9	3.96%
	Other	5	2.20%
	Conditions Affecting The Caregiver	2	0.88%
	Failure To Ensure Patient Safety	1	0.44%
→	Documentation	44	19.38%
	Insufficient/Lack Of Documentation	35	15.42%
	Mechanics	14	6.17%
	Content Decisions—other	9	3.96%
	Information Limited	22	9.69%
	Administrative	21	9.25%
	Staff Issues	12	5.29%
	Medical Record-Related	6	2.64%
	Policy/Protocol	6	2.64%
	Administrative/Other	2	0.88%
	Clinical Systems	5	2.20%
	Lack Of/Failure In System For Patient Care	4	1.76%
	Failure/Delay Reporting Findings/Revised Findings	1	0.44%
	Clinical Environment	4	1.76%
	Shift/Off Hours Conditions	4	1.76%
	Workflow/Workload	1	0.44%
	Equipment	4	1.76%
	Equipment	4	1.76%
	Non-Insured Influence	4	1.76%
	Electronic Health Record	3	1.32%
	Ehr-Related User Issues	2	0.88%
	Ehr System - Technology, Design & Security Issues	1	0.44%
	Total	227	100.00%

TDC MPL Patient Safety Data. Napa: The Doctors Company
2010-2024. Accessed 2026.

Most Frequent Injuries for OMS

Nerve Injury

- Lingual or inferior alveolar nerves during tooth extractions
- Third molars
- Implants, with numbness, paralysis

Errors related to treatment

- Wrong site extractions
- Damage to adjacent structures
- Broken instruments

Complications related to anesthesia

- Inappropriate administration or monitoring of anesthesia
- Delayed response to adverse reaction

TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Most Frequent Injuries for OMS (continued)

Diagnostic Error

- Delay or failure to diagnose oral cancer, infections
- Delay or failure to provide abnormal pathology results timely

Lack of Informed Consent

- Failure to communicate risks, benefits, and alternative treatment

Post-treatment infection

- Infection resulting from improper sterilization or inadequate management of treatment site

TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

What Alerts an Attorney to Medical Record

- Metadata identifies tampering of medical record
- Little or no documentation about event or incident that involved patient
- Record is incomplete or missing
- Conflict with documentation in medical record
- Inconsistent documentation in the medical record
- Delay or issues obtaining medical records from practitioner

(n.d.). www.lezdotechmed.com/Blog/Medical-Malpractice/Consequences-of-Medical-Record-Tampering-In-Medical-Malpractice-Claim/.

Has undergone repeated procedures by other physicians

Has sued a physician in the past

Appears to be engaged in doctor shopping

Has a history of non-adherence

Resents questions, defensive responses or one-word answers

Suffers from depression, eating disorder, anxiety, poor self-esteem, unhealthy motivation to have surgery

Patient Selection: Behavior Warning Signs

Exaggerated concern over minor or nonexistent problem

Major life change – divorce, job loss, etc.

Desires a quick fix to a long-term problem

Appears hostile, sharp voice, defensive posture

Demanding, self-centered, insensitive, abusive to staff

Difficulty paying attention, unfocused, interrupts

Fixated on prior surgical result or physical imperfection

Thinks procedure will fix psychological or social problems

Plastic Surgery. Patient Safety 2011 Adverse Events Ambulatory Surgery. American Society of Plastic Surgeons. Accessed April 19, 2025. [<https://www.plasticsurgery.org/Documents/Health-Policy/Patient-Safety/patient-safety-2011-adverse-events-ambulatory-surgery>]

Communication Techniques



Communication techniques to achieve a patient-centered informed consent:

- Consider patient's culture, education, lifestyle, health literacy, and personal preferences
- Use lay terminology patient can easily understand
- Use visual aids, such as brochures, anatomical models, and videos
- **Ask patient what he/she wants from treatment (expectations)**
- Allow patient to express concerns

Strategies to Avoid A Malpractice Lawsuit

When a Patient Threatens to Sue Remember:

A Malpractice Lawsuit needs 4 things:

Duty

- You had a duty to do something for the patient

Breach

- You did not do that thing or did it incorrectly or did it in a careless way

Causation

- Your breach caused the patient some type of harm

Damages

- The patient's harm can be measured in dollars

What Are “Damages”?

Damages are injuries suffered as a result of negligence

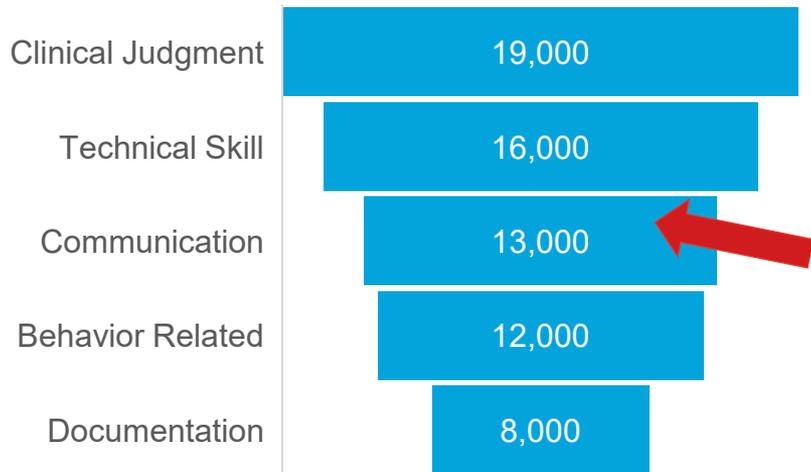
Law recognizes two categories of damages:

- Economic Damages
 - Not Capped by MICRA
 - Past medical expenses, future medical expenses
 - Lost earning capacity, future wages
- Non-Economic Damages
 - Capped by MICRA
 - Past, present and future pain and suffering
 - Loss of consortium/companionship



Contributing Factors

The Doctors Company 20,000 Claims



Communication issues are third most common contributing factor

Communication:

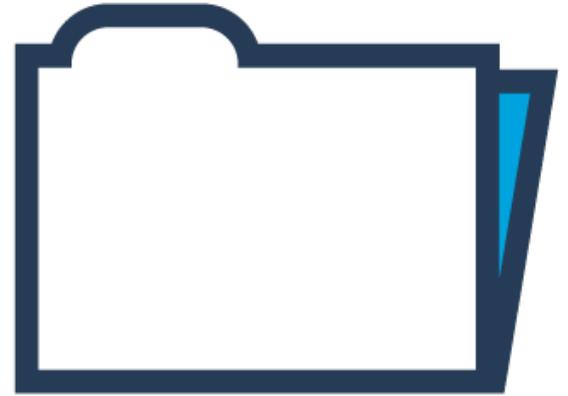
- Between provider and patient or patient's family 20%
- Among providers 13%
- Electronic tools 2%
- Tele transmissions, virtual visits, other 2%

TDC MPL Patient Safety Data. Napa: The Doctors Company
2010-2024. Accessed 2026.

Documentation: Your Silent Witness

The Medical Record Speaks for You

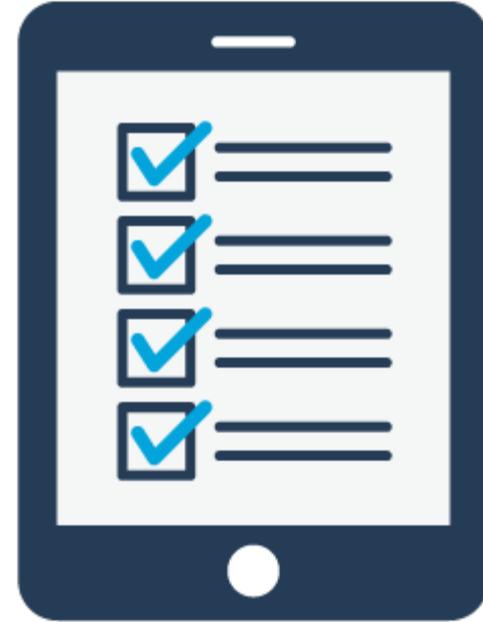
- Validates quality of care provided to patient
- Impacts coding, billing, and reimbursement
- Demonstrates compliance
- Your documentation tells your story
- **The medical record is your loudest silent witness**



Documentation Impacts Medical Malpractice Claims

Key source of evidence used to:

- Reconstruct events
- Establish dates and timelines
- Refresh memories
- Resolve conflicting testimony
- Metadata is forever



Documentation and Risk



- Medical malpractice claims can be won or lost based on quality and content of medical record
- Poor documentation, vague, incomplete, or altered record, severely compromise your credibility.
- Claims are often filed years after event occurs, physicians may need to refresh their own recollection with record
- Expert witnesses need to follow care you provided and testify your care and treatment was appropriate and met standard of care

When Should Something Be Documented

- Out of the ordinary situations
- Patient non-adherence to plan of care
- Failure to follow advice of a consult
- Consent discussions
- Patient has a preoccupation with something
- When responsibility/care is transferred
- Perplexing symptoms or outcomes
- Disruptive or inappropriate patient behavior



**If it's not written, it never
happened.
If it is written,
it doesn't matter what happened.**

**Sercan Leylek
Norwegian Author**

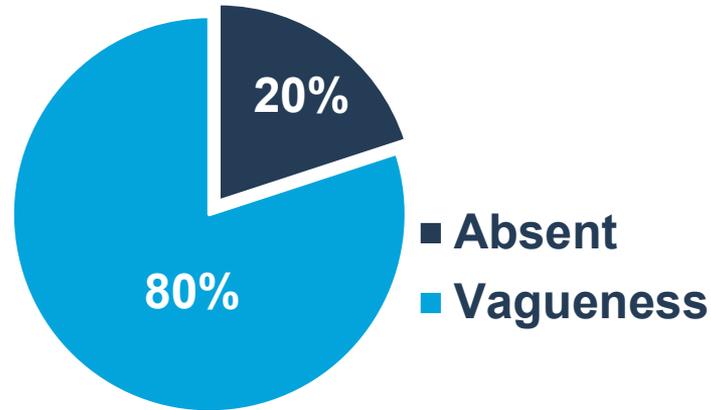
Informed Consent Is Your Best Defense

Why Are We Talking About This?

- Treating provider is responsible to make sure patient understands consent he/she is giving
 - Final responsibility rests with provider
 - Provider cannot delegate the informed consent process
- Information is helpful only if it is understood by the patient
- Use of an interpreter for a patient with limited English proficiency or hearing per ADA), educational tools, or repetition may be necessary
- Use teach-back to make sure you have explained choices in a way patients and their families have understood

Informed Consent Must Be Clearly Documented

Informed Consent Documentation In Malpractice Lawsuit Study



(n.d.). Informed Consent: Legal Obligation or Cornerstone of the Care Relationship [Review of Informed Consent: Legal Obligation or Cornerstone of the Care Relationship]. International Journal of Environmental Research and Public Health.

Informed Consent Is Your Best Defense



Informed Consent Is Not a Signed Consent Form

- Inadequate informed consent procedures
- Insufficient/lack of documentation
- Informed consent cannot be delegated

Lack of Consent vs. Malpractice

- “Lack of informed consent” is a claim that usually accompanies an allegation of medical malpractice for wrongful diagnosis or treatment
- A claim the plaintiff can win even when the malpractice claim is weak, or the damages are known complications
- Does not require treatment be a departure from the standard of care; discussion must comport with what others similarly situated in the community do



(n.d.). <https://www.thedoctors.com/Articles/Informed-Consent-Substance-And-Signature/>.

Required Elements of Informed Consent

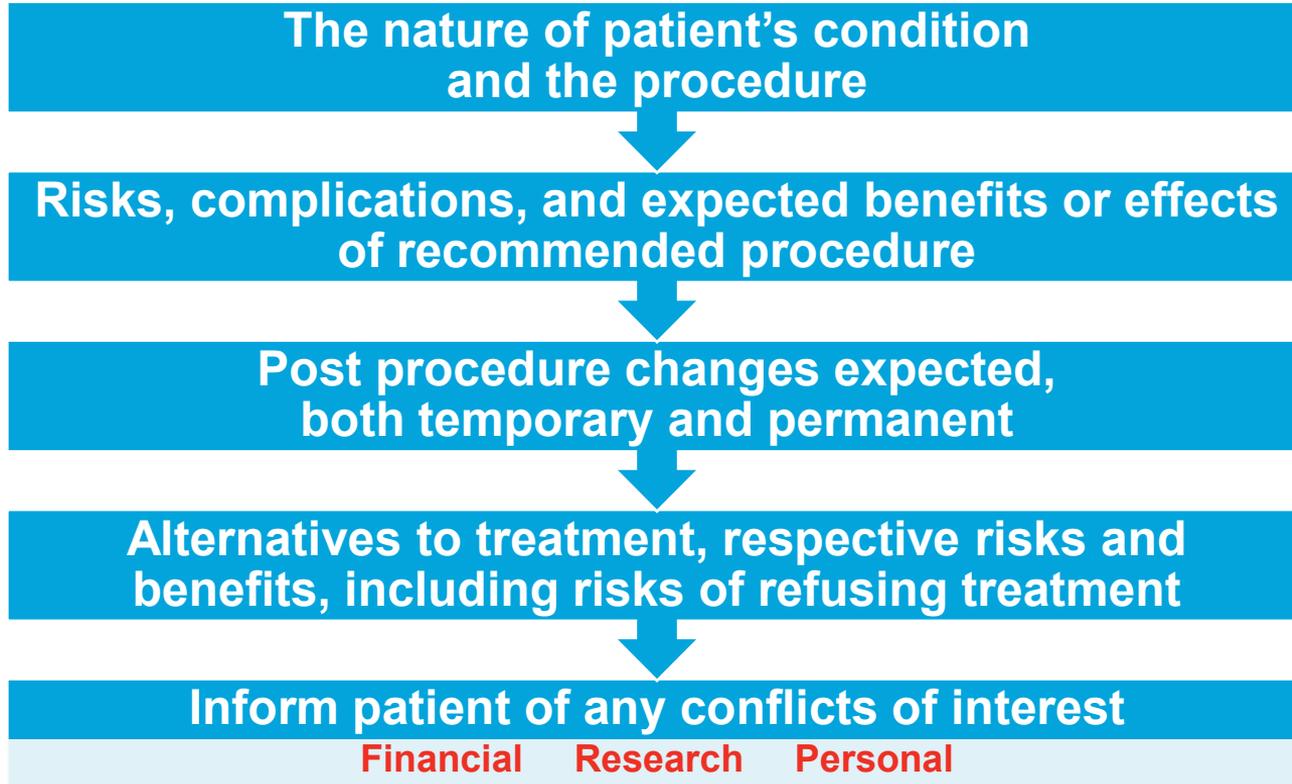
Required Elements

1. Nature of the procedure
2. Risks and benefits and the procedure
3. Reasonable alternatives
4. Risks and benefits of alternatives
5. Assessment of the patient's understanding of elements 1 through 4

**Informed Consent is
a Non-delegable Duty**

**The informed consent
process is the non-delegable
duty of the physician!**

Elements of the Discussion



How do you verify the patient understood the risks and expectations?

- A. Ask them to repeat key points in their own words
- B. Use a checklist or quiz
- C. Rely on signed consent form
- D. Trust that they'll ask questions if confused

Example of Informed Consent Documentation

I have explained the nature, purpose, anticipated benefits, material risks and complications, including bleeding, nerve injury, infection, injury to adjacent structures, scarring, and alternatives to the proposed procedure/treatment and the risks and consequences of not proceeding, to the patient (or the patient's legal representative).

I have answered all questions fully; I believe the patient/legal representative (circle one) fully understands what I have explained, acknowledges and agrees to proceed.

Create a Smart Key in your EHR

Informed Patient Decisions

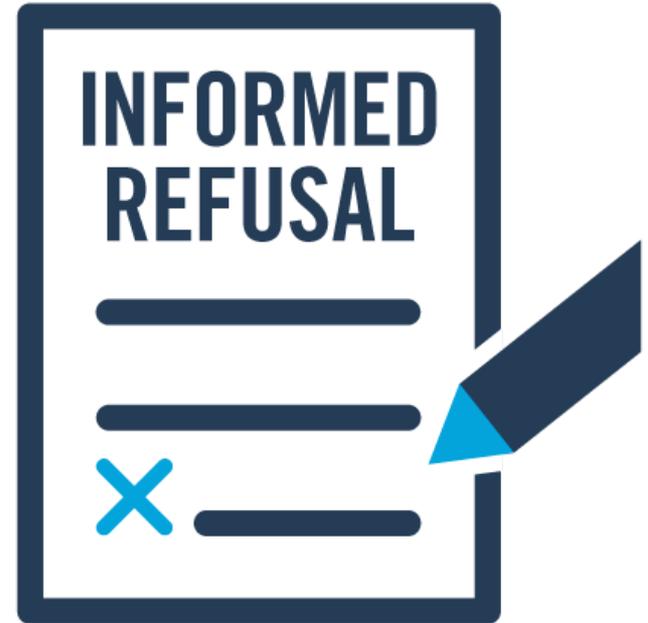


Documenting informed refusal is as important as documenting informed consent

- Important to verify patient's understanding
- Consider using TDC Informed Refusal form
- Recognize and address Cultural and language barriers
 - Document translator: family or guest do not qualify to translate

Informed Refusal

- Process is same as informed consent
 - Risks, benefits, alternative treatments, and risks of refusal
 - Use to document patient non-compliance
- Should be documented when a procedure is the recommended treatment plan and patient decides against it or chooses a lesser recommended option



(n.d.). <https://www.thedoctors.com/Articles/Informed-Refusal/>.

TDC Sample Refusal to Consent to Treatment, Medication, or Testing

Pt declined to sign



Witness signature



Physician signature



REFUSAL TO CONSENT TO TREATMENT, MEDICATION, OR TESTING

Individuals are legally entitled to exercise their freedom of choice by choosing not to undergo a recommended course of treatment, medication, or testing.

Patient's
Initials

_____ It has been recommended to me that I should undertake the following treatment, medication, or testing ordered by my healthcare provider(s):

_____ I have been advised of the risks and benefits of the treatment, medication, or testing and all appropriate alternatives, including:

_____ I have been advised of the risks and consequences of refusing the recommended treatment, medication, or testing, including:

_____ I have had all of my questions answered by my healthcare provider(s):

(Name[s] of Healthcare Provider[s])

Having considered all of my options and understanding the risks of declining the treatment, medication, or testing, I have decided not to undergo the proposed course of therapy.

Patient or Legal Representative Signature/Date/Time

Print Patient's or Legal Representative's Name

Patient's Date of Birth

Legal Representative's Relationship to Patient

Witness Signature/Date/Time

Print Witness's Name

I certify that I have explained the nature, purpose, benefits, material risks, and alternatives to the proposed treatment, medication, or testing and the risks and consequences of not proceeding, have offered to answer any questions, and have fully answered all such questions. I believe that the patient/legal representative (circle one) fully understands what I have explained.

Healthcare Provider Signature/Date/Time

J131877 01/22

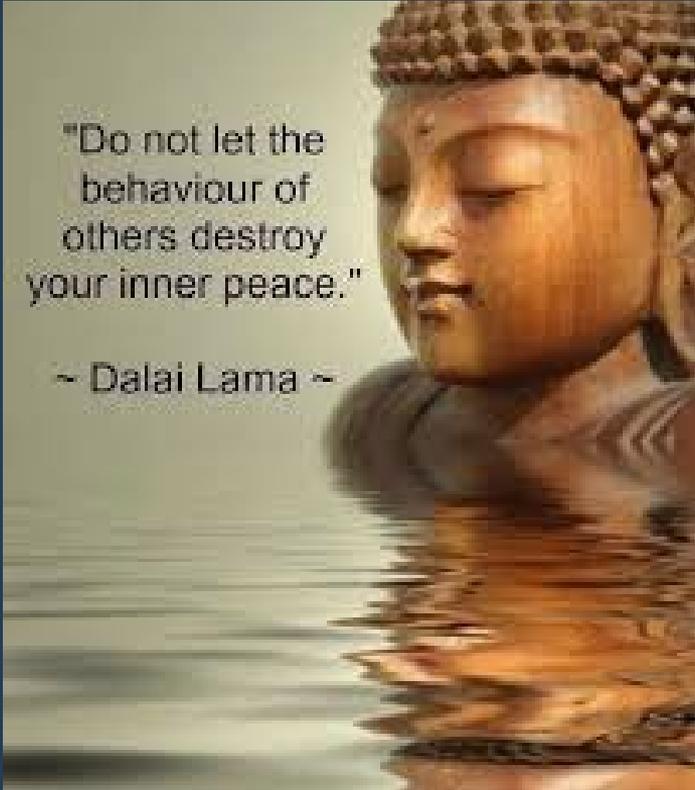
This form is for reference purposes only. It is a general guideline and not a statement of standard of care and should be edited and amended to reflect policy requirements of your practice site(s), CMS, and accreditation requirements, if any, and legal requirements of your individual state(s).

Informed Consent in Special Situations

- In an emergency, when patient is unable to provide consent, the healthcare provider must contact a legally authorized representative to obtain informed consent
- If an emergency does not permit time to contact a legally authorized representative, consent is implied
- Consent may be waived under emergent conditions that threaten life, limb, eyes, and the central nervous system
- For incompetent patient who cannot consent, physician is legally bound to obtain informed consent from incompetent patient's authorized representative, except in an emergency, this type of consent should be thoroughly documented in the medical record

Additional Informed Consent Issues

- Do not obtain consent from a patient who is sedated
- Revisions to consent form must be dated, timed, and signed by both parties
- Always use a translator when necessary for informed consent discussion
 - Family or guest is not appropriate to serve as translator
- Do not rush informed consent discussion and allow time for questions
- Use repeat back to you to evaluate patient's understanding of information
- Healthcare team member may sign as witness to the patient's signature, this is to only verify patient signed form



"Do not let the
behaviour of
others destroy
your inner peace."

~ Dalai Lama ~

TDC Informed Consent Resources

www.thedoctors.com

1. **How Blunt is Too Blunt for Informed Consent?**

<https://www.medscape.com/viewarticle/984914?src=rss#vp>

2. **Informed Refusal**

<https://www.thedoctors.com/articles/informed-refusal/>

3. **Informed Consent Sample Forms**

<https://www.thedoctors.com/patient-safety/informed-consent-sample-forms/>

4. **Informed Consent: Substance and Signature**

<https://www.thedoctors.com/articles/informed-consent-substance-and-signature/>

5. **Minor Consent: Challenges for Pediatric Dentistry**

<https://www.thedoctors.com/articles/minor-consent-challenges-for-pediatric-dentistry/>

6. **Quick Check: Informed Consent Process**

<https://www.thedoctors.com/siteassets/pdfs/risk-management>

References

1. (n.d.). <https://www.thedoctors.com/Articles/Informed-Refusal/>.
2. (n.d.). <https://www.thedoctors.com/Articles/Informed-Consent-Substance-And-Signature/>.
3. (n.d.). Informed Consent: Legal Obligation or Cornerstone of the Care Relationship [Review of Informed Consent: Legal Obligation or Cornerstone of the Care Relationship]. *International Journal of Environmental Research and Public Health*.
4. (n.d.). www.lezdotechmed.com/Blog/Medical-Malpractice/Consequences-of-Medical-Record-Tampering-In-Medical-Malpractice-Claim/.
5. Plastic Surgery. Patient Safety 2011 Adverse Events Ambulatory Surgery. American Society of Plastic Surgeons. Accessed April 19, 2025. [<https://www.plasticsurgery.org/Documents/Health-Policy/Patient-Safety/patient-safety-2011-adverse-events-ambulatory-surgery>].
6. TDC MPL Patient Safety Data. Napa: The Doctors Company 2010-2024. Accessed 2026.

Our Mission is to Advance, Protect, and
Reward the Practice of Good Medicine.

Thank you!

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The Doctors Company

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