

## Consent for HIV Testing Must the Patient's Signature on VA Form 10-0121 Be Witnessed?

Many clinical treatments and procedures require signature consent, and under VA policy someone must witness that consent as part of the process of documenting the consent. Some practitioners have questioned whether the witness requirement applies when obtaining consent for HIV testing. As explained below, the patient's signature on VA Form 10-0121, Consent for HIV Testing, does not have to be witnessed.

### General Requirement for Signature Consent

The requirements for obtaining and documenting informed consent for patients treated in VA health care facilities are detailed in VHA Handbook 1004.1, *Informed Consent for Clinical Treatments and Procedures*. Generally, the patient's signature on a VA-authorized form is required for any treatment or procedure that involves sedation, anesthesia, or narcotic analgesia; that may produce significant discomfort to the patient; that has a significant risk of complication or morbidity; or that requires injections into a joint space or body cavity.<sup>1</sup> (For a nonexhaustive list of treatments and procedures that fall into one or more of these categories see VHA Handbook 1004.1, Appendix A.)

### Specific Requirement for Signature Consent in HIV Testing

Signature consent for HIV testing is required by federal law.<sup>2</sup> VA practitioners must obtain the patient's written consent specifically for the test to ensure that the consent is voluntary and informed. Practitioners must also provide pre- and post-test counseling. Pre-test counseling includes, among other things, discussion of confidentiality protections for information about testing for HIV and treatment for HIV/AIDS that is contained in VA records. Specifically, except in very narrowly proscribed circumstances, information about a VA patient having been tested or treated for HIV may not be disclosed without the patient's express written authorization.<sup>3</sup>

### Protecting the Confidentiality of Information about HIV Testing

In this specific situation, the requirement that information about HIV testing and/or treatment for HIV/AIDS be kept confidential supercedes the otherwise general requirement for witnessing of signature consent. Requiring that someone witness the patient's consent would in itself violate confidentiality.

For these reasons then, when obtaining the patient's informed consent for an HIV test it is neither required nor appropriate to have someone witness the patient signing the consent form.

### Notes

1. See VHA Handbook 1004.1, ¶7c.(2), *Treatments and Procedures that Require Signature Consent*.
2. See Section 124 of Pub.L. 100-322, as amended, set out as a note after 38 U.S.C. §7333.
3. See 38 U.S.C. §7332 and corresponding regulations found at 38 C.F.R. §§1.460-1.499

If you have questions or comments, please contact the Ethics Center at [vaethics@va.gov](mailto:vaethics@va.gov)