

## Who May Serve As Witness for Signature Consent for Clinical Treatments and Procedures?

When a proposed treatment or procedure requires signature consent (e.g., anesthesia, surgery, blood product transfusion), the patient's and practitioner's signature on a VA-authorized consent form must be witnessed by a third party.<sup>1</sup> Current VHA policy on informed consent, however, does not specify who can appropriately serve as a witness, prompting some facilities to seek guidance from the National Center for Ethics in Health Care.

### What Is the Witness's Role in Consent?

By signing an informed consent form, the witness is attesting *only* to having actually observed the patient and practitioner sign the form. The witness's signature does not indicate that the practitioner fully informed the patient of the risks and benefits of the procedure, or that the patient understood the practitioner. The primary function of the witness is to verify that the patient actually signed the consent form, and he or she may be called to testify to that fact.

If a document has been signed by a patient without a witness present, the patient must re-sign the original document in the presence of the witness. In most circumstances, VA policy requires only one witness. However, when the patient is illiterate or otherwise unable to sign the consent form and marks an "X" on the appropriate line, two individuals must witness. Both witnesses should be present when the "X" is placed on the consent form.

### Who Can Be a Witness?

By law, a witness must be at least eighteen years old and must possess normal competency and capacity (38 CFR §17.32). The witness may be a stranger, or a family member or friend. Although VA policy does not specifically prohibit members of the treatment team from serving as witnesses, this practice is not advisable. Having a member of the treatment team serve as witness may create the appearance of conflict of interest and the witness's credibility could be called into question if he or she were called to testify. Moreover, having a member of the treatment team serve as witness risks creating an environment in which the patient may feel pressured to sign the consent form.

In those rare instances involving unusual or extremely hazardous treatments or procedures, the patient's or surrogate's signature on a VA-authorized consent form *must* be witnessed by someone who is not employed by or affiliated with the health care facility.

Although the witness plays a limited role in the informed consent process, the requirement that the patient's signature be witnessed was designed as a way to protect patients. Facilities should ensure that in implementing this requirement they protect patients from conflict of interest and unnecessary violations of privacy.

### Notes

1. See VHA Handbook 1004.1, [VHA Informed Consent for Clinical Treatments and Procedures](#).

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