Patient Rights

• What Are Rights?
  – Entitlements that every person has simply by virtue of their existence
  – Broadly expressed in the U.S. Constitution as the rights to life, liberty and the pursuit of happiness
  – More important ones enumerated in the Bill of Rights
  – Also states that rights not enumerated were nonetheless retained by the people

Patient Rights

• What Are the Sources of Healthcare Rights?
  – Every person has basic human rights - “life, liberty and the pursuit of happiness”
  – Our Constitution gives each person additional rights, some of which are in the Bill of Rights and other amendments
  – In addition to these rights, every patient has specific statutory rights from either state of federal law
    • Most don’t know what these rights are until a lawyer advises them that their rights were violated

Patient Rights

• What is the Consumer Bill of Rights
  – In 1997, President Clinton charged the Advisory Commission on Consumer Protection and Quality in the Healthcare Industry to draft a “consumer bill of rights” for healthcare

Patient Rights

• Information Disclosure
  – Every patient should have access to his own information about his health condition
    • Allows patients to make informed decisions
  – The advisory commission suggested that consumers have the right to know the level and extent of specialty preparation of each of their primary caregivers - but stopped short of requiring it
Patient Rights

• Information Disclosure
  – So if a patient asks, the provider should be truthful, but has no duty to volunteer the information
  – The Health Insurance Portability and Accountability Act mandates the disclosure of some information, e.g. that the patient may have a surrogate decision-maker and that the patient can designate who can receive information about the patient’s care

Patient Rights

• Information Disclosure
  – Most other statutes just state that the patient should be informed
  – New York State mandates 19 specific rights for hospital patients

Patient Rights

• Informed Consent
  – Means that a patient must be told sufficient information to make a reasonable choice about a procedure
    • Need for the procedure
    • Benefits
    • Risks or potential harm
    • Other forms treatment
    • Right to a second opinion

Patient Rights

• Right to Choose a Healthcare Plan
  – Although the bill of rights includes this right, in many cases it does not really exist
  – Patients may choose to go to any physician or any hospital, but…
  – Most plans will pay a lesser percent for visits to or admissions in a non-plan provider
  – So the effect is to negate the choice

Patient Rights

• Right to Emergency Care
  – The right to emergency care exists under both common law and a special federal statute, the Emergency Medical Treatment and Active Labor Act (EMTALA)
    • Passed by Congress following a 60 Minutes program about patient dumping in Texas

Patient Rights

• EMTALA
  – Requires an appropriate medical screening examination, within the capability of the hospital’s emergency department, to anyone who comes to the ED and requests an exam or treatment for a medical condition
Patient Rights

- EMTALA
  - Further requires the hospital to provide such treatment as may be required to stabilize the medical condition or to provide for the transfer of the individual to another medical facility

- EMTALA
  - Has led to much litigation
    - Poorly defines some aspects, e.g., “screening examination”
    - Largely depends on hospital size and location
    - Defines some aspects, e.g., “stabilize” but courts have added their own variations

- EMTALA
  - Bottom line: patients can sue for damages if they are denied access to healthcare
  - Healthcare professionals need to be aware of EMTALA’s myriad provisions as well as the way courts have interpreted them and the way they have enforced the rights granted under EMTALA

- Right to Participate in Treatment Decisions
  - Comes from the basic right of autonomy
    - Ability to make decisions about oneself
  - Patients can lose that right under certain conditions
    - Unconscious
    - Declared mentally incompetent
    - Unable to communicate desires
    - Under age 18 - parents can consent to treatment
    - Presents a danger to himself and others and requires immediate psychiatric care

- Advanced Directives
  - Guideline that allows healthcare providers to know a patient’s wishes and act on them
  - Can become subject to abuse and manipulation
  - Two types
    - Living wills
    - Durable powers of attorney
Patient Rights

• Advanced Directives
  – Living wills
    • Merely states the patient’s wishes with regard to healthcare decisions
      – May suggest under what circumstances the patient might want advanced cardiac life support, mechanical ventilation and other invasive treatments
      – May also suggest when it would be appropriate to withhold these treatments

• Merely states the patient’s wishes with regard to healthcare decisions
  – May suggest under what circumstances the patient might want advanced cardiac life support, mechanical ventilation and other invasive treatments
  – May also suggest when it would be appropriate to withhold these treatments

Patient Rights

• Advanced Directives
  – Living wills
    • Not binding on anyone, including the physician
    • Since it is a statement of a patient’s intent, a physician may still feel free, using her best judgment, to act in a manner contrary to the patient’s expressed wishes
      – Patients should discuss their living will with the physician and get her commitment to follow the document

Patient Rights

• Durable Power of Attorney
  – Patients can appoint someone to make decisions for them
  – A power of attorney is durable if it survives the incompetence, but not the death of the principal
  – Allows the surrogate to make decisions even if the decisions may lead to the principal’s death

• Can Healthcare Providers Discriminate?
  – Federal law requires that persons have adequate access to emergency procedures regardless of their ability to pay and regardless of the race, religion or skin color

Patient Rights

• Right to Confidentiality
  – President’s commission:
    1. Confidentiality of Health Information
       Consumers have the right to communicate with health care providers in confidence and to have the confidentiality of their individually identifiable health care information protected.
       Consumers also have the right to review and copy their own medical records and request amendments to their records.

• Health Insurance Portability and Accountability Act - HIPAA
  – Original intent was to improve information privacy in the emerging field of electronic medical records
  – Result is that the field of medical privacy became needlessly complicated - it is essentially a full employment act for healthcare lawyers
Patient Rights

• HIPAA
  – Access to medical records
  – Notice of privacy practices
  – Limits on use of personal medical information
  – Prohibition on using medical information for marketing
  – Stronger state laws control
  – Consumers may file complaints

Patient Rights

• Right to Be Protected from Harm
  – Arises from the special relationship between hospitals and their patients

• Right to Free Association
  – Hospitals may impose time, place, manner and behavior limitations on visitation, but as a general rule cannot restrict who visits

Patient Rights

• Right to Personal Liberty
  – Federal regulations restrict the use of restraints to short periods with physician orders
  – Order must be based on a rationale described in the medical record that clearly shows need
  – Physician is required to review the need every 24 hours and remove them ASAP

Patient Rights

• Summary
  • Patients have the right to autonomy unless incompetent or may inflict harm on others
  • Patients have the right to consent to care, refuse to consent to care and to later withdraw that consent
  • Clinicians may not override a patient’s refusal to consent, so long as the patient is conscious and competent
  • Patients have the right to associate freely so long as doing so will not harm them or another patient

Patient Rights

• Summary
  • Patients have the right to expect that clinicians will protect their medical privacy and that information communicated in the privacy of the patient relationship will stay private
  • The rights patients have to privacy, autonomy and information can be enforced in the courts
  • Patients have the right to emergency medical screening when they present in the ED
    – They cannot receive different screening on the basis of their ability to pay, or other factors than any other patient would receive
    – The hospital cannot transfer a patient whose condition is not stable

Patient Rights

• Summary
  • Patients have the right to receive accurate, timely and truthful information about their care

Patient Rights

• Summary
  • Patients have the right to be restrained unless there is a sound medical rationale and the decision is reviewed every 24 hours
  • Patients have a right to have their decisions about end-of-life care respected, and to designate in advance who will make their healthcare decisions
  • Patients have the right to receive accurate, timely and truthful information about their care

Patient Rights

• Summary
  • Patients have the right to autonomy unless incompetent or may inflict harm on others
  • Patients have the right to consent to care, refuse to consent to care and to later withdraw that consent
  • Clinicians may not override a patient’s refusal to consent, so long as the patient is conscious and competent
  • Patients have the right to associate freely so long as doing so will not harm them or another patient

Patient Rights

• Summary
  • Patients have the right to expect that clinicians will protect their medical privacy and that information communicated in the privacy of the patient relationship will stay private
  • The rights patients have to privacy, autonomy and information can be enforced in the courts
  • Patients have the right to emergency medical screening when they present in the ED
    – They cannot receive different screening on the basis of their ability to pay, or other factors than any other patient would receive
    – The hospital cannot transfer a patient whose condition is not stable

Patient Rights

• Summary
  • Patients have the right to receive accurate, timely and truthful information about their care

Patient Rights

• Summary
  • Patients have the right to be restrained unless there is a sound medical rationale and the decision is reviewed every 24 hours
  • Patients have a right to have their decisions about end-of-life care respected, and to designate in advance who will make their healthcare decisions
  • Patients have the right to receive accurate, timely and truthful information about their care
Patient Rights

• Summary
  • If there is a difference of opinion between a clinician and a surrogate decision-maker (agent for healthcare), the clinician may have an obligation to seek appointment of a guardian if the agent is not acting in the best interests of the patient.
  • If there is a difference between the agent and the patient, unless declared or adjudged incompetent, the patient is the person with the final say.