

HEALTH ED

Louisiana Elder Law 2009

Consent Law

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I. Informed Consent

a. LA-R.S. 40:1299.40. Consent to medical treatment; exception; Louisiana Medical Disclosure Panel; availability of lists to establish necessity and degree

1. The relevant statute provides that written consent to medical treatment means the voluntary permission of a patient, through signature, marking, or affirmative action through electronic means to any medical or surgical procedure or course of procedures which sets forth in general terms the nature and purpose of the procedure or procedures, together with the known risks, if any, of death, brain damage, quadriplegia, paraplegia, the loss or loss of function of any organ or limb, of disfiguring scars associated with such procedure or procedures.
2. The statute also provides that the Department of Health and Hospitals promulgate a list of required risk disclosure for certain procedures.

There are 179 procedures and their possible risks listed on the Department of health and Hospitals Medical Disclosure Panel website, ranging from craniotomy to simple procedures like a tonsillectomy. By example:

Procedure:

2375. Tonsillectomy.

1. Bleeding.
2. Injury to nerve to tongue.
3. Nasal speech.

II. Exceptions to informed consent

a. Infectious disease

LA-R.S. 40:1299.40 provides that consent is not necessary to test a patient's blood for infectious disease if an employee of a hospital has been exposed to the blood or bodily fluids of a patient, in such a manner as to create any risk that the agent, employee, or physician may become infected with the human immunodeficiency virus or other infectious agent.

b. Emergencies

LA-R.S. 40:1299.54 provides that in an emergency, consent is not required. An emergency is defined as a situation wherein: (1) in competent medical judgment, the

proposed surgical or medical treatment or procedures are reasonably necessary; and (2) a person authorized to consent under Section 1299.53 is not readily available, and any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected, or could reasonably result in disfigurement or impair faculties.

c. Capacity

Any competent person over the age of eighteen has the right to control his treatment, including refusal of treatment. LA-R.S. 40:1299.56

Any person, even a child, may consent to medical treatment for an illness or disease. The consent of a parent or guardian of the child is not necessary. The medical provider is not even required to notify the parent or guardian. LA-R.S. 40:1095.

Obviously, elective plastic surgery would not qualify as treatment for an illness or disease.

Question: Does removal of a wart qualify? Removal of a mole?

Any person, even a child, may consent to medical treatment for pregnancy or childbirth. The consent of a parent or guardian of the child is not necessary. The medical provider is not even required to notify the parent or guardian. LA-R.S. 40:1095.