OBJECTIVE
To provide guidance in proper completion of the General Consent form

SCOPE
This policy pertains to all MCG Health, Inc. personnel who may consent patients for health care services

POLICY
It is the policy of MCG Health, Inc. to ensure that consent for treatment is obtained on every patient (for pediatric patients, see below II.3) and documented appropriately in the medical record.

PROVISIONS
I. Need for Consent

The relationship between a physician and a patient is consensual in nature. In the absence of an emergency, if the physician undertakes to treat a patient without his express or implied consent or that of someone authorized to consent on his behalf, the physician has committed a legal wrong, or battery (unconsented to touching of the patient's body). Even though the patient may have benefited from the treatment, he/she can sue the physician. Where there is a bad result the physician can be sued for a battery although the treatment may not have been performed negligently. Thus the physician increases his liability when he/she treats a patient without consent, regardless of the outcome. Assistance regarding informed consent is available through Risk Management at 1-RISK (7475), or after hours the Administrator On-Call (3-5503).

Consent may be expressed or implied. Expressed consent is written or oral consent to treatment. Implied consent is consent implied from the circumstances, such as when a person comes into a physician's office voluntarily for routine diagnostic procedures. In an emergency when a patient is unable to consent, consent may be presumed if no authorized person is readily available to consent for the patient (see Section III for a further discussion of emergency treatment).

While expressed consent may be oral or written, written consent provides greater protection. In Georgia, written consent is presumed to be valid in the absence of fraudulent misrepresentation of material facts in obtaining the consent. Whereas, oral consent requires reliance upon faulty human memory and may lead to disputes. Where oral consent is to be relied upon, a notation should be made in the patient's medical record of what was said to the patient and of the fact that the patient consented. The names of any witnesses present should be included.
II. Who May Give Consent

Medical Treatment:

A. The Georgia Medical Consent Law (O.C.G.A. 31-9-1 et seq.) governs who may consent to treatment.

1. An adult (18 years of age or older) for himself/herself (includes the right to refuse treatment).


3. A parent (adult or minor) for his/her minor child.

4. A married person (adult or minor) for himself/herself and for his/her spouse.

5. A person serving (temporarily or otherwise) in the place of the parents for a child under his/her care, and a legal guardian for the person for whom he/she is serving as guardian. Legal guardians are court appointed.

6. A female, regardless of age or marital status, for herself when related to pregnancy, childbirth, or birth control.

7. For an incompetent adult patient who has not created a Durable Power of Attorney for Healthcare, or does not have a spouse; then the following persons (in this order) may consent for the incompetent adult patient:
   a. Any adult child for his/her parents,
   b. Any parent for an adult child,
   c. Any adult for his/her brother or sister,
   d. Any grandparent for his/her grandchild.

B. A person who has been declared legally incompetent may not consent for himself/herself or for anyone else. A person believed by a physician to be incompetent as a matter of fact, even though not declared so by a court, should be treated as a person who is incapable of expressing his wishes (discussed below). Even in such circumstances the patient's consent should be obtained, if possible, in addition to that of a person authorized under the Medical Consent Law to consent on behalf of the patient, or the situation should be treated as an emergency (discussed below).
The Medical Consent Law permits reliance in good faith upon the representation of a person that he/she is authorized to consent on behalf of the patient. Included in the representation upon which one may rely, are a person's statements concerning identity, age, marital status, emancipation and relationship to the person for whom the consent is requested.

When considering the relationship between the patient and the person being asked to consent for him/her, one may include the adoptive, foster and step-relations as well as "natural whole blood" relations. The term "spouse" includes the relationship by common-law marriage as well as ceremonial marriage. (Contrary to popular belief, in Georgia it is not necessary for a man and a woman to live together seven years before becoming common-law husband and wife. It is only necessary that a man and woman agree to become husband and wife and, in pursuance of such agreement, enter into a state of cohabitation.)

The Georgia Medical Consent Law states that the law should not be interpreted to abridge the right of a competent adult to refuse to consent to medical treatment for himself/herself. Courts have made exceptions to this rule when the life of the mother or small children was in danger and the best interests of the children were considered. Advice will be necessary in such cases. Contact Risk Management at 1-RISK (7475) or after-hours the Administrator On-Call at 3-5503.

Consent on behalf of a minor by an authorized person (as described above) is sufficient even if another authorized person for the minor refuses to consent. If there is confusion about the hierarchy of consents, contact Risk Management at 1-RISK (7475) or after-hours the Administrator On-Call at 3-5503.

In the case of an incompetent adult patient, consent by an authorized person who is highest in priority (as described above) is sufficient.

C. Behavioral Health Consents;
Voluntary admission to a psychiatric unit requires the consent of:
1. the patient if 18 years or older, OR
2. the parent or guardian if the patient is less than 18; OR
3. the patient if less than 18 years and legally emancipated (note: emancipation is defined as living independently) ; OR
4. the legal guardian of an adult patient when they have been determined by a Probate court as legally incompetent. Guardian should show proof of guardianship.
5. the patient if 12 years or older, but only for observation and diagnosis, not treatment. A parent or guardian must consent to treatment. O.C.G.A. 37-3-20(a).
Consents must be obtained BEFORE the patient is taken on the unit. Also, consent to treatment is still governed by O.C.G.A. § 31-9-1 et.seq., as set forth above.

III. Consent in Emergencies

Medical Treatment:

Consent to medical treatment may be implied in an emergency. An emergency exists when:
A. In competent medical judgment, the proposed treatment is reasonably necessary, and
B. A person authorized to consent is not readily available, and
C. Any delay in treatment

1. Could reasonably be expected to jeopardize the life or health of the patient, or
2. Could reasonably result in disfigurement or impaired faculties.

All three conditions (listed above as A, B, C) must be met. Whether someone authorized to consent is "readily available" will depend on the circumstances. The amount of effort to contact such a person should be governed by the danger to the patient from any delay in treatment. The medical record should reflect clearly the emergency circumstances.

Behavioral Health:
Voluntary and involuntary patients have a general right to refuse medications. O.C.G.A. § 37-4-163. However, in emergency situations, if a physician determines that refusal of medication would be unsafe to the patient or others, medication can be administered without patient consent and despite patient objection. If the patient continues to refuse medication after such initial emergency dose, either involuntary treatment papers should be initiated or a concurring opinion from a second physician must be obtained and documented before medication can be continued without the patient’s consent. O.C.G.A. § 37-3-163.

In the case of a grave emergency with a patient, who as result of their advanced age, impaired thinking, or other disability, cannot reasonably understand the consequences of withholding consent to surgery or other intervention and where the medical staff determines that immediate surgical or other intervention is necessary to prevent serious physical consequences or death and where delay in obtaining consent would create a
grave danger to the physical health of such person, as determined by at least two physicians, then essential surgery or other intervention may be administered without the consent of the person, the spouse, next of kin, or any other person. In such cases, a detailed record of the determination of the physicians shall be entered into the medical records of the patient and this will be proper consent for such surgery or other intervention. Such consent will be valid notwithstanding the type of admission of the patient and it shall also be valid whether or not the patient has been adjudged incompetent. Any physician, agent, employee, or official who obtains consent or relies on such consent and who acts in good faith shall be immune from civil or criminal liability for their actions in connection with the obtaining of or the relying upon such consent. Actual notice of any action taken shall be given to the patient and the spouse, next of kin, guardian, or representative of the patient as soon as practically possible. O.C.G.A. § 37-3-163.

IV. Telephone Consents

Telephone consents should be used only when absolutely necessary in view of the difficulty of proving in court that the person to whom you spoke is who he/she represented himself/herself to be. However, Georgia Medical Consent Law protects those who rely in good faith on representations made to them by persons consenting for treatment for themselves or others.

Obtaining consents for medical or surgical treatment by telephone is acceptable where a delay in treatment may jeopardize the life or health of the patient and the legally responsible representatives of the patient are available by telephone. Consent by telephone must be witnessed and a record kept in the chart denoting the exact time and nature of the consent given. Immediate steps should then be undertaken to produce a confirmation of consent by telegram, facsimile, or by written letter whenever possible. Such a telegram, facsimile, or written letter should then be attached to the appropriate consent form becoming a part of the patient's permanent medical record.

Generally, every reasonable effort should be made to identify persons from whom consent is sought by telephone. To protect the physician who relies on a consent by telephone, it is necessary that a disinterested third party listen in on the telephone conversation and sign the consent form as a witness to the conversation and its consents.

V. Informed Consent

VI. Withdrawal of Consent

Medical Treatment:
A patient may withdraw his consent to medical treatment, and any physician who ignores the withdrawal could be liable for any subsequent treatment. However, when the patient attempts to withdraw consent after treatment has begun, the physician who proceeds is liable only if:

A. The patient acts in such a way that it is clear that the consent has been withdrawn and his acts are those of clear and rational mind, and
B. The patient's health or life will not be endangered by the cessation of medical treatment at the time consent is withdrawn.

Behavioral Health:
A voluntary patient, other than a minor child for whom admission has been sought by parent or guardian, who has admitted himself for treatment shall be given notice of his discharge rights in writing at the time of admission and may request discharge at any time to any staff member or service provider. O.C.G.A. § 37-3-20, O.C.G.A. § 37-3-22, O.C.G.A. § 37-3-23. The request must be made in writing, with assistance given as necessary within 24 hours of initial oral request by patient or his representative. The party taking the request must submit the request to the attending physician or designee within 24 hours. The physician has 72 hours to either discharge the patient or initiate involuntary treatment procedures and the decision should be made as soon as the clinical evaluation and risk assessment of patient safety is made. O.C.G.A. § 37-3-22. Patients who do not meet the requirements for an involuntary can be discharged against medical advice. The evaluation must be made face-to-face by the attending physician, or the resident physician with review with the attending, and a detailed note must be written documenting the evaluation, review, and outcome. Any minor admitted voluntarily shall be released at any time after written request is made by the minor’s parent or legal guardian.

VII. Right to Refuse Treatment

Medical treatment:
The law recognizes the right of a competent adult to refuse to consent to medical treatment for himself. If a competent adult, who has been provided appropriate information about his/her diagnosis/condition and the benefits/risks associated with proposed treatment refuses the recommended treatment, this refusal should be documented in the medical record in the following manner. The care provider, who provided to the patient the “appropriate information” regarding his/her diagnosis/condition and the benefits/risks associated with proposed treatment, should document the major points of the information provided, and the patient’s refusal to consent. A second licensed care provider, who also witnessed the
patient’s refusal to consent, should also document on the medical record that he/she witnessed the patient’s refusal to consent.

In many cases, the refusal is based on religious beliefs and will be accepted by the courts. However, there have been cases where courts have ordered treatment when the patient was a mother with young children. The interests of the children were considered more important than the religious beliefs of the mother. An unborn child might be protected similarly if the patient is pregnant.

In such cases, legal assistance should be sought, by contacting Risk Management at 1-RISK (7475) or after hours the Administrator On-Call (3-5503).

Behavioral Health Treatment:
If a patient has been referred for inpatient treatment by a medical professional or has been evaluated with an inpatient treatment recommendation but refuses to consent for treatment, an attending physician, or the resident physician with review with an attending, shall conduct a face-to-face evaluation (or re-evaluation) and risk assessment to determine patient’s safety. If the patient is a danger to self or others, involuntary treatment papers should be initiated. If the patient’s safety can be assured, alternate treatment recommendations may be given. In either case, a detailed note must be written documenting the evaluation (or re-evaluation), review, and outcome.

VIII. Consent for Minors

A. When both parents refuse to consent to the treatment of a minor and the child's health is in danger, immediately contact one of the following: Risk Management at 1-RISK (7475) or after hours the Administrator On-Call (3-5503) or MCG Health Inc. Social Services personnel (through the Paging Operator). These persons know the necessary steps for obtaining a court order, even in emergency circumstances or at odd hours. When a child's parents are separated or divorced and the parent with legal custody refuses to consent to necessary medical treatment, the physician should seek assistance in obtaining a court order to avoid being caught legally between warring parents.

B. Any minor, regardless of age, can consent on his/her own behalf to treatment for a venereal disease and/or drug abuse. The minor's physician may inform a parent,
spouse, or guardian of any such treatment. However, the physician is not obligated to inform the parent, spouse, or guardian.

IX. AS A GENERAL RULE, THE FOLLOWING GUIDELINES SHOULD BE FOLLOWED WHEN COMPLETING ANY CONSENT FORM:

a. Do cross over errors and have patient initial changes.
b. Do use plain simple language in describing procedures
c. Do ask patient if he/she understands the procedure(s); document patient’s indicating of understanding. Inform patient that their signature implies their understanding.
d. Do have patient initial any attachment to consent forms and refer to attachments in main form.
e. Do fill in all blanks; if something is not applicable, mark “N/A”
f. Do not make notes in margins
g. Do not insert word(s) after the patient has signed the form.
h. Do not use two colors of ink.
i. Do not have patient sign blank form.
j. Do not request signature when patient is under medication which might affect his judgment.
k. Do not ignore exceptions or objects patient writes into form.
l. Do not guarantee particular outcome.
m. Do not sign as a witness if you didn’t see the patient sign the form.

RESPONSIBILITY
It is the responsibility of all MCG Health, Inc. personnel who provide care, or direct the provision of patient care, to assure that each patient has provided consent for all patient care services to be rendered within their scope of responsibility.

Approved ____________________________            ______________________________
Chief Medical Officer                             President/Chief Executive Officer
MCG Health, Inc.                                  MCG Health, Inc.
Date:  ______________________              Date:  ___________________________
May 3, 2004                                          May 3, 2004