
Informed Refusal

By Matthew Bauer, JD

While physicians are familiar with the concept of informed consent, they may not be familiar with the concept of informed refusal. Informed refusal is the flip side of informed consent and recognizes that competent patients have the right to refuse recommended treatment after receiving sufficient information regarding the potential risks of such refusal. The key in any informed refusal discussion is to explain the medical rationale for the physician's recommended course of treatment and to adequately explain the potential negative consequences for refusing such recommended treatment. It is also vitally important for physicians to document a patient's informed refusal to undergo recommended treatment in the medical record, as demonstrated by the closed claim outlined below.

The 55-year-old female patient was referred to gastroenterologist Dr. Brees^[1] due to abdominal pain, bloody stool, constipation, and weight loss. After an initial consultation appointment, Dr. Brees performed a colonoscopy with polypectomy. Unfortunately, the patient's polyp specimens were lost by pathology. Dr. Brees notified the patient that the polyp specimens were lost and recommended additional work up and testing to determine the cause of the patient's symptoms and to rule out colon cancer.

The patient declined further work up and testing at that time as the severity of her symptoms had improved. Dr. Brees documented the patient's refusal and his discussion with the patient outlining the potential risks of refusing recommended treatment in the medical record. Unfortunately, the patient was diagnosed with colon cancer 15 months later by another gastroenterologist, and Dr. Brees, along with other health care providers, received a pre-suit letter from the patient's attorney alleging medical negligence and demanding compensation for delay in diagnosis and treatment.

After SVMIC hired defense counsel to review the patient's allegations and medical records with Dr. Brees, defense counsel was able to demonstrate to the patient's attorney that the alleged delay in diagnosis and treatment was not due to any negligence on the part of Dr. Brees or due to his failure to recommend additional testing to rule out colon cancer. Because Dr. Brees documented his informed refusal discussion with the patient in the medical record, defense counsel was able to show that Dr. Brees properly informed the patient of the potential risks and negative consequences for refusing recommended treatment. The patient's attorney ultimately did not file a medical malpractice lawsuit against Dr. Brees, presumably because of the documentation in the medical record of the patient's informed refusal.

As demonstrated by this closed claim, informed refusal discussions should be documented in the patient's medical record because a well-documented medical record not only promotes quality medical care but can also prevent a lawsuit from ever being filed in the first place. Physicians may also consider having the patient sign an informed refusal form (SVMIC policyholders may download a sample informed refusal form template [here](#)) and/or sending a letter to the patient outlining the expected benefits of the recommended treatment plan and explaining the potential risks of foregoing the recommended treatment plan. These extra steps not only provide additional documentation of the patient's refusal but also serve as a point of emphasis to the patient that his/her refusal to follow recommended treatment could potentially have serious and negative consequences for his/her health. Finally, policyholders are encouraged to [contact SVMIC](#), and a claims attorney will be happy to answer any questions and assist with any situations involving informed refusal.

[1] The name of the physician and patient specifics have been altered.

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