

HEALTH SERVICES POLICY & PROCEDURE MANUAL

North Carolina Department Of Public Safety
Prison

SECTION: Administration – Offender
Rights

POLICY # AD IV-5

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SUBJECT: Offender Right to Refuse Medical
Treatment

EFFECTIVE DATE: May 2014
SUPERCEDES DATE: May 2010

References

Related ACA Standards

4th Edition Standards for Adult Correctional
Institutions 4-4397

PURPOSE

To provide guidance on how to manage an offender's refusal of care.

POLICY

This policy is designed to establish a procedure in which an offender may refuse diagnostic and treatment recommendations. Procedures for compulsory testing, quarantine, offender competency and guardianship related to refusal of treatment are outlined below. Health Care Staff will follow documentation guidelines established within this policy.

PROCEDURE

I. Right to Refuse

- a. If found competent to make this decision, offenders may elect to refuse diagnostic and treatment recommendations.
- b. Offender may be quarantined for observation when the offender's condition is a danger or potential danger to himself, the offender population, or employees of the Department of Public Safety, as determined by the facility health authority in coordination with the facility head.
- c. Treatment for purposes of coercion, punishment or any other improper purpose is prohibited.

II. Documentation

- a. All refusals of any diagnostic or treatment modality must be documented on the Release by Patient leaving Treatment facility or Refusing Health Care Against Orders (DC #442) and placed in the offender's medical record.
- b. When an offender refuses to receive a recommended diagnostic and treatment modality but also refuses to sign the Refusal of Treatment, the form will be witnessed and signed by two DPS staff members
- c. It will be duly noted on the Refusal of Treatment that the offender refused the diagnostic and/or treatment modality and that he refused to sign the Refusal of Treatment form.

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III. Counseling

- a. By refusing treatment at a particular time, the offender does not forego his ability to receive the same or related health care at a later time.
- b. Health care staff shall counsel offenders against refusals of treatment when they believe it to be in the offender's best interest.
- c. Counseling is to be document in the offender's health record.

IV. Compulsory Testing

- a. Diagnostic tests for an offender reasonably suspected of having a communicable disease can be accomplished with or without the offender's consent.
- b. Consent should be sought in all cases.
- c. Testing or treatment without the offender's consent shall be by order of the individual's attending physician.
- d. The least intrusive and most effective alternative available shall be used to accomplish the treatment (medical isolation, chest x-ray, etc.).
- e. The health care provider shall enter into the medical record all aspects of the offender's condition and the reason for the medical intervention without the offender's consent (such as a communicable disease issue).
- f. When an offender refuses to submit to an ordered diagnostic test, prison authorities will make reasonable efforts to convince the offender to voluntarily submit to testing.
- g. Counseling will be documented in the medical record.
- h. Continued offender refusal to submit to ordered diagnostic testing may result in compulsory testing.
 1. When testing is exercised, the following conditions will apply:
 - a. Appropriate medical personnel will be present when use of force is necessary.
 - b. Only the degree of force necessary to perform the diagnostic test is to be applied. The force used shall be documented on a Use of Force Report.
 2. The facility health authority may detain and isolate an offender:
 - a. Who is reasonably suspected of being infected with a communicable disease when and the extent such detention and isolation is necessary to protect the health of the offender population and staff
 - b. Until the results of the examination or diagnostic tests are determined.
 - c. Complete documentation of all actions relating to the forcible administration of treatment or isolation will be included in the offender health record and reported to the Facility Administrator on a Use of Force report.

IV. Quarantine

- a. Local and State Health Directors are empowered to exercise quarantine and isolation authority.

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- b. Quarantine and isolation authority shall be exercised only when and so long as the public health is endangered, all other reasonable means for correcting the problem have been exhausted, and no less restrictive alternative exists. (GS 130A-145)
- c. DPS Health Care Staff shall follow all legitimate quarantine and isolation orders from a local or the State Health Director.
- d. Immunizations against a communicable diseases in a communicable disease outbreak situation may be given without the offender's consent upon written instructions by the Chief of Communicable Disease Branch, North Carolina Department of Environmental Health.
- e. Offenders who fail to follow communicable disease and communicable condition control measures are causing a significant risk of disease transmission to the offender population and employees of DPS.
- f. The offender shall be quarantined (isolated) until such time as the provider responsible for the offender determines that either the offender has responded to counseling and will be compliant or an appropriate plan is in place to prevent transmission.

V. Offender Competency

- a. If there is reason to suspect that an offender is not competent and medical treatment or diagnosis is necessary, a clinical determination of the offender's competency must be made.
- b. For these purposes, competency is defined as:
 - 1. the ability to reason and understand the nature and consequences of the health care decision being made.
 - 2. the inability to reason or understand will generally be the product of a significant mental disease or defect.
- c. An offender is not incompetent simply because he declines to follow medical advice, however ill-advised that decision may be.
- d. In life threatening emergencies, the decision of competency is made by the available senior medical staff.
- e. If the offender is reasonably believed to be incompetent, informed consent will not be required in responding to life threatening conditions.
- f. Interventions based on such determinations of incompetency and supporting reasons must be documented by the senior medical staff that made the clinical determination of the offender's competency.
- g. Such documentation should include the specific and objective circumstances, words or actions which led the recording staff member to conclude that the offender was not competent to make the decision.
- h. In other than a life threatening emergency, an offender who is in need of medical care and who is suspected of being incompetent shall be referred to Mental Health for the

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appropriate assessment. This referral shall take place even though the offender is consenting to treatment.

- i. If the appropriate Mental Health personnel determine to a reasonable medical certainty the offender is competent to make the determination as to treatment, that determination shall be documented and the offender have the right to decline medical treatment, either in general or a specific treatment procedure.
- j. The determination of competency shall be considered effective until such time as there are circumstances indicating some change in the offender's condition or status.
- k. In the event of such change, the new or additional circumstances should be documented and a new competency assessment requested.

VI. Guardianship

- a. If the determination is that the offender is not competent to make his/her own medical judgments and the need for treatment is not currently life threatening, application for judicial appointment of a guardian should be made.
- b. Following appointment, treatment decisions may be made by said guardian in the same manner as would be true of the offender himself if he were competent.

Paula Y. Smith, M.D.

3/24/2014

Paula Y. Smith, M.D., Chief of Health Services Date

SOR: Risk Manager

Addendum

[DC # 442 Release by Patient Leaving Treatment Facility or Refusing Health Care Against Orders](#)