

When the patient disagrees

Nurses and nurse practitioners take pride in providing detailed information to patients to help them make treatment decisions. But what happens when patients don't make what you think is the "right" choice? Ultimately, you need to respect the patient's autonomy and right to choose (self-determination) even if you feel the patient isn't making the best decision, for example, by refusing an important diagnostic test.

Other examples of patients not following medical advice include those related to vaccination. Some parents may choose not to have their child receive the vaccine for preventing human papillomavirus (HPV) infection. Others may refuse the measles vaccine for their child, which you know puts others at risk for infection. In addition, patients may choose to exclusively use alternative treatment options rather than integrating them into their standard medical care.

Ideally, people will make the best choice for themselves and their loved ones. You can help them in that process (and reduce your own legal risk) by ensuring they have the information they need to make an informed decision and engaging in a shared decision-making process.

Information, please

Consider this scenario: A patient decides to abruptly stop taking her prescribed beta-blocker because she "doesn't like taking pills." After developing rebound hypertension and tachycardia, she claims she wasn't told of the possible adverse effects of not taking the medication. Unless you can point to documentation that shows the patient received education about the adverse effects of sudden stoppage, you could find yourself named in legal action.

To help avoid situations such as this and the others noted at the start of this article, provide education, which should be delivered in the patient's preferred language. It's also helpful to explain the concept of evidence-based care and to note research studies that support, for example, vaccination for HPV. The consumer summaries offered by the Agency for Healthcare Research and Quality (AHRQ) through its Effective Health Care Program (<https://effectivehealthcare.ahrq.gov/consumers>) are a resource for patient-friendly information about health conditions. Another resource is the patient section of the Choosing Wisely website (www.choosingwisely.org), where you can download patient information based on recommendations from leading specialty organizations.

Document all education that you provided in the patient's healthcare record, as well as any use of translation services, and include that the patient or parent affirmed their understanding of the material. Follow your organization's policies and procedures related to informed refusal or patients acting against medical advice to ensure you are fulfilling your duties.

Shared decision-making

Information is an integral part of shared decision-making (SDM). The National Learning Consortium defines SDM as “a process in which clinicians and patients work together to make decisions and select tests, treatments, and care plans based on clinical evidence that balances risks and expected outcomes with patient preferences and values.” SDM helps patients understand their options and make decisions that are right for them. Using the model may make it less likely a patient chooses not to follow medical advice. And if the choice is not one you agree with, at least you know the patient made a thoughtful decision.

The five-step SHARE approach from the AHRQ is a useful model for the SDM process. The approach is based on extensive research and clinician input:

1. **Seek your patient’s permission.** Explain to the patient that there are choices related to treatment and ask them to participate in the decision-making process. Some patients may not know they should take part in making treatment decisions. If appropriate, ask the patient if others, such as family members or loved ones, should be included in the discussion. An example of how to start the conversation is, “There’s good information about how these treatments differ that I’d like to discuss with you before we decide on an approach that is best for you.”
2. **Help your patient explore and compare treatment options.** Assess how much the patient already knows about the options and provide information in plain language. Explain the benefits and risks of each option.
3. **Assess your patient’s values and preferences.** Determine what is important to the patient in relation to the options, using open-ended questions such as “As you think about your options, what’s important to you?”
4. **Reach a decision with your patient.** Ask if there are any additional questions the patient has before they can decide. Keep in mind that patients may need time to consider their options and consult with others before making the decision.
5. **Evaluate your patient’s decision.** Evaluation refers to follow-up. In patients with chronic diseases, for example, the decision may need to be revisited at a future date as the patient’s condition changes. You should also work with the patient to identify and remove barriers to implementing the decision.

You can access more information about this model, including tools and a workshop curriculum, at <https://www.ahrq.gov/health-literacy/curriculum-tools/shareddecisionmaking/index.html>.

When a patient refuses

Patients have a legal right to refuse care or to leave the hospital against medical advice. When the patient refuses, listen to the reasons and address them if possible. For instance, a patient who doesn’t fully understand a procedure may agree to it once they have additional information. It’s also essential to provide information about the consequences of the decision so you meet the criteria for “informed refusal” or leaving against medical advice, according to your employer’s policies and procedures.

Otherwise, patients could later claim they were not told or did not understand the consequences of

their decision. (See *Against advice* on the next page, as well as page 54 of CNA and NSO's [Nurse Practitioner Claim Report: 4th Edition](#) for more information on informed refusal).

Basic rights

Patients have a right to refuse care, but they also have a right to know the implications of their refusal. They also have the right to receive sufficient information before making decisions. You can facilitate optimal outcomes, and reduce your legal risk, by collaborating with patients in decision-making.

Against advice

Patients may choose to refuse treatments or diagnostic tests, to leave the hospital against the advice of their care providers. To reduce the risk of patient harm and the risk of possible legal action, follow these recommendations:

- **Assess the patient's ability to make decisions.** If you are unsure, you may want to ask the patient to describe the reason for the visit, repeat back information given about treatment needs, and list basic personal information such as age, birthdate, and current address. If decision-making is impaired, assess if the impairment is temporary (for example, due to medication effects) or long-term. Determine if the patient has designated a surrogate decision-maker.
- **Listen to the patient's reasons for wanting to leave or refusing treatment** and address them as you can. For example, a patient may simply be frustrated by prolonged wait time in the ED. Avoid minimizing any of the patient's concerns, criticizing them if they may be misinformed, or telling them they are wrong.
- **Consider asking the patient's significant others for their assistance** in convincing the patient to stay or to agree to treatment. However, you do not want others to apply undue duress. Asking open-ended questions that invite people to find their own reasons for change tend to be more effective than strong-arming or shaming.
- **Document details of the patient's decision in the healthcare record.** Note those present during the discussion, the patient's stated reasons for the decision, and information provided, including education material and the specific risks of not following the recommended treatment or leaving the facility. Also, document questions from the patient and/or family and the answers you provided.
- **Continue to provide care not related to the treatment refused.** In addition, provide care until the patient leaves the premises; this includes discharge instructions, and if you are a prescriber, prescriptions for needed medications. Failure to do so could leave you open to charges of abandonment.
- **Have the patient sign any form for leaving against medical advice** that your organization requires and include it in the healthcare record. If the patient refuses to sign, note that on the form. Sometimes the act of asking to sign a form will change a patient's mind, although some organizations have chosen to eliminate such forms because they can create an adversarial relationship with the patient.
- **If possible, reach out to the patient the next day** to see how they are doing. Document the call.
- **Remain calm and professional.** Be kind and empathetic and use non-judgmental language. People are generally more likely to take the advice of someone they perceive to be likeable and trustworthy.

Discussing vaccines

Parents refusing to have their children vaccinated against measles has led to several outbreaks in the United States, and some jurisdictions have made vaccination a requirement before the child can attend school. The CDC offers a resource for clinicians to use when discussing vaccination with parents. The resource recommends clinicians assume that parents will vaccinate their child, as is usually the case. Therefore, it's better to say, for example, "Your child needs three shots today," rather than "What do you want to do about shots?"

For parents who are unsure, give a strong recommendation, such as, "I strongly recommend your child get these vaccines today." You may choose to follow up with a supporting statement that you think will best resonate with the parent such as, "These shots are very important to protect your child from serious diseases." If parents express concerns, listen and provide information. (The CDC has a handout of responses to common questions at www.cdc.gov/hpv/hcp/for-hcp-tipsheet-hpv.pdf.)

If the parent refuses to allow vaccination, explain possible consequences and review their responsibilities such as informing the child's school of the vaccination status and isolating the child during an outbreak. Document the encounter in the healthcare record. In addition, continue to follow up with parents during subsequent visits because they may change their minds.

By: Georgia Reiner, MS, CPHRM, Risk Analyst, NSO

RESOURCES

Agency for Healthcare Research and Quality. (2018). *The SHARE approach*. www.ahrq.gov/health-literacy/curriculum-tools/shareddecisionmaking/index.html.

Centers for Disease Control and Prevention. (2018). *Talking with parents about vaccines for infants*. www.cdc.gov/vaccines/hcp/conversations/talking-with-parents.html.

CNA, NSO. (2018). *Nurse Practitioner Claim Report: 4th edition*. https://aonaffinity-blob-cdn.azureedge.net/affinitytemplate-dev/media/nso/images/documents/cna_cls_np_101917_cf_prod_sec.pdf.

Greensway D. (2017). Can't stop your patient from leaving AMA? *Today's Hospitalist*. <https://www.todayshospitalist.com/cant-stop-your-patient-from-leaving-ama>.

HealthIT.gov, National Learning Consortium. (2013). Shared decision-making fact sheet. www.healthit.gov/sites/default/files/nlc_shared_decision_making_fact_sheet.pdf.

Litt, D. & Walters, S. (2021). Battling misinformation through health messaging. National Institutes of Health. <https://www.nih.gov/about-nih/what-we-do/science-health-public-trust/perspectives/science-health-public-trust/battling-misinformation-through-health-messaging>.

Office of the U.S. Surgeon General, U.S. Department of Health & Human Services. (2022). *A community toolkit for addressing health misinformation*. <https://www.hhs.gov/sites/default/files/health-misinformation-toolkit-english.pdf>.

The Sullivan Group. Do's and don'ts of AMA: patients who leave against medical advice. <https://blog.thesullivangroup.com/ama-patients-who-leave-against-medical-advice>

Disclaimer: The information offered within this article reflects general principles only and does not constitute legal advice by Nurses Service Organization (NSO) or establish appropriate or acceptable standards of professional conduct. Readers should consult with an attorney if they have specific concerns. Neither Affinity Insurance Services, Inc. nor NSO assumes any liability for how this information is applied in practice or for the accuracy of this information. Please note that Internet hyperlinks cited herein are active as of the date of publication but may be subject to change or discontinuation.

This risk management information was provided by Nurses Service Organization (NSO), the nation's largest provider of nurses' professional liability insurance coverage for over 550,000 nurses since 1976. The individual professional liability insurance policy



administered through NSO is underwritten by American Casualty Company of Reading, Pennsylvania, a CNA company. Reproduction without permission of the publisher is prohibited. For questions, send an e-mail to service@nso.com or call 1-800-247-1500. www.nso.com.

