

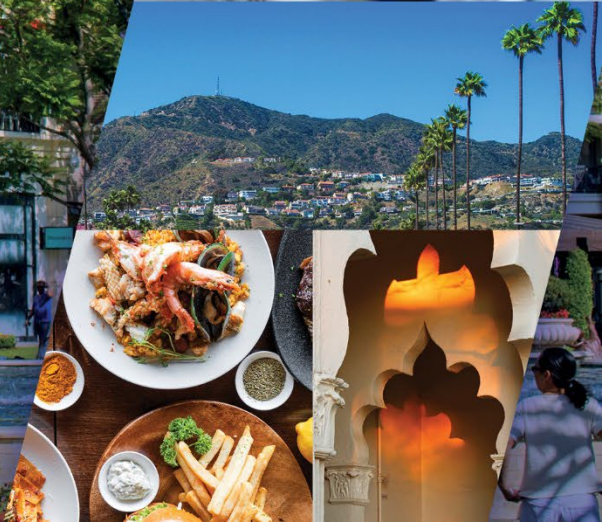
2024 CONSENT LAW SEMINAR

GLENDALE

May 1



California
Hospital
Association



Disclaimers for Consent Seminar (because we're lawyers)

- These presentations are solely for **educational purposes** and the matters presented herein do not constitute legal advice with respect to your particular situation.
- These presentations do not constitute legal advice, or its application to the delivery of health care services.
- Attendees should consult with their own legal counsel and/or risk management for advice and guidance.

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Brief Basics of Consent



Basics of Informed Consent

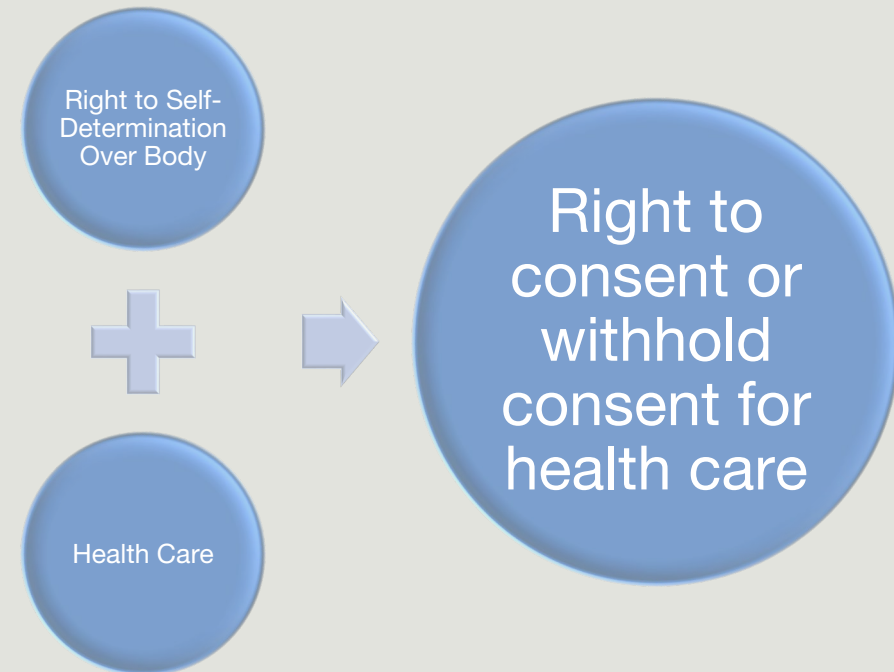


Check out CHA's
Basics of Informed
Consent Presentation
ON DEMAND:

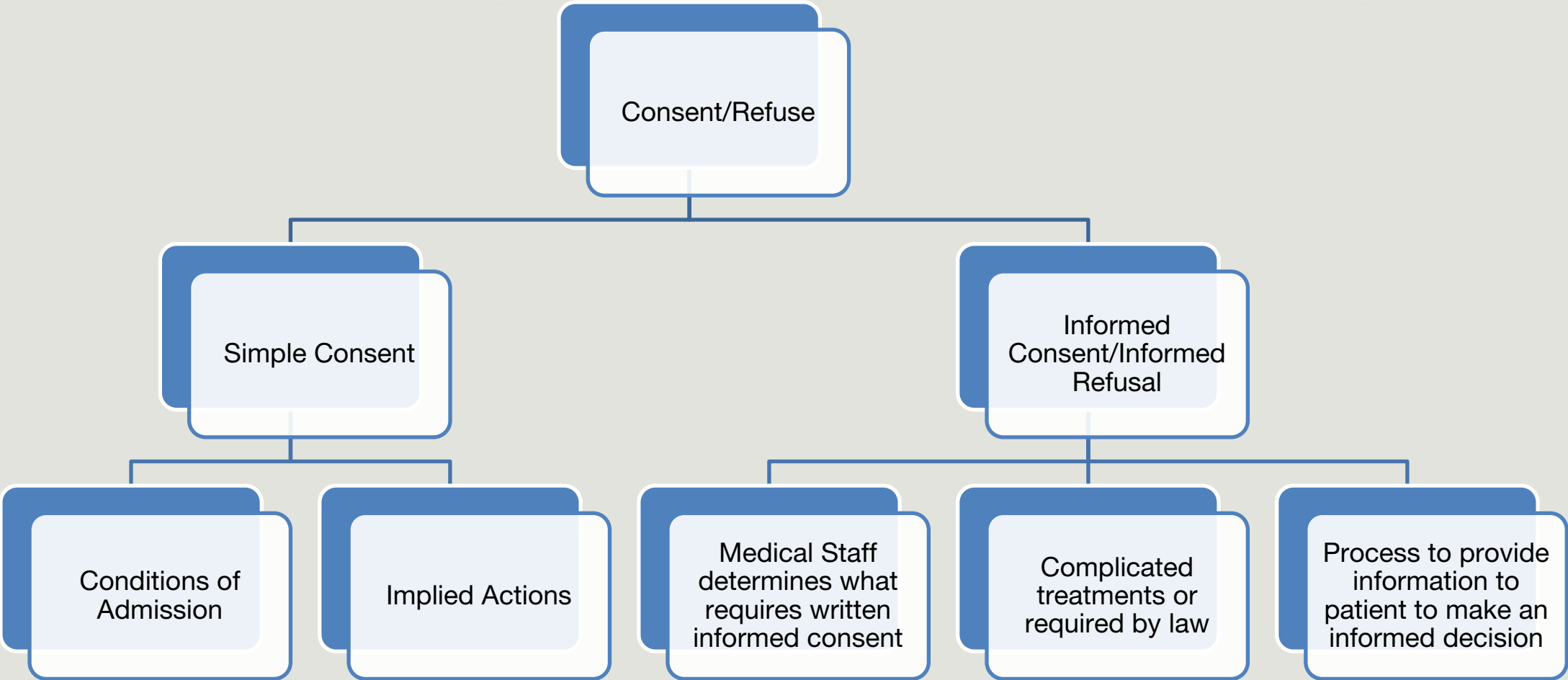
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Consent Foundational Premise

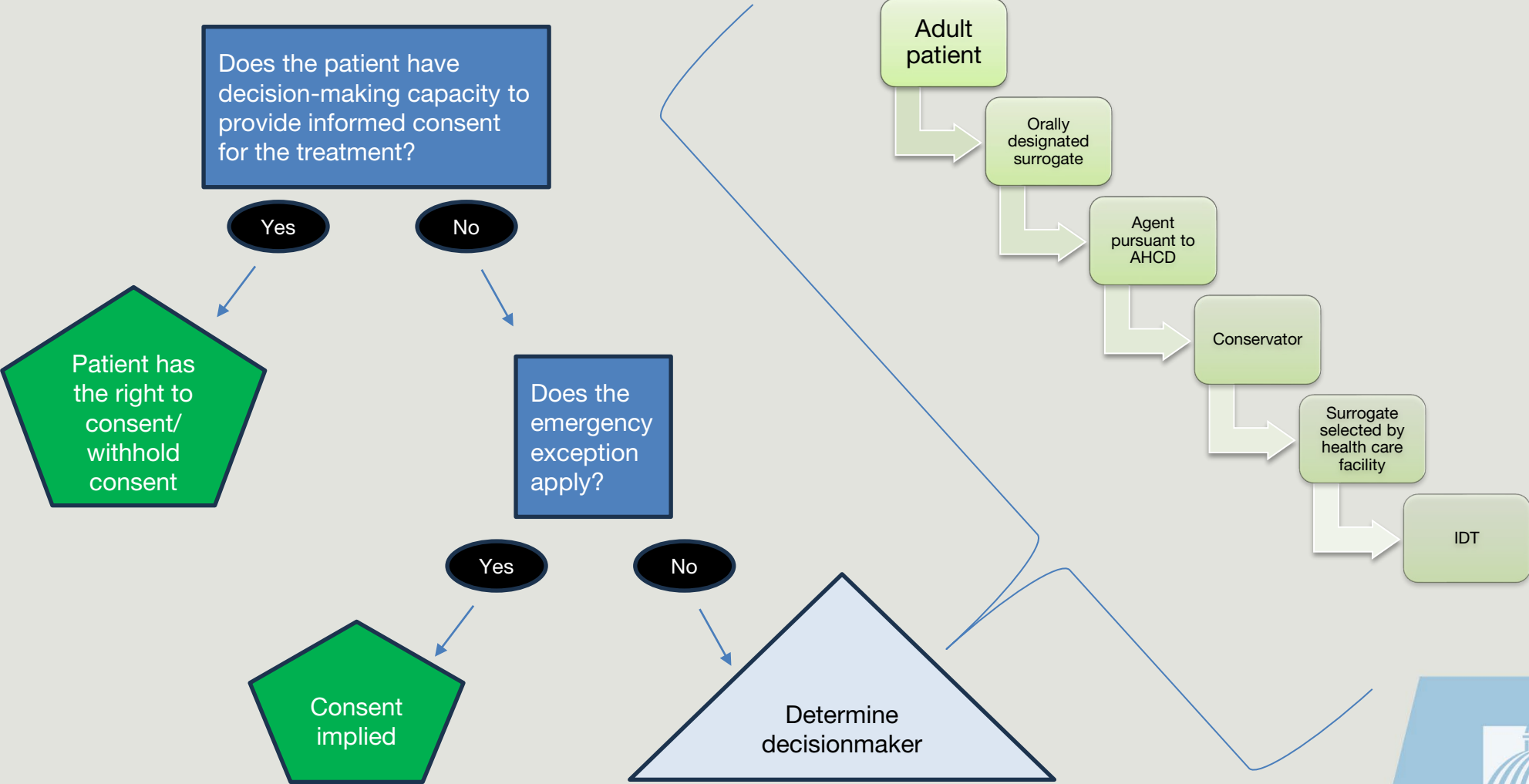
1. Every competent adult has a fundamental right of self-determination over their body.
2. A person unable to exercise this right (an incompetent adult or minor*) has the right to be represented by another person.



Right to Consent



Who Can Consent: Adults



Emergency Exception



Emergency = situation requiring immediate services for alleviation of severe pain, or immediate diagnosis and treatment of unforeseeable medical conditions, which, if not immediately diagnosed and treated, would lead to serious disability or death.

Express consent may not be required when there is an **EMERGENCY** and:

- It's impracticable to obtain consent or Patient mentally incapacitated,
- No authorized representative or unavailable; and
- There is no prior refusal for specific treatment to treat emergency.

CHA Quick Reference Guides – Decision Makers: Adults

Decision Makers for MEDICAL TREATMENT OF ADULTS			
(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, abortion and experimental treatment)			
Person who can consent to treatment		Definition	
<i>The following hierarchy must be followed:</i>			
1. Adult patient with capacity	Able to understand the nature and consequences of the decision; adult is a person age 18 or older		
2. Surrogate decision maker	Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days		
3. Agent	Appointed in an Advance Health Care Directive or Power of Attorney for Health Care		
4. Conservator	Appointed by a court		
5. Court-appointed surrogate decision maker	Court appoints a surrogate to make health care decisions		
6. Closest available relative	See "Closest Available Relative" table, below		
7. Interdisciplinary team	See "Adults Lacking Capacity and Not Under a Conservatorship" in CHA's Consent Manual for important information		
<p>Emergency Exception When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.</p> <p>Closest Available Relative</p>			
Health Care Decisions	Autopsy	Anatomical Gifts	Disposition of Remains
<p><i>No statutory hierarchy¹</i></p> <ul style="list-style-type: none"> Spouse/domestic partner Adult child Either parent Adult sibling Grandparent Adult aunt/uncle Adult niece/nephew 	<p><i>No statutory hierarchy</i></p> <ul style="list-style-type: none"> Spouse/domestic partner Adult child or parent Adult sibling Any other kin or person who has the right to control disposition of remains Public administrator Coroner or other official, such as the California Curator of the Unclaimed Dead 	<p><i>In the order listed</i></p> <ol style="list-style-type: none"> An agent who could have made an anatomical gift immediately before decedent's death Spouse/domestic partner Adult child Either parent Adult sibling Adult grandchildren Grandparent An adult who exhibited special care and concern for the decedent during the decedent's lifetime Guardian or conservator of the decedent at the time of death Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above 	<p><i>In the order listed</i></p> <ol style="list-style-type: none"> An agent named in an advance directive Spouse/domestic partner Adult child or majority of children Parent Adult sibling or majority of siblings Surviving adults in degree of kinship or a majority of the same degree Conservator of person Conservator of estate Public administrator, <i>if</i> the patient has assets
	Reference: Health and Safety Code Section 7113	Reference: Health and Safety Code Section 7150.40	Reference: Health and Safety Code Section 7100
<p>¹For general medical decisions, case law (not a statute) authorizes decisions by the "closest available relative" and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient's values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor's recommendations is not a proper criterion for selection.</p>			

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Questions?



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Thank you

