



Prepared Testimony

**House File 1560** (Gruenhagen)

**Initials required for each item of consent when requested to release health records.**

Wednesday, March 23, 2016

Testimony of Twila Brase, President and Co-founder

*Presented by Matt Flanders, Legislative Specialist*

Madame Chair and Members of the Committee,

Citizens' Council for Health Freedom often receives copies of consent forms from concerned patients. These "consent to treat" forms often include a roster of *other items* to which patients are essentially required to consent if they want access to care. That's because there's only one line for the patient's signature and nothing giving them a right to say no to the other items in the list.

**For example, look at HealthPartners' form.** It says changes aren't accepted.

Given the strong MN medical privacy laws, we look at these consolidated consent forms as the way hospitals and clinics get around the various consent requirements in Minnesota law; requirements that are stronger than those in the federal HIPAA privacy rule. The right of consent means you have a choice. If you don't have a choice, it's not actually consent.

As an example of this lack of choice, the **North Memorial form** shows nine items, including consent for treatment in item **(A)**. At the very end you're asked to sign a statement that says, "I consent to all of the above."

Above that single signature, patients are forced to consent at **B** to HIV testing for if a physician decides they should be tested.

**C** is problematic because Minnesotans by law must be asked for their consent to have data shared and used for payment, for treatment and for health care operations, as the **Mayo Notice of Privacy Practices** states.

*Minnesota law* generally requires patient consent for disclosures of protected health information by Mayo Clinic in Minnesota Entities for health care operations purposes, unless the disclosure is to a Mayo-related entity.

Again, real consent means you have a choice. But the single signature forces the patient to agree, despite how broadly defined these terms are. For example, "health care operations" is a **390**-word definition in HIPAA.

The single signature subjects patients at **D** to medical and genetic research. Their only option is to later submit a written objection. HealthPartners does it

better – they have a box -- but it’s a dissent, an opt-out, not a request for authorization as required by state law. (M.S. 144.295) Again, the Mayo Clinic Notice of Privacy Practices notes this distinction between HIPAA and Minnesota law.

*Minnesota law* generally requires patient consent for disclosures of protected health information by Mayo Clinic in Minnesota Entities to outside researchers for medical research purposes. Mayo Clinic in Minnesota Entities will obtain such consent from their patients or refusal to participate in any research study, or will make a good faith effort to obtain such consent or refusal, before releasing any identifiable information to an outside researcher for research purposes.

**E** appears careless. Do patients really want their presence disclosed to “anyone who may inquire” about them by name? How about a star-struck fan or a vengeful ex? Yet that’s what could happen under the single signature.

**And F** is only intended to give legal protection to North Memorial against patients who lose property at the facility. With one signature, patients give up these rights in order to access care. Might this provision also protect the hospital if the patient’s medical data is breached by hackers?

**G** and **I** are sweeping authorizations. To get care, the patient is forced to agree to significant releases of information, including to hospitals, clinics or providers *unrelated* to North Memorial such as other providers or accountable care organizations in which *North Memorial* participates. Again, one signature; no choice.

**H** discusses the Notice of Privacy Practices. But patients can refuse to sign this statement and still be treated -- as the Office of Civil Rights states in #4 on the document in our handout.

**So what’s missing that should be here?** Consent for use of a record locator service as required by M.S. 144.293, subd 8. North Memorial’s Notice of Privacy Practices says it “may access and share...health information electronically through a health information exchange.” The RLS is “[a key component](#)” of such exchange. Also missing is an option for the patient to NOT share data with their health plan if they pay cash. That’s a right that cash-payers have under HIPAA.

**We mailed a letter to North Memorial’s CEO** on February 26, 2015, which is in your packet, but we never received a response.

**HF 1560 is an important bill that will assure Minnesotans that their consent rights under current Minnesota law will not be violated.**

We have found a shining example of what this could look like. The **Silverman Ankle & Foot clinic**, which is part of the Allina Integrated Medical Network located in Minneapolis, already gives patients these itemized choices.

If health care facilities are going to have these consolidated forms, these types of choices should be standard practice, allowing Minnesotans to exercise their legal rights to consent or to refuse to consent. These state-mandated choices are already theirs under Minnesota law. But these consent forms violate those legal patient privacy and consent rights by a single signature and no choices.

We ask you to vote yes on HF 1560.

Thank you.