Walking Away
The Legal Minefield of Patient Refusals

Frank Robert Flaspohler

2026 KEMSA CONFERENCE & EXPO

A Run-of-the-Mill Refusal

- Susan, a 68-year-old female, fell in her kitchen earlier today
- Daughter tells of her mom's history of Alzheimer's, stroke, paranoia
- Patient misses the year twice, then corrects herself. She declines all but a limited visual assessment.
- But, she is adamant, "*Last time it cost me $700 for a headache*"
- Your vote: **Transport** or **Release**?

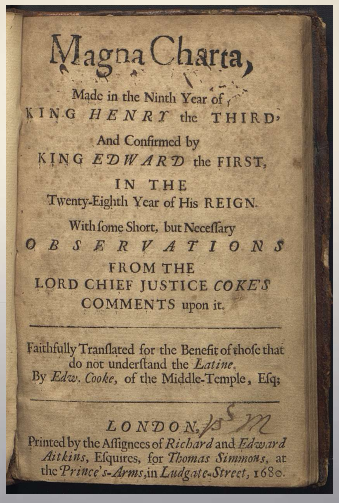


2026 KEMSA CONFERENCE & EXPO

How Information became a Right

- **No right is held more sacred**, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law… *Union Pacific R. Co. v. Botsford*, 141 US 250 (1891)

- Process of educating patients about the risks, benefits and alternatives of any particular medical intervention
- What would a reasonable person need to know to be informed enough to make a decision in this situation?


Magna Charta,

Made in the Ninth Year of KING HENRY the THIRD,

And Confirmed by KING EDWARD the FIRST, IN THE Twenty-Eighth Year of His REIGN.

With some Short, but Necessary OBSERVATIONS FROM THE LORD CHIEF JUSTICE COKE'S COMMENTS upon it.

Faithfully Translated for the Benefit of those that do not understand the Latine. By Edw. Cooke, of the Middle-Temple, Esq;

LONDON, Printed by the Assignees of Richard and Edward Atkins, Esquires, for Thomas Simmons, at the Prince's-Arms, in Ludgate-Street, 1680.

2026 KEMSA CONFERENCE & EXPO

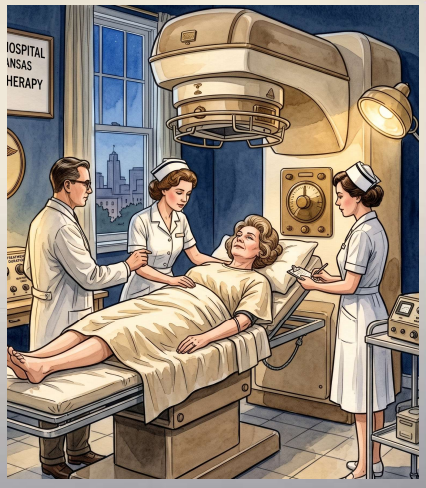
The Birthplace of Informed Consent

Where the Duty Comes From

2026 KEMSA CONFERENCE & EXPO

Natanson v. Kline (Kansas 1960)

- Irma Natanson, recovering from breast cancer and was referred by Dr. Kline for cobalt radiation treatment. **She consented to the treatment.**
- She suffered cobalt radiation burns as a result at St. Francis, Wichita
- If the treatment was not given with ***informed consent***, the clinician *who failed in his legal obligation is guilty of malpractice no matter how skillfully the treatment* may have been given.
- Patients are entitled to explanations of the risks and hazards of medical treatment.



2026 KEMSA CONFERENCE & EXPO

Liability Waits on Both Sides

- Just as informed consent must be obtained to provide care, informed refusal must be obtained to decline it.
- An uninformed refusal exposes the clinician to negligence or claims of abandonment
- But a forced transport of capacitated adult may be battery
- Refusals may be even for life-saving care



2026 KEMSA CONFERENCE & EXPO

The Kansas Liability Landscape



- Kansas preserves *sovereign immunity* for certain situations (Sect. 65-6124):
  - Clinicians giving emergency instruction
  - Clinicians implementing such instructions
  - Medical directors providing medical oversight
- Good Samaritan protection for rendering aid for minors without parental consent (Sect. 65-2891(a)).

2026 KEMSA CONFERENCE & EXPO

"Alert and Oriented" Is Not "Capacity"

The Four Abilities

2026 KEMSA CONFERENCE & EXPO

The Four Abilities for Clinical Capacity

- Patients must be able to **understand** the information about their condition
- Ensure the individual **appreciates** how the information applies to them, right now
- Are they using **reason** to consider their options?
- The patient should communicate a clear, consistent choice
- Capacity is a sliding scale – The more vital the treatment, the more information they should be given



2026 KEMSA CONFERENCE & EXPO

Assessing The Four Abilities



- **Understanding** their current situation:
  - Can you tell me what is happening to you right now?
- **Appreciate the risks** & benefits:
  - What do you think will happen if you don't get help right now?
- **Ability to reason** to a decision:
  - What factors are you considering in making this decision?
- **Communication** of Decision:
  - What do you want to do?

2026 KEMSA CONFERENCE & EXPO

Case Study #1

- You are dispatched to a rural cornfield for a 65 year old man for a patient with altered mental status. He has been out on the combine all day, and was walking around dazed. You arrive to find the patient unresponsive near his grain wagon. His spouse informs you that he suffers from insulin-dependent diabetes mellitus.
- The EMT administers a finger stick and returns with a glucose reading of 35 mg/dL. The paramedic administers dextrose 10% by IV, and the patient awakens and is alert. He indicates that he wishes to refuse transportation to the emergency department.

2026 KEMSA CONFERENCE & EXPO



Capacity that Changes

- Clinical capacity is always assessed in the moment, for that specific patient, at that specific time
  - And can be re-assessed throughout the call as needed
  - **Documentation showing re-assessment is essential prior to accepting a refusal**

2026 KEMSA CONFERENCE & EXPO

Minors and Consent

- Generally, individuals must have legal capacity to make medical decisions (over the age of 18)
- Section 65-2891 provides consent for medical care when no parent is available (but doesn't speak of refusal)
  - Minors retain the right to consent in cases of venereal disease or drug abuse
- Only parents can refuse care.



2026 KEMSA CONFERENCE & EXPO

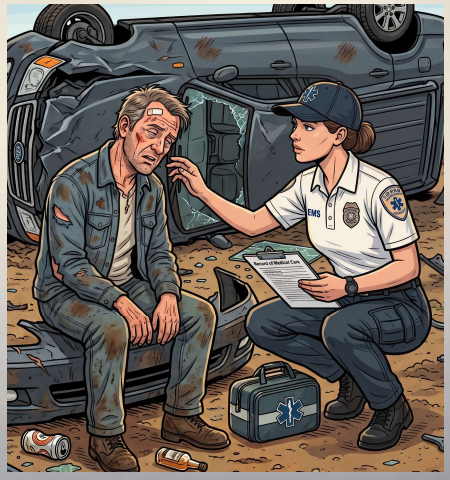
Anatomy of a Valid Refusal

R.B.A.U.

2026 KEMSA CONFERENCE & EXPO

R.B.A.U. —Prove It

- **Risks**: specific, blunt, condition-based consequences
- **Benefits**: what transport actually accomplishes
- **Alternatives**: middle paths, and persuasion evidence
- **Understanding**: teach-back, quoted in their words



Carefully document all parts of the discussion – This is your primary assessment!

2026 KEMSA CONFERENCE & EXPO

Case Study #2

- You respond to the home of a single, 47 yr old male, complaining of "feeling sick," He has a history of end-stage renal disease, and he missed his dialysis appointment last week because he lacks transportation. The home is cluttered, with trash and debris spread throughout.
- After an evaluation, his vital signs and O2 saturation are normal. But, his lung sounds reveal wheezing, and you note swelling in his extremities. After discussing the plan for transport to the hospital, he says, "Just leave me here. I'll be all right."



2026 KEMSA CONFERENCE & EXPO

Persuade but Never Coerce



- Using persuasion is the lawful approach to convincing patients to get appropriate care
  - Spend time listening to the patient's concerns
  - Involve medical control & family members
- Policy custody can be an option when needed (Section 59-2953)
  - EMS holds no detention authority of its own

2026 KEMSA CONFERENCE & EXPO

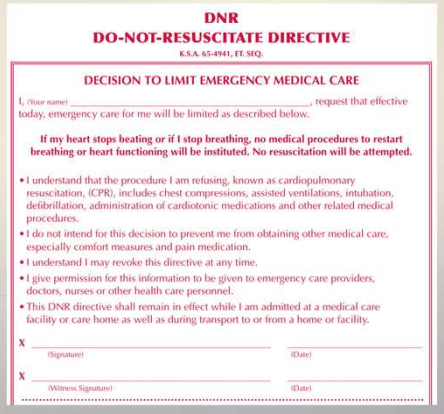
Refusals in Advance

DNRs, TPOPP, and POA's

2026 KEMSA CONFERENCE & EXPO

Kansas DNRs and TPOPP

- "Do Not Resuscitate" form is an advanced directive to refuse CPR
  - Must be signed by the patient and a witness
  - May also be signed by a physician
- Section 65-4944 gives protection to health care providers who follow DNR forms in good faith
- TPOPP is more specific for patients with serious illness (a physician's order for specific treatments)
- **Any confusion, Contact Medical Control**



DNR
DO-NOT-RESUSCITATE DIRECTIVE
K.S.A. 65-4941, ET. SEQ.

DECISION TO LIMIT EMERGENCY MEDICAL CARE

I, (Your name) _____, request that effective today, emergency care for me will be limited as described below.

If my heart stops beating or if I stop breathing, no medical procedures to restart breathing or heart functioning will be instituted. No resuscitation will be attempted.

- I understand that the procedure I am refusing, known as cardiopulmonary resuscitation, (CPR), includes chest compressions, assisted ventilations, intubation, defibrillation, administration of cardiotonic medications and other related medical procedures.
- I do not intend for this decision to prevent me from obtaining other medical care, especially comfort measures and pain medication.
- I understand I may revoke this directive at any time.
- I give permission for this information to be given to emergency care providers, doctors, nurses or other health care personnel.
- This DNR directive shall remain in effect while I am admitted at a medical care facility or care home as well as during transport to or from a home or facility.

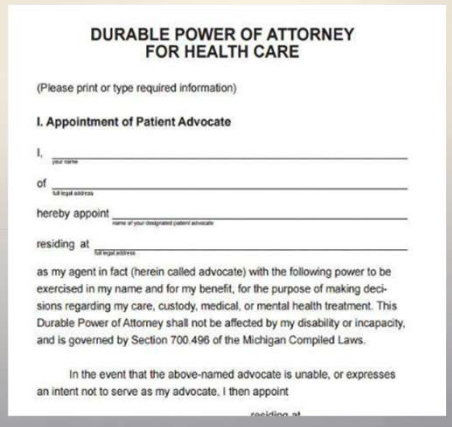
X _____ (Signature) _____ (Date)

X _____ (Witness Signature) _____ (Date)

2026 KEMSA CONFERENCE & EXPO

The Durable Power of Attorney

- A Durable Power of Attorney is typically drawn up by a lawyer, providing for a **Principal** to appoint an **Agent**
  - The Agent can make medical decisions for an individual who **cannot** for themselves
- If the patient is unable to make the decision, look for a court-appointed guardian or implied consent:
  - Medical control is the final resource.



DURABLE POWER OF ATTORNEY
FOR HEALTH CARE

(Please print or type required information)

I. Appointment of Patient Advocate

I, _____ (your name)

of _____ (full legal address)

hereby appoint _____ (name of your designated patient advocate)

residing at _____ (full legal address)

as my agent in fact (herein called advocate) with the following power to be exercised in my name and for my benefit, for the purpose of making decisions regarding my care, custody, medical, or mental health treatment. This Durable Power of Attorney shall not be affected by my disability or incapacity, and is governed by Section 700.496 of the Michigan Compiled Laws.

In the event that the above-named advocate is unable, or expresses an intent not to serve as my advocate, I then appoint

residing at

2026 KEMSA CONFERENCE & EXPO

Building the Bulletproof Narrative

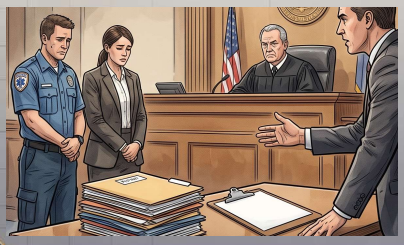
The Defensible PCR

2026 KEMSA CONFERENCE & EXPO

Different Crews, Different Outcomes

- The proper process and complete documentation wins before the Board of EMS & the courts
- Attention and care to the patient was all properly documented.
- The variable was the documentation

- Clinicians can suffer significant penalties, including loss of license
- Falsification turns negligence into dishonesty (which can be criminal)
- Signature forms without support persuade no one





2026 KEMSA CONFERENCE & EXPO

Double Check Your Refusal Narrative

- "Alert and oriented" is never sufficient
- Ensure you've included the facts of your basic assessment (this is what you base your recommendation on): vitals, functional capacity, specific risks
- A detailed discussion of R.B.A.U.
- Include specific quotes from patients and family
- **Document the conversation, not the conclusion**



2026 KEMSA CONFERENCE & EXPO

The Verdict — and Four Rules

- Clinical Capacity is an assessment based upon your professional judgment. Make sure you exercise it carefully.
- Documentation is your strongest defense in the courtroom. Always write your reports as if you'll be reading them to a judge.
- Watch for special situations that may provide for changes in capacity (ETOH, diabetics, head injury)
- **R.B.A.U.** outlined by discussion in every refusal

You're not going to like everyone you come in contact with and sometimes you're going to be tired and may not want to be there, but as long as you are there, remember that complacency kills.

The minute you begin to treat people differently or cut corners, someone is going to die…

2026 KEMSA CONFERENCE & EXPO


EMS Legal Services, LLC
Frank Robert Flaspohler
(660) 537-9031 – frank@emslegalservices.com
THANK YOU FOR JOINING ME TODAY!
2026
KEMSA
CONFERENCE & EXPO