8.07 HEALTH CARE PROVIDER MALPRACTICE – CONSENT ON BEHALF OF ANOTHER

In this case [insert name of patient] could not consent to [insert treatment or procedure] because [insert reason for inability to consent]. Under such circumstances, the law of Alaska allows [insert name] to consent to the [treatment] [procedure] on behalf of [insert name of patient]. You must decide, in accordance with the following instructions, whether [insert name of person authorized to consent] gave informed consent on behalf of [insert name of patient].

# Use Note

This instruction should be given before the other consent instructions (8.03, 8.04 or 8.06) in cases where the law requires someone other than the patient to give consent to the proposed treatment.

# Comment

There is little law in Alaska identifying whose consent is necessary in different situations. In most jurisdictions, the consent of a parent or guardian is required if the patient is a minor or incompetent. W. Keeton and W. Prosser, Handbook on the Law of Torts § 18 (5th ed. 1984). Several statutory provisions in Alaska recognize exceptions to this rule. See, e.g., AS 25.20.025 (when a minor may consent to medical and dental services) and AS 18.16.010 (consent to abortion).

This instruction is not appropriate for cases where a person’s authority to give consent depends on a factual resolution such as whether the patient was incapacitated by a sedative. The situations in which a person’s authority may be disputed are so rare and diverse that no pattern instruction can be offered.