

1 **13-1108. Consent; competency.**

2 When required, consent must be obtained at a time when the person giving consent is able
3 to understand what ~~[[he]-[she] is]~~they are doing.

4 USE NOTES

5 Withdrawn

6 [As amended, effective January 1, 1987; August 15, 1997; approved, effective February 24, 1998;
7 as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending or
8 filed on or after December 31, 2025.]

9 **Committee commentary.** — Even where consent is manifest in the words or conduct of the
10 patient, the patient may challenge ~~[his]~~their competency to consent. *Demers v. Gerety*, 1973-
11 NMCA-134, 85 N.M. 641, 515 P.2d 645~~[(1973)]~~, *rev[-]’d on other grounds*, 1974-NMSC-010,
12 86 N.M. 141, 520 P.2d 869, on remand, 1974-NMCA-123, 87 N.M. 52, 529 P.2d 278~~[(Ct. App.)]~~,
13 *cert. denied*, 87 N.M. 47, 529 P.2d 273 (1974). Competency to consent is presumed; the patient
14 carries the burden of persuasion where competency is challenged. *See Grannum v. Berard*, 422
15 P.2d 812~~[-25 A.L.R.3d 1434]~~ (Wash. 1967).

16 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]