

Beaumont Hospitals®

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PATIENTS WITH DECISION-MAKING CAPACITY

Adult patients are presumed to have the capacity to decide about their treatment unless demonstrated otherwise.

Decision-making capacity requires the patient to have the ability to make and communicate a decision that reflects an understanding and appreciation of the nature and consequences of the proposed and alternate actions and to evaluate them in relation to personal preferences and priorities.

The attending physician has the responsibility for determining each patient's decision-making capacity. If the attending physician is uncertain about the patient's decision-making capacity, the physician will request a consultation from another staff physician, preferably a psychiatrist, neurologist, or a gerontologist or from a fully licensed psychologist and/or consult another staff physician to assist in defining the patient's decision-making capacity.

If a patient with decision-making capacity chooses a non-resuscitation or limited support alternative, this is the patient's choice and it may not be overridden by contrary view of either his/her attending physician or family members. When the patient's physician disagrees with the patient's decision, it remains the physician's responsibility to write the order according to the patient's wishes or arrange for transfer of care to another physician.

The patient's decision shall remain in effect if the patient subsequently becomes incapacitated and if the anticipated outcome has not changed significantly.

PATIENTS WITHOUT DECISION-MAKING CAPACITY

If, in the judgment of the attending physician, the patient is incapable of making informed decisions, the physician should consult the surrogate decision maker.

The surrogate decision maker may be an individual named in advance by the patient to act in this capacity, next of kin, or guardian. The surrogate should make decisions of care based on the patient's wishes.

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PROCEDURE FOR WITHDRAWING OR WITHHOLDING LIFE SUSTAINING TREATMENT FOR ALL PATIENTS

- A. Before concurring in a request to withdraw or withhold life-sustaining treatment, the attending physician may desire to seek consultation concerning questions of diagnosis, prognosis, and alternative therapies. Although such consultations are not required, their utilization in this process is encouraged. In addition, the physician may want to seek other consultation or distribute educational materials to the patient or to the patient's family.

An attending physician must document in the patient's medical record:

(1) the patient's medical condition and prognosis, (2) the discussion the attending physician had with the patient/surrogate decision maker regarding the patient's condition, prognosis and alternative treatment modalities, and (3) the patient's/surrogate decision maker's ultimate decision and rationale for that decision. The physician of record must be notified and concur with a decision to withhold or withdraw life sustaining treatment or a clinical ethics consultation should be initiated.

Consultations and any material provided to the patient and/or family should be documented in the medical record.

Approval of next-of-kin to withdraw or withhold life-sustaining treatment from a medically competent, adult patient is not required. Objection of surrogate decision maker/family members is not sufficient to overrule the informed decision of a medically competent adult patient.

The surrogate decision maker should, however, be informed of the patient's decision and of the physician's intent to comply with that decision unless the patient requests that his/her decision be kept confidential.

- B. If the attending physician and patient/surrogate decision maker disagree as to the course of treatment, consultation with another physician is encouraged. If the disagreement is not resolved, a clinical ethics consultation may be requested. (See Patient Care – Corporate Manual, Policy #309 “**Clinical Ethics**”).

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FOR ALL PATIENTS (Cont'd)**

If the disagreement between physician and patient/surrogate decision maker cannot be resolved, the attending physician should make appropriate arrangements to transfer the patient to another physician within the hospital or to another health care facility willing to honor the patient's/surrogate decision maker's treatment decisions. If it is impossible to transfer the patient to another physician or facility, it is the patient's/surrogate decision maker's option to sign out against medical advice.

During the period that the disagreement remains unresolved, treatment should continue. If the conflict remains unresolved, the attending physician must contact Medical Administration or the Department of Legal Affairs.

The attending physician remains responsible for the patient until the care is formally transferred to another physician.

- C. In the following cases, the attending physician may not withdraw or withhold treatment, or transfer the patient until an attending physician has discussed the case with the Department of Legal Affairs:
- 1) A pregnant adult
 - 2) An adult with minor children as dependents
 - 3) A patient who is a prisoner referred for medical care
 - 4) A patient who is a victim of an act or omission out of which prosecution might arise
 - 5) No Legal guardian, DPOA for Health Care, or qualified family member (spouse, adult child, parent, adult sibling) available
 - 6) The patient's parent is a minor
 - 7) The patient has never been competent
- D. To ensure adequate communication regarding a patient's/surrogate decision maker's treatment decisions only the attending physician or his/her designee may order withdrawing or withholding life sustaining treatment where death is likely to follow. This must be a written order. The attending physician should ensure appropriate control of symptoms after withdrawal of an intervention and appropriate support of family members at the bedside leading up to and following the death of the patient.

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E. For patients without decision-making capacity the attending physician or designate should inquire about and document review of the following:

- 1) The existence of current Letters of Guardianship evidencing the appointment of a legal guardian by the Probate Court.
- 2) The existence of a Durable Power of Attorney for Health Care authorizing an individual to act as patient advocate, that is, to make decisions on the patient's behalf when the patient is no longer capable of making them for himself/herself. By law, the patient advocate cannot make decisions to withhold or withdraw life-sustaining treatment unless the Durable Power of Attorney for Health Care contains a statement that the patient understands withdrawing or withholding treatment could result in death and specifically authorizes the patient advocate to make such decisions. A Durable Power of Attorney for Health Care is binding in Michigan.
- 3) The existence of a Living Will or other written document expressing the patient's wishes regarding withholding or withdrawing life sustaining treatment that the patient signed when he/she was competent. Although a Living Will is not authorized by statute in Michigan, it does provide evidence of the patient's intentions concerning these matters.
- 4) Any oral directives that the patient might have given to a family member, friend or other health care provider regarding life sustaining treatment.
- 5) The patient's philosophical and/or religious beliefs, if appropriate.

F. If the wishes of the patient without the decision-making capacity cannot be determined, and the attending physician has reason to question whether the surrogate decision maker is acting in the patient's best interest, withdrawing or withholding

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life-sustaining treatment may be delayed until further appropriate information/consultation is obtained, including consultation with Legal Affairs as appropriate, and consultation with the Clinical Ethics Consultation Service is encouraged.

G. An attending physician must document in the incompetent patient's medical record: (1) the patient's medical conditions and prognosis, (2) that the attending physician has reviewed any available written Advance Directive, (3) the discussions that the attending physician has had with the legal guardian, patient advocate or family regarding the patient's condition, prognosis and alternative treatment modalities and (4) consent of the legal guardian, patient advocate or family to the withdrawal or withholding of life sustaining treatment.

H. The decision to withhold or withdraw treatment from an Incompetent Patient who is Terminally Ill or Permanently Unconscious must be made by the patient's attending physician, and consultation with others as appropriate is encouraged when there are questions about diagnosis, prognosis, or alternative therapies. A decision to withhold or withdraw treatment should be supported by the other physicians caring for the patient. Their consultation and agreement with the plan to withhold or withdraw treatment should be included in the record. In the event of differences of opinion among the staff, consultation with the Clinical Ethics Consultation Service is encouraged.

ADDITIONAL REQUIREMENTS IN WITHDRAWING OR WITHHOLDING LIFE SUSTAINING TREATMENT FROM A MINOR

A. Generally, under Michigan law, a person less than age 18 is considered to be a minor whose parents are the principal decision makers regarding medical treatment decisions.

However, if the attending physician and parents believe the minor child possesses the maturity to participate in a decision to withdraw or withhold life-sustaining treatment, that participation should be allowed. In assessing the minor child's maturity, the attending physician and parents should consider the factors enumerated in the initial paragraphs of this policy.

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ADDITIONAL REQUIREMENTS IN WITHDRAWING OR WITHHOLDING LIFE SUSTAINING TREATMENT FROM A MINOR (Cont'd)

- 1) Only an attending physician may order and act upon an order to withdraw or withhold life-sustaining treatment when death is likely to immediately follow (e.g., withdrawal of a ventilator). In such instances the attending physician may not delegate this responsibility to the resident staff and/or nursing staff.
- 2) If the parents of a minor are divorced or separated and do not agree about a decision to withdraw or withhold life sustaining treatment, the Department of Legal Affairs should be consulted.

B. Emancipated Minors

An emancipated minor may participate in his/her medical treatment decisions and consent to withdrawing or withholding life sustaining treatment. For this purpose, the emancipated minor is treated as an adult.

A minor, defined as a person less than 18 years of age, is emancipated in each of the following circumstances:

- 1) When a minor is validly married;
- 2) When a minor is on active duty with the United States Armed Forces;
- 3) When the Family Division of Circuit Court has entered an order of emancipation.

An emancipated minor may validly participate in and consent to treatment decisions. Refer to the Sections pertaining to the adult patient (above).

GOVERNING POLICY

This policy is to be considered the governing policy of Beaumont Hospitals. All previous policies not in conformity with this policy are no longer valid.

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