

	Patient Care	Policy # 7.022	
	Subject:	Sponsor: Risk Management	
	Withholding or Withdrawing of Life-Sustaining Treatment (Including Guidance on Futile Medical Treatment)	Effective: October-01 Reviewed: October 2010 Revised: June 2007 Review Due: October 2011	
	Reference: Act 169 of 2006: Advance Directive for Health Care Act; 42 CFR 482.1313 (b)(2) interpretive guidelines 4/13/07		Page 1 of 10

POLICY:

It is the policy of Hahnemann University Hospital to recognize the right of every competent adult patient to determine which medical treatments to accept, and which to forego (refuse). This policy is based on consideration of ethical, legal and moral principles recognizing the autonomy of patients with intact decision-making capacity. When a patient lacks decision-making capacity, the patient's health care agent or health care representative should be consulted and may assume the decision making process on behalf of the patient. (See attachments.)

PURPOSE:

To delineate guidelines for the withholding or withdrawing of life-sustaining medical treatment in accordance with parameters established by the Medical Staff of Hahnemann University Hospital.

GENERAL PRINCIPLES:

Hahnemann University Hospital recognizes the right of patients to actively participate in decisions regarding their medical care.

Competent adults have the right to make decisions about recommended medical treatments after they have been fully informed of the risks, benefits, and alternatives to the prescribed treatment. This decision-making right not only includes the right to accept the treatment, but also the right to forego (refuse) the treatment offered. (See Hospital Policy – Informed Consent).

Withholding or withdrawing of life-sustaining treatment can apply in both a setting where the treatment has not yet been initiated (withholding treatment), and a setting where the treatment is ongoing but is no longer thought to be desired (withdrawing treatment). This is true regardless of the outcome of withholding or withdrawing the therapy. In fact, being able to withdraw therapy that has proven to be ineffective enables physicians and patients to consider using treatments, whose initial value may be uncertain, until such time as more information can be gathered.

Treatments that patients may decide to withhold/withdraw include, but are not limited to, ventilator support, chemotherapy, surgery, feeding tubes, dialysis, antibiotics, and transfusion. In addition, a decision to forego one particular lifesaving treatment does not necessarily carry over to another lifesaving treatment. The use of cardiopulmonary resuscitation (CPR) is covered under Hospital Policy, Level of Care and Cardiopulmonary Resuscitation.

This hospital recognizes the right of competent patients to actively participate in decisions regarding their medical care. If a patient's decision-making capacity is in question refer to Hospital Policy, Health Care Decision-Making for the Competent and Incompetent Individual.

As long as the patient's decision-making capacity remains intact, discussion with the patient should take priority over a written document and/or the wishes of the health care agent/representative. (See Hospital Policy, Advance Directives).

Regardless of such a decision, the dignity, social, psychological and spiritual well being of the patient will be respected at all times. In addition, all nursing and comfort measures to relieve pain and

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suffering and provide hygienic care will be provided to all patients at all times.

Physicians and other health care providers may decline to participate in any course of action that would violate their ethical or religious beliefs. When indicated, physicians should take appropriate steps to transfer the care to another physician chosen by the patient or surrogate. (See Hospital Policy, Patient Care Staff Members' "Right of Conscience").

Chaplain resources are available upon request of the patient and/or family (See Hospital Policy, Care of the Dying Patient).

LIMITED RESTRICTIONS FOR PREGNANCY

Life-sustaining treatment, including nutrition and hydration, must be provided to an incompetent pregnant woman, and who has an end stage medical condition or is permanently unconscious, in spite of the existence of a Living Will. However, if both the attending physician and an obstetrician who has examined the patient believe (with a reasonable degree of medical certainty) that life-sustaining treatment:

1. Will not maintain the pregnant woman in such a way as to permit the continuing development and live birth of the fetus.
2. Will be physically harmful to the pregnant woman; or
3. Would cause pain to the pregnant woman which cannot be alleviated by medication,

Then the patient's written declaration can be followed and the life-sustaining treatment withdrawn. The legislation does not require physicians to perform pregnancy tests unless he/she has reason to believe that the woman may be pregnant.

*Risk Management may be consulted to explain the restrictions which Pennsylvania Law places on the use of Advance Directives during pregnancy.

ETHICS COMMITTEE CONSULT

The Ethics Committee is available to help attending physicians, families, patients, and other health care professionals evaluate and manage issues, which include, but are not limited to:

- evaluating evidence of a patient's previously expressed wishes,
- resolving disagreements with respect to withholding or withdrawing support or treatment,
- facilitating communication between the involved parties,
- provide guidance in cases where uncertainty or disagreement remains.

Recommendations from the Ethics Committee will be **advisory only**, and will be documented in the patient's medical record. (See Hospital Policy, Ethic Committee Consults).

ROLE OF THE PHYSICIAN

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The patient's attending physician shall be responsible for determining the patient's diagnosis and prognosis. A second medical opinion by another physician to confirm the diagnosis and prognosis is optional, but not required.

Promptly, after a determination that the patient has an end-stage medical condition or is permanently unconscious, the attending physician shall certify in writing that the patient has, an end-stage medical condition or is permanently unconscious

It is the role of the physician to initiate discussions regarding treatment alternatives with the patient and/or health care agents/ representatives).

Before making a health care decision the patient, or if patient unable to participate in decision making, the health care agent or health care representative shall gather information on the patient's prognosis and acceptable medical alternatives regarding diagnosis, treatments, and supportive care. This information is usually provided by the attending physician and other members of the health care team.

In the case of health care decisions regarding end of life of a patient with an end-stage medical condition, the collected information is to distinguish between:

1. Curative alternatives, palliative alternatives, and alternatives that will merely serve to prolong the process of dying.
2. The patient's end-stage medical condition and any other concurrent disease, illness or physical, mental, cognitive or intellectual condition that predated the patient's end-stage medical condition.

The physician is responsible for documenting the patient's or health care agent/representative's decision on the Level of Care Form and in the medical record in sufficient detail so that the rationale for any decision to forego or withdraw life sustaining treatment is explained. Since changes in the patient's condition may affect the decision to forego life-sustaining treatment, the patient's condition needs to be closely monitored and discussed with the patient or surrogate.

In cases where there is a conflict or the physician feels that a health care agent/representative is clearly not acting in the patient's best interest, the physician may request assistance from the Ethics Committee or consult Risk Management.

ROLE OF NURSING AND ANCILLARY DEPARTMENT PERSONNEL

It is the role of nursing and other ancillary patient care providers to assist and support the patient, significant others and the physician(s) during the decision-making process.

Personnel should communicate to the physician any information shared by the patient or surrogate, which may be relevant to the issue.

PROCEDURE FOR WITHDRAWING TREATMENT:

It is the desire of Hahnemann University Hospital that the attending physician be actively involved and

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present during the disconnection of cardiorespiratory support systems. Except as indicated below, this responsibility **cannot** be delegated to junior house staff, nursing personnel, students, or other employees.

The hospital realizes that due to urgent and emergent commitments, presence of the attending physician may not be possible. In such circumstances, the senior resident or fellow may act as his/her designee during the procedure to disconnect cardiorespiratory support systems. Prior to this procedure, the senior resident or fellow will notify the attending physician and carry out the procedure as directed by the attending physician. This discussion must be appropriately documented in the patient's medical record. The senior resident or fellow **may not** delegate this responsibility.

FUTILE MEDICAL TREATMENT

A health care provider or another person may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed and an act of unprofessional conduct as a result of refusing to comply with a direction or decision of an individual based on a good faith belief that compliance with the direction or decision would be unethical or, to a reasonable degree of medical certainty, would result in medical care having no medical basis in addressing any medical need or condition of the individual.

The patient or his/her health care agent/ representative has the right to make informed decisions regarding medical care. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

PROCEDURE

When an attending physician determines a current or requested course of treatment is medically futile, the physician must inform the patient or health care agent/representative of the following: the nature of the ailment, the prognosis, the reasons why the treatment is medically futile, the options including palliative treatment and hospice. This should include a discussion of the goal of care. The assistance of a third party, such as a nurse, social worker, chaplain, or informed relative, may be sought to facilitate the patient's or decision-maker's understanding of the physician's explanation.

Forgoing medically futile treatment does not constitute abandonment; rather it reinforces the commitment to continue the provision of palliative treatment.

The attending physician must certify the end-stage medical condition or that the patient is permanently unconscious in the medical record.

The attending physician should document in the patient's chart that the treatment under consideration is medically futile and a discussion with the patient or authorized decision-maker has occurred.

Exceptional reasons may exist for providing treatment that is medically futile for short periods of time in order to provide special accommodations to the patient and family.

Conflict resolution:

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1. Communication: Every effort should be made to resolve conflicts about providing treatment that is medically futile through respectful discussion among parties involved in the dispute.
2. Second opinion: If, after reasonable effort, agreement is not reached between the attending physician and the patient or authorized decision-maker regarding treatment that is medically futile, the attending physician is encouraged to obtain an independent medical opinion. This second medical opinion should be from a physician who is not a member of the attending physician's group and who has personally examined the patient and signed a note documenting his/her findings in the chart.

If disagreement about the provision of treatment that is medically futile continues, the case should be referred to the hospital Ethics Committee for review.

1. If the committee's decision coincides with the patient's desires but the attending physician remains unpersuaded, arrangements will be made by the attending physician for the transfer of the patient to another attending physician within the institution.
2. If the committee's decision coincides with the physician's judgment but the patient or authorized decision-maker remains unpersuaded, arrangements for transfer of the patient to another institution may be sought. The accepting institution and physicians should be comfortable honoring the patient's or authorized decision-maker's wishes.
3. If transfer is not possible because no institution/ physician can be found to follow the patient's or authorized decision-maker's wishes, then Hahnemann University Hospital's legal counsel will be consulted to assist in the decision that treatment in question need not be provided.

APPROVALS:

Ethics Committee: October 2010

Medical Executive Committee: November 2010

Administration: November 2010

Michael P. Halter
Chief Executive Officer

ATTACHMENT A

DEFINITIONS

COMPETENT – a condition in which an individual, when provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to do all of the following:

- Understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision;
- Make that health care decision on his/her own behalf;
- Communicate that health care decision to any other person

This term is intended to permit individuals to be found competent to make some health care decisions but incompetent to make others.

END-STAGE MEDICAL CONDITION – an incurable and irreversible medical condition in an advanced state caused by an injury, disease or physical illness that will, in the opinion of the attending physician, to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. Except as specifically set forth in an advance directive, the term is not intended to preclude treatment of a disease, illness or physical, mental, cognitive or intellectual condition, even if incurable and irreversible and regardless of severity if both the following apply:

- The patient would benefit from the medical treatment, including palliative care and
- Such treatment would not merely prolong the process of dying.

(there is no life-expectancy parameter)

HEALTH CARE – any care, treatment, service or procedure to maintain, diagnose, treat or provide for physical or mental health, custodial or personal care, including any medication program, therapeutical and surgical procedure and life-sustaining treatment.

HEALTH CARE AGENT - an individual designated by a patient in an advance health care directive.

HEALTH CARE DECISION – a decision regarding an individual’s health care, including, but not limited to, the following:

- Selection and discharge of a health care provider
- Approval or disapproval of a diagnostic test, surgical procedure or program of medication
- Directions to initiate, continue, withhold or withdraw all forms of life-sustaining treatment, including instructions not to resuscitate.

HEALTH CARE REPRESENTATIVE – is a person(s) who may help make health care decisions for the patient when the patient is incompetent and does not have an appointed legal guardian and has not designated an individual in a written advance directive.

HEALTH CARE POWER OF ATTORNEY - is writing made by a patient designating an individual to make health care decisions for the patient.

INCOMPETENT – a condition in which an individual despite being provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to be:

- Unable to understand the potential material benefits, risks and alternatives involved in the specific proposed health care decisions,
- Unable to make that health care decision on his/her own behalf, or
- Unable to communicate that health care decision to any other person.

This term is intended to permit individuals to be found incompetent to make some health care decisions but competent to make others.

LIFE-SUSTAINING TREATMENT is any medical procedure or intervention that, when administered to a patient who has an end-stage medical condition or is permanently unconscious, will serve only to prolong the process of dying or maintain the patient in a state of permanent unconsciousness. In the case of an individual with an advance health care directive or order, the term includes nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the advance health care directive or order so specifically provides.

LIVING WILL - is a writing that expresses a patient's wishes and instructions for health care and health care directions when the patient determined to be incompetent and has an end-stage medical condition or is permanently unconscious.

PERMANENTLY UNCONSCIOUSNESS – a medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and the capacity for interaction with the environment. It specifically includes, without limitation, an irreversible vegetative state or an irreversible coma.

REASONABLY AVAILABLE – an individual is readily available to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual's health care needs.

ATTACHMENT B

HEALTH CARE AGENT

The person(s) named in a health care power of attorney (POA)

There is no requirement that the patient be permanently unconscious or have an end-of-life medical condition for an agent to direct the withholding or withdrawing of health care necessary to preserve life. However, in the absence of the one of these conditions, physicians should take special care to determine that the agent is following the prescribed decision-making process. (the health care provider needs to read the written POA form to determine exactly what powers the individual has given to his/her agent).

The designation of a spouse as a patient's agent is deemed revoked as of the time the divorce action is filed if either the spouse or patient files for divorce, unless the POA clearly provides otherwise.

Except as expressly provided otherwise in a POA, a health care agent shall have the authority to make health care decisions and to exercise any right and power regarding the patient's care, custody and health care treatment that the patient could have made and exercised. The agent's authority may extend beyond the patient's death to make anatomical gifts, dispose of the remains and consent to autopsies.

HIPAA - Unless specifically provided otherwise in the POA, an agent has the same rights and limitations as the patient to request, examine, copy and consent or refuse to consent to the disclosure of medical or health care information.

Unless related by blood, marriage or adoption, a health care agent may not be the patient's attending physician or other health care provider, nor an owner, operator or employee of a health care provider in which the patient is receiving care.

A patient may have joint agents of equal priority. Usually the members will agree on a course of action after consultation with the patient's health care team. However, in some cases there may be disagreement.

- In the case of joint agents with equal priority, no decision can be made unless they agree. (when there is a written advance directive)
- In any event, the lack of agreement does not preclude the administration of medical treatment in accordance with accepted standards of medical practice in the meantime.

ATTACHMENT C

HEALTH CARE REPRESENTATIVES

(When patient does not have a Power of Attorney)

A health care representative may make a health care decision for a patient whose attending physician has determined that the patient is incompetent if:

- The patient is at least 18 years of age, or has graduated from high school, or has married or is an emancipated minor;
- The patient does not have a health care power of attorney; or
- The patient's health care agent is not reasonably available or has indicated an unwillingness to act and no alternative health care agent is reasonably available; and
- A guardian of the person to make health care decisions has not been appointed by the court

An individual of sound mind may, by a signed writing or by personally informing the attending physician or the health care provider, designate one or more individuals to act as a health care representative. In the absence of a designation or if no designee is reasonably available any member of the following classes, in descending order of priority, who is reasonably available, may act as health care representative:

1. Spouse, unless an action for divorce is pending, and the adult children of the patient who are not the children of the spouse
2. Adult child(ren)
3. Parent(s)
4. Adult brother(s) or sister(s)
5. Adult grandchildren
6. An adult who has knowledge of the patient's preferences and values, including but not limited to, religious and moral beliefs, to assess how the patient would make health care decisions.

A patient may by verbally telling the physician or by signed writing, including a health care power of attorney, provide for a different order of priority.

An individual with a higher priority who is willing to act as a health care representative may assume the authority to act notwithstanding the fact that another individual has previously assumed that authority.

Unless related by blood, marriage or adoption, a health care representative may not be the patient's attending physician or other health care provider, nor an owner, operator or employee of a health care provider in which the patient is receiving care.

Upon assuming authority, a representative is required to promptly inform the other members of the patient's family who fall within the default class and can readily be contacted.

When there is no identified health care agent in an Advance Directive, it is preferable for the next of kin who provides initial consent to remain the responsible party for all medical decisions.

A patient may have multiple representatives in the highest priority class. Usually the members will agree on a course of action after consultation with the patient's health care team. However, in some cases there may be disagreement.

- In the case of multiple representatives of equal priority, the attending physician may rely on the decision of the majority.
- But if the representatives are equally divided, then no decision may be made until the representatives resolve their differences. (an individual having a lower priority may not break the tie or serve as the patient's representative)
- In any event, the lack of agreement does not preclude the administration of medical treatment in accordance with accepted standards of medical practice in the meantime.

A family meeting and/or an Ethics consultation may be initiated to provide guidance. If consensus is not possible, the Director of Risk Management or the Administrator-On-Call should be contacted to determine the appropriate course of action.

If a patient's health care representative cannot be identified, Case Management/Social Work will notify the Director of Risk Management who will determine if a Guardianship Petition will be initiated.