

FHCDA Hospital Form 5 – Adult Patient Without a Surrogate: Authorization to Withhold or Withdraw Life-Sustaining Treatment including DNR

This form shall not be used if the patient has appointed a health care proxy and the agent is available.

Name of Patient _____

I. Determination of Incapacity

1. Initial Determination of Incapacity

I have determined to a reasonable degree of medical certainty that the patient lacks capacity to make the decision as follows: _____. I found that the cause and extent of the patient's incapacity are _____ and the likelihood that the patient will regain decision-making capacity is _____.¹

Attending Physician²

Signature

Date/Time

2. Concurring Determination of Incapacity

I have independently determined to a reasonable degree of medical certainty that the patient lacks capacity to make this decision. I found that the cause and extent of the patient's incapacity are _____ and the likelihood that the patient will regain decision-making capacity is _____.

Name of Practitioner³

Signature

Date/Time

II. Patient's Prior Decisions

In some cases, the patient may have made decisions about health care prior to losing capacity that are relevant to the decision under consideration at this time. Prior decisions may include specific consents for treatment or decisions to forgo specific interventions. If the patient's prior decisions are known and relevant to the decision being contemplated at this time, the attending physician shall rely on the patient's prior decision in making treatment decisions. The attending physician must document these prior decisions in the medical record.

1. ___ To the best of my knowledge, the patient has made no prior decisions with regard to withholding or withdrawing life-sustaining treatment.
2. For those prior decisions to withhold or withdraw life-sustaining treatment, including DNR, the patient previously made the following decision(s):

Check as applicable:

a. ___ Consent to a Do Not Resuscitate Order

___ Consent to withdraw or withhold the following other life-sustaining treatment(s): _____

1 If the patient lacks decision-making capacity because of mental illness or mental retardation or developmental disability, special rules apply to the determination.

2 The FHCDA defines attending physician as a physician selected by or assigned to a patient pursuant to hospital policy who has primary responsibility for the treatment and care of the patient. When more than one physician shares responsibility, or where a physician is acting on the attending physician's behalf, any such physician may act as the attending.

3 The FHCDA requires hospitals to adopt written policies identifying the training and credentials of health or social services practitioners qualified to provide a concurring determination of incapacity.

- b. The patient made the decision in the following manner. EITHER:
- (i) _____ orally during hospitalization in the presence of the two witnesses listed below, both of whom are eighteen years of age or older, at least one of whom is a health or social services practitioner affiliated with the hospital (Witnesses must sign below):

_____	_____	_____
Witness 1	Signature	Date/Time
_____	_____	_____
Witness 2	Signature	Date/Time

OR

- (ii) _____ in writing (e.g., a living will. Include writing in chart).

3. If the patient stated that his or her consent to withdraw or withhold treatment would become effective under the following specific clinical or other circumstances, _____, I have determined that such circumstances are now present, and the consent is now effective.

_____	_____	_____
Attending Physician	Signature	Date/Time

III. Document Lack of Surrogate

I, or someone acting on my behalf, despite reasonable and diligent efforts, was unable to identify a surrogate for the patient who was reasonably available, willing, and competent to act.

_____	_____	_____
Name of Attending Physician	Signature	Date/Time

IV. Notify the Patient^{4,5}

Check one:

- The patient has been informed that he or she has been determined to lack capacity; **OR**
 The patient has NOT been informed of the above because there is no indication that the patient can comprehend the information.

_____	_____
Name	Title
_____	_____
Signature	Date/Time

V. Decision and Clinical Criteria for Withholding or Withdrawing Life-Sustaining Treatment, including DNR

Attending Physician Opinion on the Decision and Clinical Criteria.

Check as applicable:

a. I am authorizing the following decision:

_____ To enter a Do Not Resuscitate Order, I have determined, to a reasonable degree of medical certainty, that (i) in the event of cardiac or respiratory arrest, CPR or intubation would offer the patient no medical benefit because the patient will die imminently, even if the treatment is provided; and (ii) the provision of CPR under the circumstances would violate accepted medical standards.

4 The FHCDA does not specify who is required to notify the patient.

5 If the patient was transferred from a mental hygiene facility, notice must also be given to the director of the facility and to Mental Hygiene Legal Services.

_____The withdrawal or withholding of the following life-sustaining treatment: _____

I have determined, to a reasonable degree of medical certainty and in conversation with hospital staff directly responsible for the patient's care, that (i) the treatment would offer the patient no medical benefit because the patient will die imminently, even if the treatment is provided; and (ii) the provision of the treatment under the circumstances would violate accepted medical standards.

Attending Physician

Signature

Date/Time

VI. Concurring Opinion by Another Physician Designated by the Hospital

I concur with the determination of the attending physician that the treatment proposed is appropriate because

Name of Concurring Physician

Signature

Date/Time

VII. Confirmation of Continued Lack of Capacity⁶

For decisions not carried out at or about the time the determination of incapacity was made, a confirmation is required.

I have confirmed that the patient continues to lack decision-making capacity.

Name of Attending

Signature

Date/Time

VIII. Ethics Process

Please consult the hospital's policy on seeking guidance for cases that may require an ethics consultation or review by the ethics review committee (ERC)⁷.

IX. Attending Physician's Order

The physician **shall enter** the order to withhold or withdraw treatment, including DNR in the medical record.

This form must be placed in the patient's medical record.

This form has been prepared for hospital use by the GNYHA FHCDCA Workgroup and is not a substitute for the institution's obligation to consult with legal counsel as appropriate.

⁶ The confirmation of incapacity may be made by attending physician or another attending.

⁷ Review by the ERC is required when: 1) the attending physician objects to a surrogate's decision to withhold or withdraw artificial nutrition or hydration for an adult patient who is not terminally ill or permanently unconscious; and 2) an emancipated minor makes a decision to withhold or withdraw life-sustaining treatment. These ERC decisions are binding.