

# University Health Network Policy & Procedure Manual Clinical – Appropriate Use of Life-sustaining Treatment

## Policy

### Initiation of Life-Sustaining Treatment

Health care workers will initiate [life-sustaining treatments](#) within the [standard of care](#) when such treatments are consistent with a [capable](#) patient's wishes, values and beliefs.

If a capable patient has not thought about life-sustaining treatments, yet may require such therapies while in hospital, information will be provided regarding the risks and benefits of life-sustaining treatments in the context of the patient's situation.

If a patient is incapable of making treatment decisions, discussions about life-sustaining treatments will proceed with his/her [substitute decision-maker \(SDM\)](#). The SDM's role is to make decisions based on the patient's previously expressed wishes. If these wishes are not known or not clearly applicable to the patient's current circumstances, the SDM's role is to consider the patient's [best interests](#).

### Withholding Life-sustaining Treatment

Where the health care provider proposes to withhold (i.e., before treatment has been initiated) [life-sustaining treatment](#) on the grounds that it falls outside the [standard of care](#), and the [capable](#) patient or his/her [SDM](#) disagrees, the reasons for withholding will be clarified, and an [independent, second opinion](#) offered and facilitated if requested. Where disagreements between health care workers and patients or SDMs persist, both parties will follow the procedures in [Disagreement about Withholding or Withdrawing Life-sustaining Treatments](#) to resolve their disagreements about the appropriateness of initiating life-sustaining treatments.

### Continuation & Withdrawal of Treatment

Once initiated, health care workers may not withdraw life-sustaining treatments, except in circumstances where:

- a [capable](#) patient makes an informed decision to discontinue treatment,
- or

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- an [SDM](#) is acting on his/her legal obligation to honour the patient's most recently expressed capable wish applicable to the discontinuation of [life-sustaining treatment](#) in their present circumstances,
- or**
- where an incapable patient's wishes are unknown or not applicable to his/her situation, the [SDM](#) decides to discontinue [life-sustaining treatment](#) in acting on his/her legal obligation to act in the patient's [best interests](#).

In other circumstances, if the patient or SDM disagrees with the **withdrawal** of treatment, the reasons for seeking withdrawal will be clarified, and an [independent, second opinion](#) offered and facilitated if requested.

Where disagreements between health care workers and patients or SDMs regarding the withdrawal of life-sustaining treatment persist, both [Disagreement about Withholding or Withdrawing Life-sustaining Treatments](#) and [Additional Steps for Disagreements Related to Withdrawing Life-sustaining Treatments](#) will be followed to attempt to achieve agreement between the parties. If the dispute remains unresolved, life-sustaining treatments may not be withdrawn unilaterally by the physician(s) or the health care team. Legal Affairs must be contacted to discuss the appropriateness of an appeal to the Ontario Consent and Capacity Board, arbitration, or court proceedings.

## Definitions

**Best interests** – As defined in the Health Care Consent Act:

“In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when [capable](#) and believes he or she would still act on if capable;
- (b) any wishes expressed by the incapable person with respect to the treatment that are not required to be followed under paragraph 1 of subsection (1); and
- (c) The following factors:
  1. Whether the treatment is likely to,
    - i. improve the incapable person's condition or well-being,
    - ii. Prevent the incapable person's condition or well-being from deteriorating, or
    - iii. Reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.
  2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.
  3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.
  4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed.”

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**Capable** – As defined in the Health Care Consent Act:

“A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.”

**Independent, second opinion** – The opinion of a UHN consultant not currently or previously involved in the care of the patient at issue, and who is appointed at the request of the program medical director in collaboration with the patient or his/her [SDM](#).

**Life-sustaining treatment** – Treatments that support or replace a body function essential to the life of the patient. Such treatments are provided along a spectrum of care as patients journey through critical illness, wherein palliative therapies will assume increasing importance in treatment plans, if curative treatment goals cannot be achieved. For the purposes of this policy, life-sustaining treatment decisions include choices about intensive care admission.

**Standard of care** – The care that would be provided in similar circumstances by a reasonable health care provider who possesses and exercises the skill, knowledge and judgment of the normal prudent practitioner of his or her special group, and is in the patient's [best interests](#) given his/her values, beliefs, wishes and circumstances.

**Substitute decision-maker (SDM)** – As defined in the Health Care Consent Act:

"A person who is authorized under section 20 (of the Health Care Consent Act) to give or refuse consent to a treatment on behalf of a person who is incapable with respect to the treatment. The appropriate SDM is the highest person on the hierarchy below who is:

- (a) [Capable](#) with respect to decision-making regarding the proposed treatment;
- (b) At least 16 years old, unless he or she is the incapable person's parent;
- (c) Not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf;
- (d) Available; and
- (e) Willing to assume the responsibility of giving or refusing consent.”

Health Care Consent Act hierarchy of SDMs (as defined in the Health Care Consent Act):

1. The incapable person's guardian of the person, if the guardian has authority to give or refuse consent to the treatment.
2. The incapable person's attorney for personal care, if the power of attorney confers authority to give or refuse consent to the treatment.

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3. The incapable person's representative appointed by the Board under section 33, if the representative has authority to give or refuse consent to the treatment.
4. The incapable person's spouse or partner.
5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This paragraph does not include a parent who has only a right of access. If a children's aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent.
6. A parent of the incapable person who has only a right of access.
7. A brother or sister of the incapable person.
8. Any other relative of the incapable person.

The Public Guardian and Trustee is the decision-maker of last resort if no other person on the list above is [capable](#), available or willing to provide or refuse consent."

## Procedure

**Note:** Although these procedures are presented in the order they will most likely occur, the order may be varied and several steps may occur simultaneously. The patient's condition may not permit completion of this process.

## Disagreement about Withholding or Withdrawing Life-sustaining Treatments

1. **Notification of disagreement:** At the point where there is clear disagreement:
  - Where appropriate, notify the nurse manager and/or chief of service or program director of the disagreement.
  - Notify Bioethics (Toronto General/Princess Margaret Hospitals at 14-8750; Toronto Western Hospital at 13-2521) and Patient Relations (416-340-4907) to inform them that their assistance may be required if further communication and negotiation are unsuccessful.
  - If intensive care admission may be required, consult with an intensive care physician as early as possible.
2. **Interprofessional team consensus:** The health care team works together to reach consensus regarding the range of appropriate treatment.
3. **Communication:** In collaboration with other members of the health care team, the most responsible physician or other designated member of the health care team:

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- Explores why the patient or [SDM](#) wishes treatment to be initiated, withheld, continued or withdrawn, and addresses these issues directly.
- Discusses with the patient or SDM the rationale for recommending to initiate, withhold, continue or withdraw [life-sustaining treatment](#).
- Describes palliative care measures which emphasize patient comfort and dignity.
- Offers Hospital resources such as Bioethics, Social Work, or Spiritual Care, to assist the patient/[SDM](#)/family with their psychosocial, cultural, spiritual, and informational needs.
- Documents pertinent details of this communication in the patient's medical record.

### **Additional Steps for Disagreements Related to Withdrawing Life-sustaining Treatments**

1. **Negotiation and mediation:** The most responsible physician or other designated member of the health care team attempts to negotiate a plan of treatment that is acceptable to both the patient or SDM and the health care providers actively involved in the care of the patient.

- If no plan of treatment is acceptable to all parties, consult with Bioethics to assist in clarifying the relevant preferences and values and discussing related ethical issues.
- Consult with Patient Relations where there is a complaint expressed about patient care.

**Note:** Bioethics and Patient Relations can assist the health care team in negotiating/mediating a plan of treatment.

2. In the course of **negotiation and mediation**, the patient or [SDM](#) may be offered:

- A **second opinion:** Give the patient or SDM another opportunity to request an [independent, second opinion](#) and, assisted by the health care team, to obtain one.

**Note:** If there is a difference of medical opinion, the most responsible physician /delegate must advance the discussion to the appropriate program medical director or clinician-on-call.

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- **Trial of therapy:** Discuss with the patient or SDM a time-limited trial of therapy with preset treatment goals to which the patient or SDM agrees.
  - **Patient transfer:** Give the patient or SDM an opportunity to identify another provider willing to assume care of the patient and, assisted by the health care team, to do so.
3. **Adjudication of disputes relating to life-sustaining treatment:** If mediation fails to resolve the dispute, the health care team may not withdraw [life-sustaining treatment](#).
- Contact Legal Affairs (416-340-4101) to discuss the appropriateness of an appeal to the Ontario Consent and Capacity Board (under section 37 of the Health Care Consent Act), arbitration, or court proceedings.

## References

1. Government of Ontario. [Health Care Consent Act, 1996](#). S.O. 1996, Chapter 2, Schedule A: s. 4 (1); s. 20 (1); s. 20 (2); s. 21 (2). Toronto, ON.
2. Picard, E. I., & Robertson, G. B. (1996). Legal liability of doctors and hospitals in Canada (3<sup>rd</sup> ed.). Carswell: Toronto, ON.
3. Rasouli v. Sunnybrook Health Sciences Centre and Cuthbertson. Superior Court of Justice: Ontario (2011): ONSC 1500.

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