

Cleveland Clinic Policy on Medical Decision-Making for Patients Lacking Decision-Making Capacity Who Do Not Have a Surrogate Decision-maker.

Preamble:

Medical decision-making for patients with neither decision-making capacity (DMC) nor a surrogate decision-maker presents an ethical challenge for healthcare providers because there is no way to obtain informed consent for treatment. This is particularly so when these decisions involve invasive/life-threatening procedures or withholding or withdrawing life-sustaining treatments. The following policy provides specific processes to follow when treating such patients. Medical decisions have been grouped within three major categories, each with its own process: (1) decisions about routine medical care, (2) decisions about medical treatments that require specific patient consent, and (3) decisions about withholding or withdrawing life sustaining treatment.

1. Decisions about routine medical care not requiring specific consent.

The physician of record can make medical decisions but a social work consultation must be ordered with the goal of locating an appropriate surrogate decision-maker and to assess whether pursuit of guardianship is appropriate. If the social worker is concerned that the patient's best interests are not being served or if the care appears inconsistent with what the patient would have wanted (in cases where information about the patient's prior wishes can be determined), then the social worker may request an ethics consultation.

2. Decisions about medical treatment that require specific patient consent but not related to withholding or withdrawing life-sustaining treatment.

A social work consultation must be ordered with the goal of locating an appropriate surrogate decision-maker and to assess whether pursuit of guardianship is appropriate. In addition, a consultation by the ethics consult service and a written concurring opinion by a second staff physician are both required prior to such treatment except in emergencies where delaying treatment would clearly have an adverse impact on the patient's medical condition. If the ethics consultant concludes that providing the treatment without the patient's consent is NOT ethically supportable, then the treatment may not be administered unless the conclusion of the ethics consultant is overruled via the following process: if the physician of record disagrees with the ethics consultant's assessment, the case can be referred to a multidisciplinary subcommittee of the ethics committee as described in section 3.B. below. The subcommittee will make rigorous efforts to identify family members, friends, and prior healthcare providers who may have information about prior indications of the patient's wishes, values and priorities. Helpful information may include life history in general as well as prior medical history, healthcare decisions, and health condition prior to the current episode. If there is no information available to indicate what the patient would have chosen, then the subcommittee should make a decision based on the patient's best interest (i.e.

maximizing benefits and minimizing burdens to the patient). The subcommittee should confer closely with the different disciplines represented on the treating team (including nurses, social workers and, as appropriate to the specific case, other allied health professionals). A majority of the subcommittee must agree with a recommendation to proceed with the proposed treatment or else the treatment may not be provided.

3. Decisions regarding withholding and/or withdrawing life-sustaining therapy such as:

**cardiopulmonary resuscitation,
intubation,
mechanical ventilation,
hemodialysis,
nutrition and/or hydration necessary to sustain life**

A. Decisions about “Do-Not-Resuscitate” Orders

Before a DNR order can be written for a patient lacking DMC and without a surrogate decision maker, a concurring medical opinion from second attending physician at the Cleveland Clinic must be recorded in the medical record. In addition, an ethics consultation by the ethics consult service is required prior to writing a DNR order and the ethics consultant must agree in a written note in the medical record that such an order is ethically appropriate. If these requirements cannot be met, then a DNR order should not be written.

B. Decisions about withdrawing life-sustaining therapy

A second concurring medical opinion with written documentation in the medical record is required prior to withdrawing life-sustaining therapy. In addition, a multidisciplinary subcommittee of the Ethics Committee must review the case and approve of withdrawing life-sustaining therapy prior to any withdrawal. Such subcommittee will have three to five members and at least one physician, one nurse and one member who is neither a physician nor a nurse. Whenever possible, the subcommittee should include a social worker (who need not be a member of the ethics committee). All members of the subcommittee must agree with the decision to withdraw life support and indicate such agreement in a written report. The subcommittee will make rigorous efforts to identify family members, friends, and prior healthcare providers who may have information about prior indications of the patient’s wishes, values and priorities. Helpful information may include life history in general as well as prior medical history, healthcare decisions, and health condition prior to the current episode. If there is no information available to indicate what the patient would have chosen with regard to life-sustaining medical care, then the subcommittee should make a decision based on the patient’s best interest (i.e. maximizing benefits and minimizing burdens to the patient). The subcommittee should confer closely with the different disciplines represented on the treating team (including nurses, social workers and, as appropriate to the specific case, other allied health professionals).

When the subcommittee cannot reach a consensus, then the case should be reviewed by the ethics committee as a whole (a minimum of ten members of the ethics committee will be considered a quorum for this purpose). At least three quarters of the ethics committee members present must agree with a decision to withdraw life-sustaining therapy. If such agreement cannot be reached, then life-sustaining therapy should be continued.

http://my.clevelandclinic.org/Documents/Bioethics/Policy_on_Patients_without_Surrogates.pdf