

ATTACHMENT I

THE UNREPRESENTED PATIENT

Purpose: To assist medical staff in making medical treatment decisions for patients who lack decisional capacity **and** have no known or capable surrogate decision-maker.

Overview: Current Texas statute allows for clergy to function as the surrogate decision-maker for a patient who lacks decisional capacity and who does not have any identifiable (or capable) surrogate. However, clergy may be reluctant to assume this role for one of two reasons: a) they do not know the patient prior to his or her admission; or b) they do not feel adequately trained to fulfill this decision-making function.

Procedure: To assist the community clergy or hospital chaplain to fulfill this surrogate role of decision-maker when necessary, the following criteria must be followed:

- A. It has been determined by the primary physician or by Psychiatry that the patient lacks capacity to make medical decisions, *and* this is documented in the medical record;
- B. Reasonable effort has been made to locate a guardian, next of kin or medical power of attorney (MPOA) surrogate decision-maker, *and* this is documented in the medical record;
- C. Patient is no longer in an “emergent situation,” as such conditions do not require a surrogate decision-maker in order to provide any treatment protocol deemed to be within the “standard of care.”
- D. Patient has *not* been determined to have a “terminal condition” (actively dying) and the medical decision being considered does not include the withholding or withdrawing of treatment from the patient. Texas Advance Directive Law (Health & Safety Code, Chapter 166) addresses the issue of withholding or withdrawing treatment and stipulates that two physicians (one

of whom is not involved in this medical case or who is a member of the facility's ethics committee) can make such treatment decisions in the circumstance of an incapacitated patient who is dying. See Policy No. 9.07,

- E.** When a patient is determined to be incapacitated and unrepresented by a surrogate decision-maker, a referral to the ethics consultation team should be initiated and a consult team is formed according to the following criteria:
1. The ethics consultation team is appointed by the chair of the Ethics Committee and functions as an advisory team to the patient's primary physician.
 2. The team is comprised of at least three professionals; one of whom is a clergy person as required by the Texas consent statute (Health & Safety Code, Chapter 313).
 3. The other members of this team should be members of the Health System Bioethics Committee and have experience with clinical ethics consultations. One member should be a community representative (if possible). Note: The chair of the Bioethics Committee should *not* be a member of this consultation team.
 4. The consultation team will provide analysis, guidance, and recommendations to the clergy, so that the Bioethics Committee remains advisory.
 5. The consultation team may request assistance from the Bioethics Committee as necessary.
- F.** The consultation team provides to the primary physician recommendations regarding the unrepresented patient's treatment, and the clergy person on the committee is considered the official decision-maker of record. The following criteria assure that the recommendations are presented:

1. The team meets with the primary physician and other medical team members to ascertain the facts of the patient's condition, medical history and social history (if known), as well as current prognosis.
2. The team then works with case management, social work, and legal services to continue the search for next of kin or any appropriate decision-maker. This might involve seeking guardianship for this patient from the courts.
3. The team remains engaged in consultation with the primary physician during the course of hospitalization or until a surrogate decision-maker is determined. If a surrogate is identified, that individual assumes decision-making responsibilities for the incapacitated patient.
4. All meetings of the consultation team are documented in the patient's medical record by the leader of the consult team.
5. The team's responsibility is concluded when the unrepresented patient is discharged, appointment of guardian, if applicable, or through some other disposition of the patient.
6. If the patient is discharged but still does not have an identifiable surrogate (and likely will be seen in a Health System outpatient facility), the team will consult with the chair of the Bioethics Committee to determine if the team needs to continue in its role and be available to the primary physician in the outpatient setting.

G. Conflict Resolution—steps to be followed

1. Any or all decisions provided to the primary physician by the consultation team are *advisory only*.

2. If there is a disagreement between the consultation team and the primary physician, the team will consult with the Bioethics Committee to seek a resolution.
3. If there is a disagreement within the consultation team, the team will consult with the Bioethics Committee to seek a resolution.