

## **Title: Medically Inappropriate Treatment in End-of-Life Health Care**

### **I. POLICY:**

It is the policy of [HOSPITAL NAME] not to provide treatment to a patient at or near the end of life when such treatment is clearly and egregiously medically inappropriate. Unresolved disagreement between a patient's primary physician and the patient/surrogate/legal representative or other patient care decision makers regarding whether current or proposed medical treatments are clearly and egregiously medically inappropriate will trigger initiation of a Special Ethics Review. The Special Ethics Review process, defined herein, includes review of the patient's values and preferences, best medical practice evidence, experience, and expert judgment, and societal healthcare norms in order to resolve such disagreement.

### **II. DEFINITIONS**

- A. *Patient at or near the end of life* ("patient") – patient suffering from illness, injury, or disorder who, according to generally accepted current best practice medical standards, best practice medical evidence, or best medical judgment, is not expected to survive greater than six months.
- B. *Surrogate* – an adult, other than a Legal Representative, authorized to make decisions for the patient.
- C. *Legal Representative* – an individual authorized to make healthcare decisions for a patient due to appointment by the Courts to be the patient's Conservator or designated in a Power of Attorney for Health Care (or other legally-recognized advance medical directive) to be the patient's Agent or Attorney-in-Fact.
- D. *Primary physician* – Also known as "physician of record" or "attending physician" or "attending of record" for the patient, this is a member of the Medical Staff who serves as the principal provider of medical services to the patient during hospitalization and directs the care for that patient during the course of the stay as evidenced by signed written orders and progress notes.
- E. *Other patient care decision makers* - individuals directly involved in the care of, and decision making for, a specific patient, including: consulting physicians, nurses, case managers, social workers, and other members of the patient's care team.
- F. *Medically ineffective treatment* - medical intervention for which there is no reasonable medical expectation of achieving the effect (beyond mere physiologic changes) for which the treatment is, or is proposed to be, used.
- G. *Clearly and egregiously medically inappropriate treatment* ("Medically Inappropriate Treatment") - medical intervention which:
  - 1. offers no reasonable expectation of achieving a patient's goals for receiving such intervention; and
  - 2. is incongruent with generally accepted current best practice medical standards, best practice medical evidence, and local or national health care social norms, with respect to

- end of life care; and  
3. is medically ineffective.

### **III. PURPOSE:**

To provide a standardized process for addressing situations in which medical interventions for patients at or near the end of life are clearly and egregiously medically inappropriate.

### **IV. PROCEDURE:**

#### **A. CONDITIONS TO BE MET PRIOR TO INITIATION OF SPECIAL ETHICS REVIEW**

1. There is disagreement between the primary physician and the patient/surrogate/legal representative or other patient care decision makers whether current or proposed interventions are Medically Inappropriate Treatment. Such disagreement does not include, however, those situations in which proposed interventions are refused by a competent patient, or by an incompetent patient's surrogate/legal representative, since it is the policy of [HOSPITAL NAME] to honor the rights of patients/surrogates/legal representatives to refuse medical treatment, subject to certain limited exceptions.
2. The [ADMINISTRATIVE ENTITY UNDER WHICH ETHICS CONSULTATION IS PROVIDED] has been requested and has recommended initiation of the Special Ethics Review process following unsuccessful efforts to resolve disagreement as to whether or not current or proposed interventions are Medically Inappropriate Treatment.

#### **B. PURPOSE OF SPECIAL ETHICS REVIEW**

1. To gather from the primary decision makers involved in the patient's care whether the patient has specific goals for receiving medical interventions, including goals explicitly associated with the acceptance or refusal of medical interventions with respect to end of life care, including palliative care.
2. To gather from the primary decision makers involved in the patient's care the clarity of those patient goals.
3. To gather from readily available literature and local experts whether there are generally accepted current best practice medical standards, best practice medical evidence, and local or national health care social norms, with respect to end of life care, which are applicable to the specific patient's current medical situation, and if so, whether these support providing current or proposed medical interventions.
4. To provide a recommendation with respect to withholding or withdrawing medical interventions based on whether such interventions can be established as Medically Inappropriate Treatment.

#### **C. SPECIAL ETHICS REVIEW PROCESS**

1. Formation of Special Ethics Review Committee

In order to fulfill the above purposes, an *ad hoc* Special Ethics Review Committee ("SER") drawn primarily from the membership of [HOSPITAL NAME] Bioethics Committee will be formed in a timely manner. The SER will include the following individuals (important note: to avoid potential conflicts of interest, none of these individuals shall be directly involved in the patient's care):

- a. Chair of the Bioethics Committee (or his or her delegate);

- b. [HEAD OF ADMINISTRATIVE ENTITY UNDER WHICH ETHICS CONSULTATION IS PROVIDED] (or his or her delegate);
- c. two physicians (preferably, one of whom has the same specialty as the patient's primary physician or a specialty relevant to the area of disagreement);
- d. one nurse;
- e. one social worker (or similar personnel: psychologist, family therapist, etc.);
- f. one lay member of the Bioethics Committee.

The Chair of the Bioethics Committee (or his or her delegate) will Chair the SER and the [HEAD OF ADMINISTRATIVE ENTITY UNDER WHICH ETHICS CONSULTATION IS PROVIDED] (or his or her delegate) will Co-Chair. Administrative support for the SER will be provided by [ADMINISTRATIVE ENTITY UNDER WHICH ETHICS CONSULTATION IS PROVIDED]. The SER Chair will be responsible for all formal communication from the SER.

## 2. Communication of SER Process

Concurrent with the formation of the SER, the SER Chair will communicate with the patient/surrogate/legal representative, primary physician, and others involved in the disagreement in order to inform them that a SER has been formed, the purpose of the Special Ethics Review, and the process the Special Ethics Review will follow.

## 3. SER Deliberation

Once formed, the SER will proceed as follows:

- a. The SER Chair and Co-Chair will gather pertinent information necessary for determining whether current or proposed intervention is Medically Inappropriate Treatment. They will also extend invitations for the primary participants involved in the disagreement as well as other individuals whose input is believed to be helpful for making such a determination to speak at the SER meeting.
- b. A SER meeting will be held in which the above-mentioned information will be reviewed and solicited individuals' input provided. Invited individuals will provide their input separately and independently.
- c. If possible, at the conclusion of the SER meeting, a recommendation will be proposed; if not, based on the discussion by the SER, the SER Chair and Co-Chair will draft a recommendation and distribute it to the members of the SER in a timely manner. The recommendation will be revised and re-distributed as needed in order to achieve, by consensus, unanimous and expeditious approval.

## 4. SER Recommendations:

- a. When the SER judges that current or proposed interventions *are not* Medically Inappropriate Treatment:
  - i. The SER Chair will provide a letter to the primary physician which outlines this conclusion and identifies options for next steps, including (but not limited to) ordering the continuation of current, or initiation of proposed, interventions, or transferring the patient to another physician who will do so.

- ii. If the primary physician chooses not to follow any suggested options, the SER Chair will refer the matter to the primary physician's Departmental leadership for resolution.
  - b. When the SER judges that current or proposed interventions *are* Medically Inappropriate Treatment, and disagreement is between the primary physician, who also believes such interventions to be Medically Inappropriate Treatment, and the patient/surrogate/legal representative, who believe otherwise:
    - i. The SER Chair and Co-Chair will convene a meeting in a timely manner with [HOSPITAL NAME] Chief Medical Officer ("CMO") in order to review the SER's recommendation and the bases for it.
    - ii. As a result of this meeting and in a timely manner, the CMO will either approve the SER's recommendation, remand it back for further consideration, or reject it.
- If approved, the SER Chair will provide a letter to the primary physician and to the patient/surrogate/legal representative which outlines the SER's conclusion. The SER Chair will also inform the patient/surrogate/legal representative of the option to transfer to a different hospital or seek judicial intervention within a timely period (ten [10] business days). If, at the conclusion of that time frame, efforts to arrange transfer are unsuccessful or no notice has been received that a judicial review has been filed, current interventions will be withdrawn and proposed interventions withheld. If notice of judicial review has been received, interventions will continue until the outcome of such judicial review.
- If remanded, the SER will responsive to any questions or issues.
- If rejected, the CMO will provide a letter to the attending physician and the SER Chair outlining the rationale and identifying options for next steps.
- c. When the SER concludes that the patient's goals are clearly known but there is legitimate medical disagreement between the primary physician and other members of the treatment team regarding whether such goals are medically achievable, referral will be made to the primary physician's Departmental leadership (with or without recommendation from SER, depending on what they were able to ascertain from the individuals involved in the disagreement).

#### 5. SER Documentation

- a. A summary report of the Special Ethics Review and its outcome will be presented at the subsequent meeting of the Bioethics Committee and entered into the Committee's minutes.
- b. Records of the Special Ethics Review will be maintained in confidential files housed in the [ADMINISTRATIVE ENTITY UNDER WHICH ETHICS CONSULTATION IS PROVIDED].

### **V. RELATED POLICIES AND PROCEDURES**

- Advance Directives: Patient Self-Determination Act
- Clinical Ethics Consultation
- End of Life Care in the Adult Intensive Care Unit – Role of the Physician of Record

- Health Care Decisions
- Refusal to Consent to Treatment
- Withholding and Withdrawal of Life Sustaining Treatment