

ON THE WITHHOLDING OR WITHDRAWING OF LIFE-SUSTAINING TREATMENTS

EDUCATION GUIDE

The purpose of this document is to provide information based on New York State law to assist in the difficult decisions surrounding the withholding or withdrawing of life-sustaining treatments.

There is no moral distinction between withholding or the withdrawing of life-sustaining treatment.

Well grounded in Anglo-American law and ethics is the right of a competent person to decide on the acceptance or refusal of treatment, even when it is life-sustaining. Federal and state laws enacted in recent years have provided mechanisms to permit individuals to make their treatment choices even after it has been determined that they lack the capacity to make health care choices. Health care professionals have an obligation to respect these choices.

ADVANCE DIRECTIVES

Every adult is presumed to have capacity* to make health care decisions unless determined otherwise. Advance directives only take effect when it has been determined that the person lacks the capacity to make health care decisions.

An advance directive is a written or oral instruction regarding health care decisions that applies when an adult becomes incapacitated. The primary types of advance directives are:

- . Living Will
- . Health Care Proxy
- . DNR

I. A Living Will is a document which contains specific instructions concerning an adult's wishes about health care choices but does not designate an agent to make health care decisions. A living will becomes effective once the patient is incapacitated and the other conditions stated in the living will are met.

Living wills are legally valid and should be honored if they present clear and convincing evidence of the patient's wishes. (NYS. HRM 92-3)

*Capacity means the ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of and alternatives to any proposed health care, and to reach an informed decision. (Health Care Proxy Law)

II. A Health Care Proxy is a document which delegates the authority to another adult (known as a health care agent) to make health care decisions on behalf an individual when that individual is incapacitated. A health care proxy becomes effective when the attending physician determines that the individual lacks the capacity to make health care decisions.

The individual executing the Proxy may also give specific instructions (verbally or in writing) which the agent for the individual is required to follow. In the absence of specific instructions or limitations, the agent will be permitted to make all decisions based on the individual's values or best interest. However, in regard to artificial nutrition and hydration, the agent must be asked if he has knowledge of the patient's wishes.

III. Do Not Resuscitate - New York State has a specific law that addresses do not resuscitate orders.

Every patient/resident is presumed to consent to resuscitation unless there have been directions to the contrary.

A patient/resident with capacity, or an agent acting in accordance with the Health Care Proxy law, may give consent for a DNR order at any time. On the other hand, for a patient/resident who lacks capacity and who does not have an appointed agent, the highest member on the surrogate list* may consent to DNR only if one of the following conditions exist: (1) the patient/resident is permanently unconscious (2) the patient/resident is terminally ill (3) burdens would outweigh benefits or (4) CPR would be medically futile.**

Therapeutic Exception: When a patient/resident has capacity, only he/she may be approached for a DNR order with the following exception:

If the attending physician determines, and a concurring physician agrees, that the patient/resident would suffer "severe and immediate injury" from a discussion about DNR, the physician may request permission from the highest person on the surrogate list.

*Surrogate list for DNR: 1) a judicially appointed committee or guardian of the patient, if one has been appointed; 2) a spouse; 3) a son or daughter at least eighteen years old; 4) a parent; 5) a brother or sister at least eighteen years old; 6) a close friend.

**Medically futile means that CPR will be unsuccessful in restoring cardiac and respiratory function or that the patient will experience repeated arrest in a short time period before death occurs. (DNR Law)

IV. Incapacitated Patients Without Advance Directives

When a patient has been determined to lack the capacity to make health care decisions regarding the withholding or withdrawal of life-sustaining treatments and has not executed a living will or health care proxy, the standard of "clear and convincing evidence" must be met. Examples of "clear and convincing evidence" include, but are not limited to, specific and repeated statements attesting to the patient's wishes. These cases may be referred to the ethics committee for assistance.

Proposed Legislation - While the DNR and Health Care Proxy laws have been helpful in providing mechanisms for decisions about the withholding and/or withdrawing of life-sustaining treatments, the majority of individuals still do not have advance directives. There is proposed legislation for surrogate decision making that has been drafted by the New York State Task Force on Life and the Law to address these instances.

Ethics Committee The Medical Center has established an Ethics Committee to provide education, policy formation and case consultation. A sub-group of the committee is available to review cases where an ethical dilemma is perceived. This group can be accessed by contacting either co-chair of the committee.