



January 18, 2011

TO: VMC Employees

FROM: Linda M. Smith
Chief Executive Officer, SCVMC

SUBJECT: **Health Care Decisions For Incapacitated Patients Without Surrogates**

REFERENCES: California Probate Code Sections 4607, 4609, 4613, 4617, 4650(c), 4652, 4683, 4736
California Hospital Association Consent Manual
Santa Clara County Medical Association Model Policy on Health Care Decisions for Patients Without Surrogates
VMC #301.45, Medically Ineffective Care Policy

DEFINITIONS:

A “**health care decision**” means a decision by a patient or the patient’s agent, conservator, or surrogate regarding the patient’s health care, including the following: (a) Selection and discharge of health care providers and institutions, (b) Approval or disapproval of diagnostic tests, surgical procedures, and programs of medication, (c) Directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care, including cardiopulmonary resuscitation. (Cal. Probate Code § 4617)

BACKGROUND:

This policy provides a process for making health care decisions on behalf of incapacitated patients who lack surrogate decision makers. Despite their incapacity, these patients are entitled to have appropriate health care decisions made on their behalf in a timely and transparent manner and to have these decisions made in their best interest, respecting their personal history, values and beliefs to the extent that these are known.

This policy is procedural in nature and applies to all health care decisions for which informed consent are usually required, including those to withhold or withdraw life-sustaining medical intervention(s). This policy supports Santa Clara Valley Medical Center’s (SCVMC) underlying consent policy and the medically ineffective care policy. This policy does not supersede any decision by the treating physician to withhold or withdraw medically ineffective treatments.

Decisions made under the terms of this policy are the same and have the same limitations as those made by an agent pursuant to a power of attorney for health care specified under current law. (California Probate Code Sections 4617, 4683, and 4652)

THIS POLICY IS NOT APPLICABLE IN THE FOLLOWING CIRCUMSTANCES:

- a) This policy does not apply in emergency medical situations.
- b) This policy does not apply in situations where, using sound medical judgment, a physician makes a bedside decision to cease attempts at cardio-pulmonary resuscitation.
- c) This policy does not apply to children less than 18 years old.

WHEN USE OF THIS POLICY IS APPROPRIATE:

This policy may be used when all of the following conditions are met:

1. The patient has been determined by the physician of record (with assistance from appropriate consulting physicians when necessary) to lack capacity to make health care decisions. Capacity means a patient's ability to understand the nature and consequences of proposed medical intervention(s), including significant benefits, risks, and alternates, and to make and communicate a health care decision (California Probate Code Section 4609).
2. No agent, conservator, or guardian has been designated to act on behalf of the patient. (For definitions, see California Probate Code Sections 4607, 4613).
3. There is no individual health care directive or instruction in the patient's medical record or other available sources that would eliminate the need for a surrogate decision maker.
4. No family member or other surrogate decision maker can be located who is reasonably available and who is willing and able to serve. Efforts made to locate a surrogate should be rigorous and at a minimum should include examining the personal effects, if any, accompanying the patient, as well as reviewing the patient's medical records and any verbal or written reports made by emergency medical technicians or the police. Efforts may also include contacting the facility from which the patient was referred and contacting public health or social service agencies known to have provided treatment for the patient.

If, after extensive effort, no legal surrogate decision maker can be located, health care decisions on behalf of incapacitated patients will be made using the following procedures.

PROCEDURE:**Responsible Party****Action**

Physician of record

1. Determines that the patient lacks capacity to make health care decisions.
2. Determines that no agent, conservator, or guardian has been designated to act on behalf of the patient.
3. Determines that there is no individual health care directive or instruction in the patient's medical record or other available sources that would eliminate the need for a surrogate decision maker.

Treating physicians, nursing staff,
social worker, case manager,
chaplain

Determine that:
No family member or other surrogate decision maker can be located who is reasonably available and who is willing and able to serve. Efforts made to locate a surrogate should be rigorous and at a minimum should include examining the personal effects, if any, accompanying the patient, as well as reviewing the patient's medical records and any verbal or written reports made by emergency medical technicians or the police. Efforts may also include contacting the facility from which the patient was referred and contacting public health or social service agencies known to have provided treatment for the patient.

Physician of Record

When the physician of record determines that a multi-disciplinary committee is needed, he/she will contact the Chair of the Ethics Committee or designee to appoint the committee.

PROCEDURE: (continued)**Responsible Party****Action**

Ethics Committee chair or designee

Membership and Chair of the Multi-disciplinary Committee: The Multi-disciplinary Committee will consist of persons capable of independently appreciating the medical consequences of the recommended treatment plan. It is recommended that the Multi-disciplinary Committee include, but not be limited to, individuals directly involved in the care of the patient, i.e., the physician of record, a nurse familiar with the patient, a social worker familiar with the patient, and a member of the Spiritual Care staff. The Chair of the Ethics Committee or designee must be on the committee and will serve as Chair of the Multi-disciplinary Committee. A non-medical (community) member of the Ethics Committee and representatives of the patient's cultural, ethnic, and/or religious communities should be (a) member(s) of the committee whenever possible and appropriate. When feasible, the patient's primary care provider and an ethicist should be consulted. The attending of record shall be a non-voting member of the multi-disciplinary committee.

Conflict of Interest: Prior to appointment, all potential members of the Multidisciplinary Committee will be asked by the Chair of the Ethics Committee or designee if any material conflict of interest, real or apparent, exists in the matter and, if so, he/she will not be appointed.

Multi-disciplinary committee

Health care decisions requiring informed consent will be made by a multi-disciplinary committee. The Multi-disciplinary Committee will establish a care plan based upon the patient's diagnosis and prognosis and the determination of appropriate goals of care. The care plan should include the appropriate level of care, including categories or types of procedures and treatments. The Multi-disciplinary Committee must function as the patient's advocate and must make decisions on the basis of the patient's best interest and values and beliefs, if known. Whenever possible, the Committee should obtain input from representatives of the patient's cultural, ethnic, and/or religious group.

Conduct and Standard of Review by the Multidisciplinary Committee: The committee will advocate on behalf of the patient.

1. The committee will review efforts to locate a surrogate decision maker and assure itself that these efforts were sufficient.
2. The Committee will review the diagnosis and prognosis and assure itself of their accuracy.
3. The Committee will determine appropriate goals of care by weighing the following considerations:
 - Patient's previously-expressed wishes, if any and to the extent known
 - Relief of suffering and pain
 - Preservation or improvement of function
 - Recovery of cognitive functions
 - Quality and extent of life sustained
 - Degree of intrusiveness, risk or discomfort of treatment
 - Cultural or religious beliefs, to the extent known

PROCEDURE: (continued)**Responsible Party****Action**

Multi-disciplinary committee

Decision-making by the Multi-disciplinary Committee: The Committee will weigh and balance all of the above considerations, keeping in mind that the best interest of the patient does not require intervention(s) in all circumstances, for example, when the patient is terminally ill and suffering, when there is no hope of recovery of cognitive functions, or when treatment is otherwise medically ineffective. The Committee will assure itself that health care decisions **are** made in good faith, **are** based on sound medical judgment, and **are** in the patient's best interest according to this policy. The Committee can ask for additional medical opinions to verify the primary conclusions. The Committee can also ask that further investigations be made about the availability of surrogates, the patient's treatment preferences, or other relevant matters. After this investigation is completed, the Committee will make an independent finding about the proposed decision and treatment plan.

Except to the extent that such a factor is medically relevant, any decision made pursuant to this policy shall not be based on the patient's age, sex, race, color, religion, ancestry, national origin, disability, marital status, sexual orientation, or any other category prohibited by law, the ability to pay for health care services, or the avoidance of burden to the hospital, family/others, or to society.

Physician of Record

Agreement on Treatment Plan:

If all of the members of the Multi-disciplinary Committee agree to the appropriateness of providing treatment, it shall be provided.

Hospital Medical Director or designee

Plans to Withhold or Withdraw Treatment

If all of the members of the Multi-disciplinary Committee agree to the appropriateness of withholding or withdrawing treatment, the matter will then be referred to the Hospital Medical Director or designee for review. The Medical Director or designee will meet with the Multi-disciplinary Committee to review the plan to withhold or withdraw treatment. If the Medical Director or designee agrees with the decision of the Committee to withhold or withdraw care, the decision of the Multi-disciplinary Committee will become final. Any implementation of a decision to withhold or withdraw life-sustaining medical treatment will be the responsibility of the primary treating physician.

Disagreement on Proposed Action: If the Multi-disciplinary Committee cannot reach agreement or if it does not approve of the proposed action, the Medical Director or designee will meet with the Multi-disciplinary Committee to explore the disagreement and facilitate resolution.

- a. If agreement is then reached either to provide or to forgo treatment, the decision of the Multi-disciplinary Committee will become final.
- b. If agreement is not reached, current treatments will be continued and any additional medically necessary interventions will be provided until such time as the issue is resolved through the court or the disagreement is otherwise resolved (California Probate Code Section 4736). Court-imposed legal remedies should be sought only in extreme circumstance and as a last resort (California Probate Code Section 4650(c)).

PROCEDURE: (continued)

Responsible Party

Action

County Counsel

County Counsel must be consulted if a decision to withhold or withdraw medical intervention is likely to result in the death of the patient when:

- the patient's condition is the result of an injury that appears to have been inflicted by a criminal act.
- the patient's condition was created or aggravated by a medical accident.
- the patient is pregnant.
- the patient is a parent with sole custody or responsibility for support of a minor child.

Physician of Record

Signed and dated medical record progress notes will be written for the following:

1. The findings used to conclude that the patient lacks medical decision-making capacity;
2. The finding that there is no durable power of attorney for healthcare, no conservator or guardian, and no medical instructions;
3. The attempts made to locate an appropriate surrogate decision maker able and willing to serve and the results of those attempts;
4. Any interviews with individuals with a close personal relationship to the patient willing to serve as surrogate and the facts needed to substantiate their qualifications;

Chair of Ethics Committee or designee

1. The findings and conclusions by the Multidisciplinary Committee and the basis for the decision;
2. The findings and conclusions by the Ethics Committee, if any.

Issued

01/18/11

Signature approval on file.