

Tehachapi Valley Healthcare District

**POLICY: Health Care Decisions for
Unrepresented Patients**

POLICY NUMBER: 100.61

DATE: March 26, 2008

DEPARTMENT: Administration

Distribution:

Revised/Reviewed:

Purpose:

The purpose of this policy is to provide a process for making ethically and medically appropriate treatment decisions on behalf of persons who lack health care decision-making capacity and for whom there is no surrogate decision-maker. This policy is procedural in nature and applies to all medical decisions for which informed consent is usually required. This policy is meant to support TVHD's underlying consent policy.

Definition: An unrepresented patient is a person who lacks capacity to make healthcare decisions and has no agent, conservator or guardian, no written directives and no surrogate decision maker or family member can be located.¹

Policy

Medical decision for an unrepresented patient will be made by the Bioethics Committee, a multi-disciplinary team whose members shall include, but are not be limited to, an attending physician, nurse familiar with the patient, social worker, other designated representative familiar with the patient, Chief of Staff and other appropriate persons, i.e. pastoral care.

In order to determine the appropriate medical treatment of the unrepresented patient, the multi-disciplinary team should:

1. Sign the "Confidentiality Agreement; Health Care Decisions for Unrepresented Patients" specific to the patient.
2. Review the diagnosis and prognosis of the patient and assure itself of the accuracy thereof.
3. 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
4. Establish a care plan based upon the patient's diagnosis and prognosis and the determination of appropriate goals of care to determine the appropriate level of care, including procedures and treatments.

Except to the extent that such a factor is medically relevant, any medical treatment decision made pursuant to this policy shall not be biased 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 avoidance of burden to family/others or to society.

Under the terms of this policy, the multi-disciplinary team may make the same treatment decisions, and will have the same limitations, as does an agent appointed pursuant to a power of attorney for health care specified under current law.^{2,3}

Agreement to Treatment

- If all members of the multi-disciplinary team agree to the appropriateness of providing treatment, it shall be provided.
- If all members of the multi-disciplinary team agree to the appropriateness of withholding or withdrawing treatment, it shall be withdrawn or withheld. Any implementation of a decision to withhold or withdraw life-sustaining medical treatment will be the responsibility of the primary treating physician ⁴.

Disagreement on Treatment

If the members of the multi-disciplinary team disagree about the care plan an ethics resource expert(s) or other resource experts will meet with the team to explore their disagreement and facilitate resolution.

- If agreement is reached either to provide or to forgo treatment, the decision of the multi-disciplinary team then becomes final.
- If agreement is still not reached, current treatments will be continued and any other medically necessary treatments provided, until such time that the issue is resolved through court intervention or the disagreement is otherwise resolved. ⁵ Court-imposed legal remedies should only be sought in extreme circumstances and as a last resort ^{6,7}.

In all cases, appropriate pain relief and other palliative care shall be continued.

Exceptional Circumstances:

Legal counsel should be consulted if a decision to withdraw or withhold treatment is likely to result in the death of the patient and the situation arises in any of the following circumstances:

- The patient's condition is the result of 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/guardian with sole custody or responsibility for support of a minor child.

Documentation

The medical staff member will sign, date and time the medical record progress notes to include the following:

- The findings used to conclude that the patient lacks medical decision-making capacity.
- The finding that there is no advance health care directive, no conservator, guardian or other available decision-maker, and no health care instructions, in the patient's medical record or other available sources.
- The attempts made to locate surrogate decision-makers and/or family members and the results of those attempts.
- The basis for the decision to treat the patient and/or the decision to withhold or withdraw treatment, and,
- Any information from the Bioethics Committee or other consult should it be convened.

Endnotes

¹ **California Probate Code 4717** states that: "(a) Notwithstanding any other provision of law, within 24 hours of the arrival in the emergency department of a general acute care hospital of a patient who is unconscious or otherwise incapable of communication, the hospital shall make reasonable efforts to contact the patient's agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient. A hospital shall be deemed to have made reasonable efforts, and to have discharged its duty under this section, if it does all of the following:

"(1) Examines the personal effects, if any, accompanying the patient and any medical records regarding the patient in its possession, and reviews any verbal or written report made by emergency medical technicians or the police, to identify the name of any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

(2) Contacts or attempts to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient, as identified in paragraph (1).

(3) Contacts the Secretary of State directly or indirectly, including by voice mail or facsimile, to inquire whether the patient has registered an advance health care directive with the Advance Health Care Directive Registry, if the hospital finds evidence of the patient's Advance Health Care Directive Registry identification card either from the patient or from the patient's family or authorized agent.

"(b) The hospital shall document in the patient's medical record all efforts made to contact any agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make health care decisions on behalf of the patient.

"(c) Application of this section shall be suspended during any period in which the hospital implements its disaster and mass casualty program, or its fire and internal disaster program."

California Probate Code 4736 states that: "A health care provider or health care institution that declines to comply with an individual health care instruction or health care decision shall do all of the following: (a) Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient. (b) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision. (c) Provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care shall be

continued.”

² **California Probate Code 4617** states that: “Health care decision’ means a decision made 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.”

California Probate Code 4683 states that: “Subject to any limitations in the power of attorney for health care: (a) An agent designated in the power of attorney may make health care decisions for the principal to the same extent the principal could make health care decisions if the principal had the capacity to do so. (b) The agent may also make decisions that may be effective after the principal’s death, including the following: (1) Making a disposition under the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code). (2) Authorizing an autopsy under Section 7113 of the Health and Safety Code. (3) Directing the disposition of remains under Section 7100 of the Health and Safety Code. (4) Authorizing the release of the records of the principal to the extent necessary for the agent to fulfill his or her duties as set forth in this division.”

³ **California Probate Code 4652** states that: “This division does not authorize consent to any of the following on behalf of a patient: (a) Commitment to or placement in a mental health treatment facility. (b) Convulsive treatment (as defined in Section 5325 of the Welfare and Institutions Code). (c) Psychosurgery (as defined in Section 5325 of the Welfare and Institutions Code). (d) Sterilization. (e) Abortion.”

⁴ **California Probate Code 4734** states that: “(a) A health care provider may decline to comply with an individual health care instruction or health care decision for reasons of conscience. “(b) A health care institution may decline to comply with an individual health care instruction or health care decision if the instruction or decision is contrary to a policy of the institution that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.”

⁵ **California Probate Code 4736** states that: “A health care provider or health care institution that declines to comply with an individual health care instruction or health care decision shall do all of the following: (a) Promptly so inform the patient, if possible, and any person then authorized to make health care decisions for the patient. (b) Unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately make all reasonable efforts to assist in the transfer of the patient to another health care provider or institution that is willing to comply with the instruction or decision. (c) Provide continuing care to the patient until a transfer can be accomplished or until it appears that a transfer cannot be accomplished. In all cases, appropriate pain relief and other palliative care shall be continued.”

⁶ **California Probate Code 4735** states that: “A health care provider or health care institution may decline to comply with an individual health care instruction or health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the health care provider or institution.”

⁷ **California Probate Code 4650 (c)** states that: “In the absence of controversy, a court is normally not the proper forum in which to make health care decisions, including decisions regarding life-sustaining treatment.”

Reviewed/Revised by: (Group/Individual)	TVHD Manager Team	S. Nave, Esq	MSPI Cmte	Med. Exec	Board of Directors
Date:	02/12/08	03/26/08	04/03/08		

Confidentiality Agreement Health Care Decisions for Unrepresented Patients

In accordance with the Tehachapi Valley Healthcare District Administrative Policy #100.61, I wish to be designated to participate in the multi-disciplinary team for the patient named below.

I understand that:

- Decisions made without clear knowledge of an unrepresented patient’s specific treatment preferences must be in the patient’s best interest, taking into consideration the patient’s personal history, values and beliefs to the extent that these are known.
- Decisions about treatment should be based on sound medical advice and should be made without the influence of material conflicts of interest. These decisions must be made with a focus on the patient’s interests, and not the interests of providers, the institutions, or other affected parties. In this regard, appropriate healthcare decisions include both the provision of needed medical treatment and the avoidance of non-beneficial or excessively burdensome treatment, or treatment that is medically ineffective or contrary to generally-accepted health care standards.
- All information shared and discussed by the multi-disciplinary team regarding this patient is confidential protected in accordance with the HIPAA privacy minimum necessary standard which forbids sharing of information unless it is necessary for the individual to perform their job.

Print Name

Signature

Date and Time

Instructions: File document in the patient’s medical record

**Confidentiality Agreement
Health Care Decisions for
Unrepresented Patients**

Patient Identification