

**Hospital  
Policy and Procedure Manual**

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**Subject: Living Will and Durable Power of Attorney for Health Care**

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**POLICY**

Hospital recognizes the right of the patients to make their own health care decisions. This includes the right of the competent patient to accept or reject medical or surgical treatment. This also includes the right to express personal wishes through the execution of written Advance Directives: a Living Will and/or Durable Power of Attorney for Health Care. Advance Directives, as specified in Ohio Law, allow the patient's wishes to be known if the patient is no longer able to make informed health care decisions for himself/herself.

In addition, Ohio Law includes a Do-Not-Resuscitate (DNR) Law that gives individuals the opportunity to exercise their right to limit care received in emergency situations in special circumstances. "Special circumstances" include care received from emergency personnel when 911 is dialed. This Law authorizes a physician to write an order letting health care personnel know that a patient does not wish to be resuscitated in the event of a cardiac arrest (no palpable pulse) or respiratory arrest (no spontaneous respirations or the presence of labored breathing at end of life). This Law is addressed in Hospital Policy 6.6, Do Not Resuscitate.

**NOTE:** Until such time as the LW or DPOA-HC becomes operative, the Physician is not prohibited from writing a DNR order.

**I. DEFINITIONS**

"Advance Directive" is a general term that refers to a person's verbal and written instructions about future medical care, in the event that the person becomes unable to speak for him or herself. The types of Advance Directives recognized under Ohio Law in Ohio include: the Living Will and Durable Power of Attorney for Health Care.

**A. "Living Will" ("LW")**

Ohio's Living Will is a type of Advance Directive in which a person puts in writing his or her wishes about life-sustaining treatments if he or she becomes permanently unconscious or terminally ill and unable to communicate. The person must be declared permanently unconscious or terminally ill and unable to communicate by two (2) physicians before the Living Will becomes effective.

**B. "Durable Power of Attorney for Health Care" ("DPOA-HC")**

DPOA-HC is a type of Advance Directive that allows a person to appoint someone (an attorney-in-fact) to make medical decisions for the person in the event that he or she is unable to do so. The DPOA-HC differs from the Living Will because the attorney-in-fact appointed through a DPOA-HC is authorized to make medical decisions in any situation where the person is unable to communicate. It is not limited to the event of

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becoming permanently unconscious or terminally ill and unable to communicate.

C. Terminal Condition \*

An irreversible, incurable, and untreatable condition caused by disease, illness, or injury from which, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the attending physician and a second physician who has examined the patient, **both** of the following apply:

1. There can be no recovery; and
2. Death is likely to occur within a relatively short time if life-sustaining treatment is not administered.

D. Life-Sustaining Treatment \*

Any medical procedure, treatment, intervention, or other measure that, when administered to a patient will serve principally to prolong the process of dying.

E. Permanently Unconscious State \*

A state of permanent unconsciousness that, to a reasonable degree of medical certainty as determined in accordance with reasonable medical standards by the attending physician and a second physician who has examined the patient, is characterized by **both** of the following:

1. The patient is irreversibly unaware of himself and his environment; and
2. There is a total loss of cerebral cortical functioning resulting in the patient having no capacity to experience pain or suffering.

\* NOTE: These terms are defined in Ohio Law; specifically O.R.C. 1337.11.

## II. GENERAL GUIDELINES

1. Physician shall be notified of the existence of a LW or DPOA-HC by Nursing, a copy of which shall be in the patient's Medical Record.
2. Physician determines patient's status:
  - a) Competent Patient (makes his/her own treatment decisions);
  - b) Patient unable to make own health care decisions.

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3. Physician takes steps to make LW or DPOA-HC operative following discussion with patient's family and/or designated health care decision-maker.
4. Physician completes required documentation in patient's Medical Record.
5. Physician initiates orders by using "Limitation of Treatment Orders" form.

### III. PROCEDURE

There are criteria defined in Ohio law delineating the steps to be taken in order for an Advance Directive, i.e. LW or DPOA-HC to become operative.

#### A. When a Living Will becomes Operative:

1. When the LW applies:

The LW applies when:

- a) The patient is terminal and unable to communicate his/her wishes regarding health care; or
- b) The patient is permanently unconscious.

2. Steps to be Taken to make a Living Will Operative:

A LW becomes operative when:

- a) The physician in charge of the patient's care and one other physician determines that the patient is in a permanently unconscious state or is in a terminal condition; and
- b) The physician in charge of the patient's care determines that the patient is no longer able to make informed health care decisions and **there is no reasonable possibility that the patient will regain the capacity to make decisions.**

#### B. When a Durable Power of Attorney for Health Care becomes Operative:

1. The DPOA-HC applies when:

A patient loses the ability to make his/her own health care decisions, even if only temporarily. At these times, health care decisions will be made by the person designated by the patient.

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2. Steps to be taken to make the DPOA-HC operative:
- a) The physician in charge of the patient's care determines that the patient has lost the ability to make informed health care decisions; and
  - b) In the event that the decisions involve withholding/withdrawing life sustaining treatment, then the same requirements as specified in Section III.A.2 of this Policy apply in order for the DPOA-HC to become operative.

**C. Decisions Involving Withholding/Withdrawing Nutrition and Hydration as Applicable to Both the LW and DPOA-HC:**

If the decision involves withholding/withdrawing nutrition and hydrations, all the following apply:

- 1. The physician in charge of the patient's care and one other physician must determine, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition or hydration will no longer provide comfort or alleviate pain; and
- 2. If the patient is in a permanently unconscious state and the patient has specifically authorized the physician in charge of the patient's care to withhold or withdraw nutrition or hydration by doing both of the following:
  - a) Including a specific statement in the LW or DPOA-HC concerning nutrition and hydration; and
  - b) Initialing or separately signing that Section of the LW or DPOA-HC.

**D. Documentation of Clinical Determinations for both the LW and DPOA-HC:**

The physician in charge of the patient's care is required to document in the patient's medical record:

- 1. The determination by the physician in charge of the patient's care and one other physician who has examined the patient that the patient is in a terminal condition or a permanently unconscious state; and
- 2. The determination by the physician in charge of the patient's care that the patient has lost the ability to make informed health care decisions and there is no reasonable possibility that the patient will regain capacity to make decisions.

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## E. Conscious Clause

The law recognizes that a physician, an employee or agent of the physician, or an employee or agent of the Hospital has the right to refuse to comply with a patient's wishes, as expressed in an Advance Directive, on the basis of the objector's conscience or religious beliefs.

Hospital personnel, who, on the basis of conscience or religious belief, are unable to comply with an Advance Directive, will notify their Supervisor. The Supervisor will immediately assign that patient to an alternate caregiver.

If the physician is not willing or able to comply with the patient's wishes as expressed in an Advance Directive, the physician will promptly inform the patient and will not attempt to unreasonably prevent or delay the transfer of the patient to the care of a physician who is willing and able to comply with the patient's wishes.

## F. Emergency Department Care

A LW or DPOA-HC does not apply, and shall not be construed as affecting or limiting the authority of a physician or health care provider in the Emergency Department to provide health care in an emergency situation.

Note: The DNR Comfort Care or DNR Comfort Care-Arrest Order will be honored in the Emergency Department.

### Cross Reference:

- 4.1 Patient Bill of Rights
- 4.4 Patient Self-Determination Act
- 4.5 Withholding and Withdrawing Treatment Statement
- 6.2 Limitation of Treatment: Withholding/Withdrawing Life Sustaining Treatment
- 6.6 Do Not Resuscitate

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