Section 9	Clinical Policies	12/01/95 -Originated
Subject 9.3	Patient Rights	12/21/07 -Reviewed w changes -Reviewed w/o changes
Policy 9.3.16	**Refusal of Consent/Treatment**	Legal -Author

Refusal of Consent/Treatment

Definitions

Adult: a person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed by a court for general purposes (i.e., has been legally emancipated by a court) or who is: legally married; serving in the armed forces; or at least 16 years old and living away from home and managing his/her own financial affairs.

Attending Physician: The physician with primary responsibility for a patient's treatment or care.

Decision-making Capacity: a document delegating authority to an agent to make health care decisions on the principal's behalf if the principal's attending physician certifies that the principal is incompetent (i.e., lacks decisional capacity).

Medical Power of Attorney (MPOA): a document delegating authority to an agent to make health care decisions on the principal's behalf if the principal's attending physician certifies that the principal is incompetent.

Legal Guardian: an individual or public agency appointed for a temporary, fixed, or indefinite term only by order of the court located in the county in which the patient resides.

Incapacitated: lacking the ability, based on reasonable medial judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits, risks, complications and reasonable alternatives to any proposed treatment.

Medical Treatment: a health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, as well as preventative care.

Minor: an individual under the age of 18 who has not had the disabilities of minor removed by a court for general purposes (i.e., has not been legally emancipated by a court) or who is not: legally married; serving in the armed forces; or at least 16 years old and living away from home and managing his/her own financial affairs.

Definitions (cont'd)

Surrogate Decision-Maker: A person with decision-making capacity who is identified as the person who has authority to consent to medical treatment on behalf of an incapacitated patient in need of medical treatment.

Urgently/Emergently Required Medical Treatment: a medical treatment, procedure or intervention to prevent, alleviate, or reverse a condition or symptoms that, in the absence of immediate medical attention, reasonably could result in jeopardy of the patient's health, serious impairment of the patient's bodily functions, or serious dysfunction of any bodily organ or part. *Example: The administration of blood or blood components*.

Policy

Health care is provided at the request of and for the benefit of the patient. When a refusal of medical treatment occurs, specifically refusal of urgently/ emergently required treatment for non-terminally ill conditions, this may sometimes place the hospital and attending physicians in a position which restricts their ability to provide the best care possible and to control treatment properly. When it becomes apparent that there is a refusal of consent/treatment, these guidelines are meant to proactively assist the health care team in ensuring the protection of both the patient and the hospital.

A refusal will be respected and honored when provided by the patient or the patient’s legally authorized representative as listed in the following chart.

	Refusal for Non-Urgent/Non-Emergent Medical Treatment	**Refusal for Urgent/Emergent Medical Treatment**
Adult Patient with decision-making capacity	Patient's refusal is respected.	Patient's refusal is respected. However, Legal Affairs should be contacted if the patient: • refuses treatment for a condition which endangers self or others (e.g., a patient with active TB or a suicidal/homicidal patient) • is pregnant with a viable fetus, and the refusal of treatment endangers the fetus; or • is a single parent of a minor dependent child, and the refusal may result in death, leaving the child a ward of the state.

Incapacitated Adult Patient	In order of priority: 1) agent named in a MPOA*, unless the court limits the agent's authority and appoints a guardian. 2) legal guardian 3) surrogate decision-maker	In order of priority: 1) agent in MPOA*, unless the court limits the agent's authority and appoints a guardian. 2) a court of record through a court order.**
Minor Patient	1) parent/conservator/guardian	1) a court of record through a court order.**

Procedure

The following steps are to be followed when UTMB is notified of a refusal of consent/treatment.

Responsibility	Action
Health care team member	1. Informs the attending physician of the refusal.
Attending physician	1. Discusses the circumstances of the refusal with the patient or his/her representative to include: • the diagnosis • the explanation of the proposed treatment • the consequences of the refusal 2. Determines if the refusal is effective and should be respected. *Note: If an **agent identified in a** MPOA is the source of refusal, review the MPOA to determine whether the patient a) has granted the agent broad decision-making authority or limited decision-making authority; b) has referenced urgent/emergent treatments in general or specifically the administration of blood/blood components. If the source is a **guardian identified in a court order**, review the court order to determine if the court order expressly authorizes the guardian to consent to and/or refuse care.* These documents should be copied and placed in the patient's medical record. 3. If the refusal is not made by an appropriate authorizing source and the condition requires urgent/emergent medical treatment, notifies the Care Management Department to assist in obtaining an authorized representative. 4. Documents all of the above information into the patient's medical record. If the refusal is for the administration of blood/blood components, obtains the appropriate signature on the "Refusal to Permit Blood Transfusion/Release of All Claims" form.

* A decision made by an agent named in a MPOA is ineffective if the adult patient objects, regardless of the adult patient's competency at the time of the objection.

**Person/agency appointed cannot consent to or refuse medical care unless the court's order expressly authorizes any such decision.

Care Manager	1. Notifies the appropriate county agency and provides the following information: • patient's name, age, diagnosis, and proposed treatment plan; • that the patient is a minor or an incapacitated adult; • medically requires urgent/emergent medical treatment; • a statement that the refusal will lead to death or serious harm to the patient. 2. Documents all of the above information into the patient's medical record.

Documentation of Guardianship Process

The attending physician will document in the patient's medical record:

- local agency contacted;
- the name and title of the individual representing that agency;
- that the individual is authorized to speak for the agency;
- whether or not the agency will take temporary guardianship over the patient; and,
- if yes, whether or not the agency will consent to or refuse the urgently/emergently required medical treatment, including administration of blood/blood components.

The care manager will obtain copies of any court documents generated in the process of obtaining a Patient Representative and place these in the patient's medical record as soon as possible.

Unable to Obtain Guardianship

If the appropriate local agency declines to take temporary guardianship over the patient, the attending physician should contact the Hospital Administrator On-Call, who will consult with the Department of Legal Affairs regarding the possibility of a petition for an attorney *ad litem* for the patient.

Rendering Emergency Care

In the event that the incapacitated adult or minor patient’s status deteriorates to the point that death or irreparable harm will result unless the urgent/emergent medical care is instituted immediately, two physicians can determine the need for emergency care. Prior to commencing such care, the physician should inform the patient’s reasonably available family that the care will be provided despite their objections.

Offender Patients

Refusals made by patients under the care and custody of either the Texas Department of Criminal Justice (TDCJ) or the Federal Bureau of Prisons (FBOP) are not absolute and, in all cases, will be weighed against legitimate interests, including the security and orderly operation of the correctional facility. Such decisions made by an offender patient shall be communicated to the TDCJ Health Services liaison physician and administrator for TDCJ patients or, for FBOP offender patients, to the appropriate FBOP facility's Health Systems Specialist.

References

Institutional Handbook of Operating Procedures Policies:
9.3.17, *Patient Consent - Overview and Basic Requirements*
9.3.18, *Consent for Medical Care of Minor*
9.3.22, *Special Issues of Consent*
9.15.5, *Initiating Advance Directives, including DNR Orders*
9.15.6, *Withholding or Withdrawing Life-Sustaining Treatment From a Patient With an Advance Directive*
9.15.7, *Withholding or Withdrawing Life-Sustaining Treatment From a Patient Without an Advance Directive*

Texas Health and Safety Code, §§313.002-313.005
Texas Health and Safety Code, §773.008
Texas Family Code, §32.003