

Section 9	Clinical Policies	12/01/91 - Originated
Subject 9.15	End of Life Issues	07/18/13 - Reviewed w/ changes - Reviewed w/o changes
Policy 9.15.6	<b>Making and Documenting Treatment Decisions including Withholding or Withdrawing Life-Sustaining Treatment</b>	08/15/13 - Effective Ethics Committee - Author

## **Making and Documenting Treatment Decisions including Withholding or Withdrawing Life-Sustaining Treatment**

### **Definitions**

See [IHOP Policy 9.15.5 Advance Directives](#).

### **Policy**

UTMB respects its patients' decisions regarding their health care, and will provide, withhold, or withdraw life-sustaining treatment with respect for patient autonomy and in accordance with reasonable medical judgment and applicable federal and state laws and regulations.

Treatment decisions made under OOHDNR orders are addressed in [IHOP Policy 9.15.8 Out-of-Hospital Do-Not-Resuscitate \(OOHDNR\) Orders](#).

### **Exceptions**

UTMB will not withdraw or withhold life-sustaining treatment from a pregnant patient.

#### **Outpatients who are having a procedure requiring moderate or deep sedation in any ambulatory setting:**

At the time a procedure is scheduled, patients will be asked about the existence of any advance directive. If a patient has an existing OOHDNR document or an existing medical condition (terminal or irreversible condition) for which an advance directive refusing life-sustaining treatment (LST) would apply, the physician must discuss with the patient the risks and benefits of accepting LST during the planned procedure. If a patient at the Victory Lakes Ambulatory Surgery Center wishes to refuse LST during their procedure, the procedure will be scheduled to be performed at the UTMB Galveston hospital where such requests can be better accommodated in collaboration between patient and provider. Patients agreeing to rescind their advance directive for their procedure at the Victory Lakes Ambulatory Surgery Center will sign a [consent form](#) indicating their understanding and acceptance of this policy. In all other ambulatory settings where moderate or deep sedation is performed, the physician and patient must agree to any proposed changes to the patient's existing advance directive and the procedure physician must document the discussion in the medical record.

### **Incompetent Patients with a Directive**

If an adult qualified patient has executed or issued a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and the person designated by the patient in their directive to make treatment decisions on their behalf may make treatment decisions in accordance with the patient's directions.

If the patient did not designate a person to make treatment decisions in their directive, the attending physician shall comply with the directive unless the

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**Incompetent Patients with a Directive, continued**

physician believes that the directive does not reflect the patient’s present desire.

To implement a treatment decision, a physician will write an order as follows:

1. Resuscitation/Intervention Orders should be signed by the attending physician and should indicate the resuscitation or intervention measures chosen by the patient.
2. Withdrawal of Life Support Orders should be signed by the attending physician and should state precisely which measures are to be discontinued.
3. The date and time of termination of life-sustaining treatment must be documented in the patient's medical records.

If there is a conflict between directives or treatment decisions made at different times, the most recent document or treatment decision controls.

**Incompetent Patients without a Directive**

If an adult qualified patient has not executed a directive and is incompetent or otherwise mentally or physically incapable of communication, the attending physician and patient’s legal guardian or agent may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment.

If the patient does not have a legal guardian or agent, the attending physician and a qualified relative from the following list, if available and in the following priority, may make a treatment decision that may include a decision to withhold or withdraw life-sustaining treatment:

1. the patient’s spouse;
2. the patient’s reasonably available adult children;
3. the patient’s parents; or
4. the patient’s nearest living relative.

Any treatment decision made under these circumstances must be based on knowledge of what the patient would desire, if known, including the patient’s religious and moral beliefs. If an agent does not know the patient’s wishes, the decision should be made according to the agent’s assessment of the patient’s best interests.

A qualified relative who wishes to challenge a treatment decision made in this manner may apply for temporary guardianship (in accordance with Texas Probate Code Chapter 875) to do so.

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**Incompetent Patients without a Directive, continued**

If the patient does not have a legal guardian or agent, and a qualified relative is not available, the treatment decision of the attending physician must be concurred in by another physician who is not involved in the treatment of the patient or who is a representative of the Institutional Ethics Committee (IEC).

All treatment decisions must be documented in the patient's medical record and signed by the attending physician.

**Documentation of Terminal or Irreversible Condition; Incompetence**

**Documentation of Terminal or Irreversible Condition**

Before making a treatment decision to withhold or withdraw life-sustaining treatment, the attending physician shall provide for the patient's certification as a "qualified patient" on diagnosis of a terminal or irreversible condition. After personally examining the patient, the attending physician shall enter a dated and timed statement of the patient's medical condition in the medical record including, but not limited to, notation of:

1. the procedures confirming the diagnosis and prognosis;
2. a statement that the patient has a terminal or irreversible condition;
3. current physical examination;
4. brief summary of the treatment and date and results;
5. statement of treatment alternatives; and
6. description of current life-sustaining treatment being utilized.

**Documentation of Incompetence**

Before honoring an advance directive, the attending physician must determine that the patient is incompetent or otherwise mentally or physically incapable of communication.

For example, an agent under a medical power of attorney may exercise authority only if the patient's attending physician certifies in writing in the patient's medical record that based on the attending physician's reasonable medical judgment, the patient is incompetent.

This documentation should include examinations, conversations, consultations, and any other relevant information explaining the physician's determination of the patient's incompetence.

**Ethics Consultation Service Revocation**

If a conflict arises regarding a patient's preferences, the Ethics Consultation Service is available to discuss possible solutions and alternatives.

**Directives**

The desire of a patient, including a patient younger than 18 years of age, supersedes the effect of a directive.

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**Revocation,  
continued**

Additionally, a patient may revoke a directive at any time regardless of the patient’s mental state or competency.

A directive may be revoked by:

- the patient or someone in the patient’s presence and at the patient’s direction by canceling, defacing, obliterating, burning, tearing, or otherwise destroying the directive;
- 1. the patient signing and dating a written revocation that expresses the patient's intent to revoke the directive; or
- 2. the patient orally stating their intent to revoke the directive.

Revocation takes effect only when the patient or a person acting on behalf of the patient notifies the attending physician of its existence or mails the revocation to the attending physician. The attending physician or their designee shall record in the patient’s medical record the time and date (and place, if the revocation was oral) of the revocation (and, if different, the time, date, and place that the physician received notice of the revocation). The attending physician or their designee shall also enter the word “VOID” on each page of the copy of the directive in the patient’s medical record. A written revocation should also be placed in the patient’s chart.

**Medical Power of Attorney**

An MPOA may be revoked at any time by:

- 1. Oral or written notification (or any other act evidencing a specific intent) to the agent by the patient of his or her intent to revoke their MPOA, without regard to the patient’s competence or mental state;
- 2. Execution by the patient of a subsequent MPOA; or
- 3. The divorce of the patient and their spouse, if the spouse is the patient's agent, unless the MPOA provides otherwise (e.g., the MPOA expressly states it shall remain effective even after divorce).

Revocation of an MPOA should be immediately recorded in the patient’s medical record, and notice of the revocation provided to the patient’s agent and any known health and residential care providers then responsible for the patient’s care.

**Physician  
Refusal to Honor  
a Directive or  
Treatment  
Decision**

If an attending physician refuses to honor a patient’s advance directive or a health care or treatment decision made by or on behalf of a patient, the patient shall be given life-sustaining treatment while the physician’s refusal is reviewed by the Institutional Ethics Committee (IEC). The attending physician may not serve as a member of the IEC reviewing his or her refusal.

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**Physician Refusal to Honor a Directive or Treatment Decision**

The patient or person responsible for the health care decisions of the patient who has made the decision regarding the directive or treatment decision:

- a. shall be informed of the IEC review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;
- b. is entitled to attend the meeting and receive a written explanation of the decision reached during the review process, which explanation shall be included in the patient's medical record; and
- c. at the time of being informed of the IEC review process, shall be provided (i) a copy of the statement explaining the patient's right to transfer; and (ii) a copy of the [registry list](#) of health care providers and referral groups that have volunteered their readiness to consider accepting transfer or assist in locating a provider willing to accept transfer.

If the attending physician, patient, or person responsible for the health care decisions of the patient does not agree with the decision reached during the IEC review process, the attending physician shall make a reasonable effort to transfer the patient to a physician who is willing to comply with the directive. UTMB personnel shall assist the physician in arranging the patient's transfer to another physician, an alternative care setting within UTMB, or another facility.

If the patient is requesting life-sustaining treatment that the attending physician and the review process have decided is inappropriate treatment, the patient shall be given available life-sustaining treatment pending transfer. The patient is responsible for any costs incurred in transferring the patient to another facility.

The physician and UTMB are not obligated to provide life-sustaining treatment beyond the 10th day after the written decision of the IEC is provided to the patient or the person responsible for the health care decisions of the patient, unless the physician and UTMB are ordered to provide life-sustaining treatment by a district or county court which may extend the 10-day period upon a finding that there is reasonable expectation a physician or health care facility willing to honor the patient's directive will be found if the time extension is granted.

Life-sustaining treatment may not be entered in the patient's medical record as medically unnecessary treatment until after the 10th day after the written decision of the IEC was provided to the patient or the person responsible for the health care decisions of the patient, or until after the extension of the time period ordered by the district or country court has ended.

**UTMB HANDBOOK OF OPERATING PROCEDURES**

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**Offender Patients** Offender patients under the care and custody of the Texas Department of Criminal Justice (TDCJ) or the Federal Bureau of Prisons (FBOP) will be treated in the same manner as other adult patients.

The attending physician shall communicate decisions to withdraw or withhold life-sustaining treatment from TDCJ offender patients to the TDCJ chaplain and hospital administrator (or designee). For FBOP offender patients, such decisions shall be communicated to the FBOP Health Systems Specialist.

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**References** [Texas Health and Safety Code Chapter 166](#) (Texas Advance Directives Act)

[IHOP Policy 9.15.5 Advance Directives](#)

[IHOP Policy 9.15.8 Out-of-Hospital Do-Not-Resuscitate \(OOHDNR\) Orders](#)

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