

Consent Requirements for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization and abortion)

| Person who can consent to treatment | Definition |
|--------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <i>The following hierarchy must be followed:</i> | |
| 1. Adult patient with capacity | Able to understand the nature and consequences of the decision; adult is a person age 18 or older |
| 2. Surrogate decision maker | Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days |
| 3. Agent | Appointed in an Advance Health Care Directive or Power of Attorney for Health Care |
| 4. Conservator | |
| 5. Court appointed surrogate decision maker | Court appoints a surrogate to make health care decisions |
| 6. Closest available relative | See "Closest Available Relative" table, below |
| 7. Multi-disciplinary committee | Authorized for skilled nursing facilities; consider for patients who have no known relatives |

Emergency Exception When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision-maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.

Closest Available Relative

| Health Care Decisions | Autopsy | Gift of Remains | Disposition of Remains |
|-------------------------------------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| <i>No statutory hierarchy¹</i> | <i>No statutory hierarchy</i> | <i>In the order listed</i> | <i>In the order listed</i> |
| Spouse/domestic partner | Spouse/domestic partner | An agent who could have made an anatomical gift immediately before decedent's death | An agent named in an advance directive |
| Adult child | Adult child | Spouse/domestic partner | Spouse/domestic partner |
| Either parent | Either parent | Adult child | Adult child or majority of children |
| Adult sibling | Adult sibling | Either parent | Parent |
| Grandparent | Any other kin or person who has the right to control disposition of remains | Adult sibling | Adult sibling or majority of siblings |
| Adult aunt/uncle | Public administrator, coroner or other official, such as the curator of the unclaimed dead | Adult grandchildren | Surviving adults in degree of kinship or a majority of the same degree |
| Adult niece/nephew | | Grandparent | Conservator of person |
| | | An adult who exhibited special care and concern for the decedent during the decedent's lifetime | Conservator of estate |
| | | Guardian or conservator of the decedent at the time of death | Public administrator, if the patient has assets |
| | | Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above | |

¹For general medical decisions, case law and not a statute authorize decisions by the "closest available relative" and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient's values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor's recommendations is not a proper criterion for selection.

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See chapter 2, "Who May Give Consent," of the CHA Consent Manual for additional information.
See chapter 11, "Patient Deaths," of the CHA Consent Manual for additional information regarding "Gift of Remains" and "Disposition of Remains"
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