

Who Decides for the Patient? Changes in the SC Adult Healthcare Consent Act

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Adult Health Care Consent Act

- State law specific
- Comes into play when a patient is “unable to consent”
- Deals with health care decisions
- Codified in Title 44, Chapter 66 of the South Carolina Code of Laws

Definition of “Unable to Consent”

- South Carolina statute provides that a patient is unable to consent IF:
 - The patient cannot appreciate the nature and implications of her condition and proposed care
 - The patient cannot make a reasoned decision concerning proposed care OR
 - The patient cannot communicate her decision concerning proposed care in an unambiguous manner

Inability to Consent Certification

- Patient's inability to consent must be certified by **two** licensed physicians
 - Each physician must have examined the patient
 - EXCEPTION: In an emergency, **one** healthcare professional who certifies in **writing** that due to an emergency it would be detrimental to patient's health to wait on two doctors

Inability to Consent Certification

- Opinion regarding the cause and nature of the inability to consent
- The extent of the patient's inability to consent and
- Probable duration of the patient's inability to consent

Who Consents if Patient Unable?

- The Adult Healthcare Consent Act provides a list of priority of who decides when the patient is unable
- Note that this list does not come into play unless the patient is “unable to consent” as defined by the law and there is an inability to consent certification filled out for the patient
- Bill H.3999 passed the General Assembly on June 2, 2016 and modifies the list of priority
- Signed by the Governor on June 3, 2016
- The legislation went into effect on June 3, 2016

List of Priority

- 1) A Guardian appointed by the probate court, IF within the scope of the guardian's appointment
- 2) Attorney-in-fact (agent) appointed by the patient under a Durable Power of Attorney, IF within the scope of authority
- 3) Anyone otherwise given authority by statute
- 4) Spouse
- 5) Adult child of the patient
 - If the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation

List of Priority continued

- 6) A parent of the patient
- 7) An adult sibling of the patient
 - If the patient has more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation
- 8) A grandparent of the patient
 - If the patient has more than one grandparent, a majority of the grandparents who are reasonably available for consultation
- 9) Any other adult relative by blood or marriage who reasonably is believed by the health care professional to have a close personal relationship with the patient
 - If the patient has more than one other adult relative, a majority of those other adult relatives who are reasonably available for consultation

A Note on Spouses

- Exception to spousal priority:
 - The patient and spouse are separated pursuant to one of the following:
 - Entry of a pendente lite order in a divorce or separate maintenance action
 - Formal signing of a written property or marital settlement agreement OR
 - Entry of a permanent order of separate maintenance and support or permanent order approving a property or marital settlement agreement between the parties

Documentation

- Statute requires documentation of efforts to locate the decision makers in the list of priority
- All efforts must be recorded in the patient's medical record

Disagreements among Equal Priority

- The law provides that if persons of equal priority disagree on whether certain healthcare should be provided to a patient who is unable to consent, an authorized person, a health care provider involved in the patient's care or any other interested person may petition the probate court for an order determining what care is to be provided or for the appointment of a temporary or permanent guardian
- Hospitals can also petition probate court for a guardian to be appointed when a decision maker is unable to be located (this can be a costly endeavor!)

Priority should be not given

- Attending physician or health care professional has actual knowledge that, before becoming unable to consent, the patient did not want that person involved in decisions concerning her care
- If the patient's inability to consent is temporary and the physician or other health care professional determines that the delay occasioned by postponing treatment until patient regains ability to consent will not result in significant detriment to the patient's health

Duties of the Decision Maker

- Authorized decision maker shall base decision on patient's wishes, to the extent those wishes can be determined
- Where patient's wishes cannot be determined, the decision maker shall base the decision on patient's best interest
- Authorized decision maker may consent or withhold consent to health care on behalf of the patient

Questions?

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