

North Shore – LIJ Health System, Inc.

*Facility Name*

<b>POLICY TITLE: Withholding and Withdrawing Life Sustaining Treatment Including Do Not Resuscitate (DNR) Orders</b>	<b>ADMINISTRATIVE POLICY AND PROCEDURE MANUAL</b>
<b>POLICY #: 100.24</b>	<b>Section:</b>
<b>Approval Date: 9/99/99</b>	<b>DEPARTMENT: Administration</b>
<b>Effective Date: November 1990</b>	<b>Last Revised/Reviewed: June 2008</b>
<b>Prepared by: Dana Lustbader MD, Alex Trinkoff, Barrie Huberman</b>	<b>Archiving Policy # 100.79 MOLST; 100.66 Withdrawing Ventilator Support; Replacing Do Not Resuscitate (DNR) Order Policy # 100.24</b>

**GENERAL STATEMENT OF PURPOSE**

All patients with Capacity to make health care decisions have the right to forgo or refuse treatment including cardiopulmonary resuscitation (CPR) and other life sustaining interventions. When a patient lacks decision making Capacity, another person authorized to make decisions for the patient may also consent to forgo or refuse CPR and other life sustaining treatment on behalf of the incapacitated patient in specific circumstances.

**POLICY**

This policy outlines the process for respecting patient's wishes regarding life sustaining treatments and for decision making for patients lacking Capacity.

**SCOPE**

This policy applies to all Physicians and Health Care Providers.

**DEFINITIONS**

**Physician** - An attending physician responsible for the patient or who shares responsibility for the patient or resident in training as long as the resident is qualified and acts in consultation with an attending physician.

**Capacity** - The ability to understand and appreciate the risks, benefits, alternatives and consequences of proposed healthcare decisions, and to reach an informed decision.

**Close Friend** - Any person 18 years of age or older who is a close friend of the patient who has maintained regular contact with the patient and is familiar with the patient's activities, health, and religious or moral beliefs, and presents a signed statement to that effect to the Physician.

**Developmental Disability** - A disability (attributable to mental retardation, cerebral palsy, epilepsy, neurological impairment, autism, or other similar condition) diagnosed before the age of 22 years and is a substantial handicap to the person's ability to function normally.

**Domestic Partner** - A person who meets any one of the following standards: (a) is formally in a domestic partnership or other relationship with the patient that is legally recognized in the United States, or is listed as the patient's domestic partner in any registry maintained by the patient's or partner's employer, or any state, municipal or foreign jurisdiction; or (b) is formally recognized as a beneficiary or covered person under the patient's employment benefits or health insurance, or the patient is a beneficiary under such benefits of the potential surrogate; or (c) the patient and the potential surrogate are mutually interdependent for support, as shown by demonstrated by common ownership or leasing of a home or personal property, common house holding, shared income or expenses, children in common, intention to marry or the length of the personal relationship.

**Emancipated Minor** - A minor who is the parent of a child or who is 16 years or older and living independently from his or her parents or guardian.

**Ethics Review Committee** - A five person committee comprised of at least one physician, one nurse, one other health care professional, one lay person with no hospital affiliation and one other member.

**Health Care Agent** - A person appointed by the patient to make healthcare decisions on his or her behalf on a Health Care Proxy form, or on another document containing the required components.

**Health or Social Service Practitioner** - A registered professional nurse, nurse practitioner, physician assistant, psychologist or licensed clinical social worker credentialed to perform Capacity determination.

**MOLST** - The Medical Orders for Life-Sustaining Treatment (MOLST) is an advance directive and legal document outlining treatment preferences which travels across health care settings with the patient.

**Surrogate** The person selected to make health care decisions for a patient without Capacity and who has not been appointed a Health Care Agent which includes in order of priority: (a) legal guardian; (b) spouse if not separated or domestic partner; (c) adult child; (d) parent; (e) adult sibling or (f) close friend or relative not listed above.

## **PROCEDURE**

### **A. ADULT PATIENTS WITH CAPACITY**

An adult patient with Capacity can consent to treatment or to withhold/withdraw life sustaining treatment including a DNR order.

### **B. RESPONSIBILITY OF HEALTH CARE PROVIDERS**

1. The Physician must consult with the attending of record or their designee prior to implementing an order to withhold/withdraw life sustaining treatment.
2. All orders to withhold/withdraw life sustaining treatment (including DNR orders) should be documented on the Withholding and Withdrawing Life Sustaining Treatment and DNR Form.
3. Orders to withhold/withdraw life sustaining treatments and DNR orders shall be reviewed when medically appropriate. Hospital orders do not need routine renewal. Non hospital DNR orders require renewal every 90 days.

### **C. CAPACITY DETERMINATION**

1. A determination that an adult patient lacks Capacity must be made by the Physician. The determination of incapacity and cause must be documented including the nature, cause, extent and probable duration.
2. Notification of incapacity shall be shared with the patient if the patient can comprehend the information. Findings of incapacity shall be communicated to the health care agent or surrogate
3. Concurring determination of incapacity is required by:
  - a. Another physician or Health or Social Service Practitioner for patients who lack capacity for medical reasons.
  - b. A physician or clinical psychologist with specialized training in treating and/or working with patients with developmental disabilities for patients who lack capacity due to developmental disability.
  - c. A psychiatrist or neurologist for patients who lack capacity due to mental illness.

## D. ADULT PATIENTS WITHOUT CAPACITY

1. An order to withhold/withdraw life sustaining treatment such as artificial nutrition and hydration, mechanical ventilation, dialysis, and cardiopulmonary resuscitation (i.e. DNR) can be made for adults who lack Capacity in the following circumstances:
  - a. **Patient with Prior Decisions:** The patient made a medical decision prior to losing Capacity either orally or in writing (i.e. DNR order, advanced directive, MOLST form). If the prior decision made by the patient to withhold/withdraw life sustaining treatment was expressed orally during the hospitalization, the names of two adult witnesses are printed in the medical record.
  - b. **Patient with Health Care Agent:** The Health Care Agent may make any health care decision the patient could have made if the patient had Capacity including a decision to withhold/withdraw life sustaining treatment, subject to any limitations listed on a Health Care Proxy Form and/or Living Will.
  - c. **Health Care Decisions for Patients by Surrogates:** One person from the list highest in priority is responsible for health care decisions for patients who lack Capacity and who lack a Health Care Agent. The person highest in priority can defer to someone lower on the list to act as the identified surrogate. People who may act as surrogates in order of priority are:
    - i. Legal Guardian
    - ii. Spouse (if not legally separated) or Domestic Partner
    - iii. Adult Child (any)
    - iv. Parent
    - v. Adult Sibling
    - vi. Close Friend
  - d. **Patient with Surrogate:** A Surrogate may consent to withhold/withdraw life sustaining treatment (including DNR) provided the Physician determines treatment would be an extraordinary burden to the patient and the patient has one of the following:
    - i. An illness or injury which is expected to cause death within six months regardless of treatment
    - ii. Permanent unconsciousness
    - iii. An irreversible or incurable condition
  - e. **Patient without Surrogate:** An order to withhold/withdraw life sustaining treatment (including DNR) may be issued when two Physicians determine that the treatment offers the patient no medical benefit because the patient will die imminently with or without the proposed treatment and the provision of such treatment violates accepted medical standards. Life sustaining treatments may also be withheld or withdrawn by court order.

#### **E. Patient Who Lacks Capacity due to Developmental Disability (DD):**

1. Medical decisions which involve withholding/withdrawing life sustaining treatments including artificial nutrition and hydration and cardiopulmonary resuscitation for patients with DD who lack capacity must comply with the Health Care Decisions Act for Persons with Mental Retardation.
2. The lack of capacity must be documented by a physician and a concurring physician or licensed psychologist. The concurring physician or licensed psychologist must meet one of the following criteria: employed by Office of Persons with Developmental Disabilities (OPWDD); employed in a facility licensed or authorized by OPWDD; or have at least three years experience in providing services to individuals with DD.
3. If the patient was transferred from an OPWDD operated or certified residential facility, the physician must notify the following parties: the Executive Director of the agency operating the facility; and Mental Hygiene Legal Service (MHLS).
4. If the patient was not transferred from such a facility, the Commissioner of OPWDD or his or her designee should be notified regarding a decision to withhold or withdraw life sustaining treatment.
5. It is advisable to contact Legal Affairs if questions arise regarding persons with DD.

#### **F. DECISION MAKING FOR MINORS**

1. The parent or guardian is authorized to make healthcare decisions regarding the withholding/withdrawing of all life sustaining treatments.
2. The minor's consent to withhold/withdraw life sustaining treatment is required if the Physician determines that the minor has Capacity.
3. If there is another parent who is unaware of the health care decision to withhold/withdraw life sustaining treatment, an attempt to inform the other parent of the decision must be made.
4. Decisions by emancipated minors with Capacity do not require parental consent, but the decision by the emancipated minor to withdraw life sustaining treatment requires approval by a Hospital's Ethics Review Committee.

**G. DNR ORDERS IN THE OPERATING ROOM OR DURING INVASIVE PROCEDURES**

1. A DNR order will not be suspended prior to surgery or any other invasive procedure without the consent of the patient or surrogate.
2. If the patient or surrogate requests suspension of a DNR order, suspension is effective from the time that the patient enters the OR/special procedure area until discharge from recovery unit or special procedure area. The prior DNR order will be reinstated post procedure unless the patient or surrogate requests otherwise.

**H. RESOLVING DISPUTES**

Consider Ethics Consultation or Palliative Care Consultation to assist in resolving disputes regarding life sustaining treatment.

**I. NON-HOSPITAL DNR ORDERS INCLUDING MOLST ORDERS**

1. All hospital personnel must honor non-hospital DNR orders, unless they believe in good faith that the DNR order has been revoked or that an exceptional medical circumstance exists such that disregarding the order is warranted.
2. Prior to discharge, a Non-Hospital DNR order should be written on a MOLST form or a NYS Non-Hospital DNR Form and given to the patient or surrogate or placed in the transfer documents.

**REFERENCES**

New York Public Health Law §2994 (Family Health Care Decisions Act)

Health Care Proxy Law Article 29–G New York Public Health Law

Health Care Choices: Who Can Decide?

NYS Office for People with Developmental Disabilities

July 2010 – Governor David A. Paterson; Acting Commissioner Max E. Chmura

<b>APPROVAL:</b> To Include Committee Name / Approval Date	
System P&P Committee	
System PICG Committee	