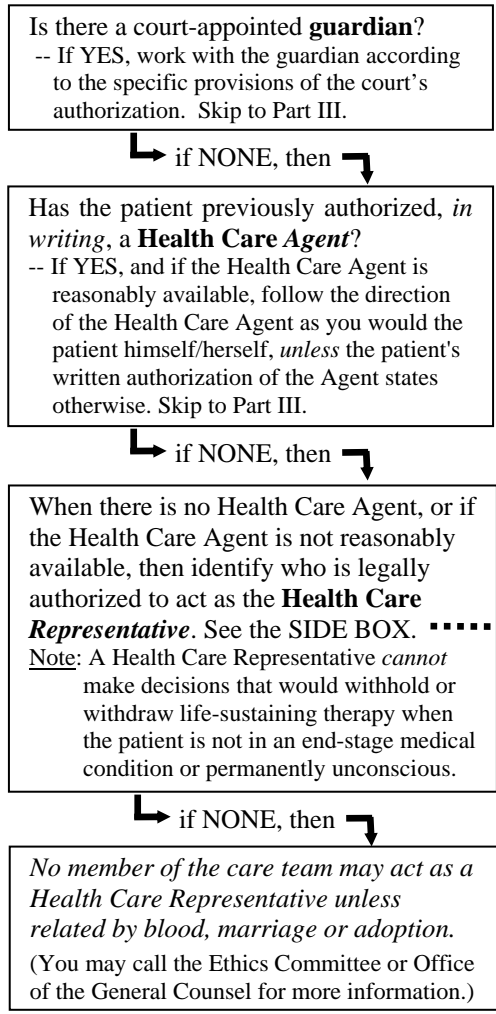


CASE A: If a patient is incompetent to make a health care decision and is NOT in an end-stage medical condition or permanently unconscious:

I. Attending physician documents the assessment of incompetence AND, if possible, promptly informs the patient and legally authorized representative (decision-maker) of the assessment.

II. Who is the legally authorized representative?



Identifying & Working With Health Care Representatives:

- 1) If the patient (before being assessed as incompetent) has given prior instructions in writing, or by informing the attending physician or health care provider, regarding the choice or exclusion of a particular Health Care Representative, *then follow those instructions from the patient* for identifying a Health Care Representative, to the extent possible. However, if the patient has NOT given such prior instructions, proceed to step #2. ↘
- 2) In the absence of any prior instructions from the patient about the identification of a Health Care Representative, determine what is the highest *class* of Health Care Representatives of which there are reasonably available members, according to the following hierarchy (in descending order):
 - a) the spouse, unless an action for divorce is pending, AND the adult children of the patient who are not the children of the spouse
 - b) an adult child
 - c) a parent
 - d) an adult brother or sister
 - e) an adult grandchild
 - f) an adult who has knowledge of the patient's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the patient would make health care decisions.

Note: Authorized Health Care Representatives must communicate the assumption of authority to members of the patient's family who can be readily contacted.

Note: Regarding claims of "common law marriage," consult with the UPHS Office of the General Counsel.
- 3) Is there more than one person in the highest *class* of Health Care Representatives willing to act in the role of decision-maker?
-- If YES, then ALL members of the highest *class* of Health Care Representatives who are reasonably available and who are willing to act in the role of decision-maker SHARE equal decision-making authority, but a decision of a MAJORITY of these particular individuals is sufficient for a specific decision. However, when there are multiple Health Care Representatives, and they are EQUALLY DIVIDED, then a decision must wait until a majority has agreed (and in the meantime, the patient shall be treated according to accepted standards of medical care).
Note: If a Health Care Representative with a higher priority wishes to assume decision-making authority, he or she may do so, even if others in a lower priority class have been acting as Health Care Representative(s).
Note: An affidavit may be requested of a Health Care Representative documenting the circumstances by which the person establishes his or her authority to act in such capacity.

III. If the treatment matter in question involves nutrition or hydration, or if the patient is pregnant, an infant or minor, or mentally retarded or mentally ill; or if there are futility-of-treatment issues; then refer to special rules in the Withholding and Withdrawing of Life-Sustaining Therapy policy (easily accessible through the UPHS Intranet).

IV. If possible, inform the patient of decisions and who has made them.
-- If the decision is to withhold or withdraw life-sustaining therapy (which can be made only by a court-appointed guardian or a Health Care Agent if the patient is not in an end-stage medical condition or permanently unconscious), an incompetent patient may COUNTERMAND the specific decision. In this case, document the countermand and promptly inform the authorized decision-maker. Such a countermand does not affect the *overall* authority of a court-appointed guardian or a Health Care Agent.

V. If the patient becomes competent to make decisions, promptly inform the patient and the legally authorized representative. Work directly with the competent patient on treatment decisions and on any questions about authorization of decision-makers.

CASE B: If a patient is incompetent to make a health care decision and IS IN an end-stage medical condition or permanently unconscious:

- I. Attending physician documents the assessment of incompetence AND, if possible, promptly informs the patient and legally authorized representative (decision-maker) of the assessment.
- II. Attending physician certifies in the medical record the determination of an end-stage medical condition or permanent unconsciousness.
- III. If the patient has a Living Will or other Advance Directive, act in accordance with its provisions (or transfer the patient to a provider who can comply with its provisions). An Advance Directive should guide ALL decision-makers and decision-making.
- IV. If specific treatment decisions cannot be guided by a Living Will or other Advance Directive, or if a Living Will or other Advance Directive does not exist, work with the patient's legally authorized representative:

Is there a court-appointed **guardian**?
-- If YES, work with the guardian according to the specific provisions of the court's authorization. Skip to Part V.

↳ if NONE, then ↘

Has the patient previously authorized, *in writing*, a **Health Care Agent**?
-- If YES, and if the Health Care Agent is reasonably available, follow the direction of the Health Care Agent as you would the patient himself/herself, *unless* the patient's written authorization of the Agent states otherwise. Skip to Part V.

↳ if NONE, then ↘

When there is no Health Care Agent, or if the Health Care Agent is not reasonably available, then identify who is legally authorized to act as the **Health Care Representative**. See the SIDE BOX.

↳ if NONE, then ↘

No member of the care team may act as a Health Care Representative unless related by blood, marriage or adoption.
(You may call the Ethics Committee or Office of the General Counsel for more information.)

Identifying & Working With Health Care Representatives:

- 1) If the patient (before being assessed as incompetent) has given prior instructions in writing, or by informing the attending physician or health care provider, regarding the choice or exclusion of a particular Health Care Representative, *then follow those instructions from the patient* for identifying a Health Care Representative, to the extent possible. However, if the patient has NOT given such prior instructions, proceed to step #2. ↘
- 2) In the absence of any prior instructions from the patient about the identification of a Health Care Representative, determine what is the highest *class* of Health Care Representatives of which there are reasonably available members, according to the following hierarchy (in descending order):
 - a) the spouse, unless an action for divorce is pending, AND the adult children of the patient who are not the children of the spouse
 - b) an adult child
 - c) a parent
 - d) an adult brother or sister
 - e) an adult grandchild
 - f) an adult who has knowledge of the patient's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the patient would make health care decisions.

Note: Authorized Health Care Representatives must communicate the assumption of authority to members of the patient's family who can be readily contacted.

Note: Regarding claims of "common law marriage," consult with the UPHS Office of the General Counsel.

- 3) Is there more than one person in the highest *class* of Health Care Representatives willing to act in the role of decision-maker?

-- If YES, then ALL members of the highest *class* of Health Care Representatives who are reasonably available and who are willing to act in the role of decision-maker SHARE equal decision-making authority, but a decision of a MAJORITY of these particular individuals is sufficient for a specific decision. However, when there are multiple Health Care Representatives, and they are EQUALLY DIVIDED, then a decision must wait until a majority has agreed (and in the meantime, the patient shall be treated according to accepted standards of medical care).

Note: If a Health Care Representative with a higher priority wishes to assume decision-making authority, he or she may do so, even if others in a lower priority class have been acting as Health Care Representative(s).

Note: An affidavit may be requested of a Health Care Representative documenting the circumstances by which the person establishes his or her authority to act in such capacity.

- V. If the treatment matter in question involves nutrition or hydration, or if the patient is pregnant, an infant or minor, or mentally retarded or mentally ill; or if there are futility-of-treatment issues; then refer to special rules in the Withholding and Withdrawing of Life-Sustaining Therapy policy (easily accessible through the UPHS Intranet).
- VI. If possible, inform the patient of decisions and who has made them.
 - If the decision is to withhold or withdraw life-sustaining therapy, an incompetent patient may COUNTERMAND the specific decision. In this case, document the countermand and promptly inform the legally authorized representative. Such a countermand does not affect the *overall* authority of the legally authorized representative.
 - An incompetent patient may REVOKE A LIVING WILL at any time and in any manner. The attending physician should document the revocation in the medical record.
- VII. If the patient becomes competent to make decisions, promptly inform the patient and the legally authorized representative. Work directly with the competent patient on treatment decisions and on any questions about authorization of decision-makers.