Tennessee Health Care Decisions Act - 2004

Glenn C. Graber
Department of Philosophy
University of Tennessee

Limits to Life-Sustaining Treatment: Overview

This tutorial is designed to help you explore the many issues that arise in connection with decisions to limit life-sustaining treatment. Variations are possible in all the questions indicated here.

Instructions: To navigate in this site, click on the appropriate question. You may explore this site in any order, but the order of the questions is the recommended order.
If you encounter trouble with this site, contact Glenn Graber.

Who?
How?
Where?
Why?
When?

Created by Glenn C. Graber
Last updated: March 8, 2003

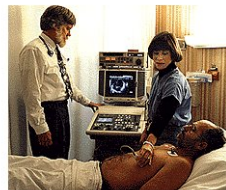
http://web.utk.edu/~ggraber/limits

Who?

Limits to Life-Sustaining Treatment

Who should make decisions about limits to treatment? Many folks would argue that the answer to this question settles the issue - "Decide who gets to decide, and then step back and leave the decision to them!"

We will see arguments in this chapter that matters are not so simple. Even after we sort the appropriate authority of the various interested parties, there may be questions remaining - at least in certain cases.



Among the possibilities are:
1. The patient
2. The family (presumably INCLUDING the patient)
3. Designated proxy or proxies (or surrogates)
4. Caregiver(s) and/or institution
5. Some wider community
6. Society

Created by Glenn C. Graber - last updated March 8, 2003
Main Menu -//- Who | How | Where | Why | When -\\-
1 | 2 | 3 | 4 | 5 | 6

Existing Law

- Competent/Capable Patient
  - The **patient** decides
  - Supported by courts in cases dealing with
    - Informed consent
    - right to refuse treatment
  - Key refusal cases: Jehovah's Witnesses

"a competent adult person generally has the right to decline to have any medical treatment initiated or continued" [In re Conroy at 347]

4

Existing Law

- Incompetent Patient
  - LIVING WILL – **physician** decides (following instructions by patient)
  - DURABLE POWER OF ATTORNEY FOR HEALTH CARE DECISIONS – patient designates person(s) to decide = **surrogate or "attorney in fact"**
  - Court-appointed **guardian** or **conservator**

TN Health Care Decisions Act

- **Agent** – designated by patient in written "individual instruction" or advance directive [TCA § 68-11-1703(b)]
- designated physician determines when delegation takes effect and ceases to be effective (judgment of patient capacity) [68-11-1703(c) & (d)]
- "a health care decision of an agent takes precedence over that of a guardian" [68-11-1707(b)]

TN Health Care Decisions Act

- agent should decide
  - "in accordance with the principal's individual instructions, if any"
  - in accord with "other wishes to the extent known"
  - "in accordance with the agent's determination of the principal's best interest . . . consider[ing] the principal's personal values to the extent known" [68-11-1703(e)]

TN Health Care Decisions Act
Limit to Authority of Agent

- a surrogate not designated by the patient may authorize withholding or withdrawing nutrition and hydration **only** after certification by two physicians "that the provision or continuation of artificial nutrition or hydration is merely prolonging the act of dying and the patient is highly unlikely to regain capacity to make medical decisions." [68-11-1706(e)]

TN Health Care Decisions Act

- **Surrogate**
  - How Chosen:
    - Designated by patient in less formal written or oral directive OR
    - Chosen by physician
  - "The patient's surrogate shall be an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, who is reasonably available, and who is willing to serve.“ [TCA § 68-11-1706(c)(2)]

TN Health Care Decisions Act

- "Consideration shall be given in order of descending preference" to:
- A) the patient's spouse, unless legally separated [and/or under order of protection]
- B) the patient's adult child
- C) the patient's parent
- D) the patient's adult sibling
- E) any other adult relative of the patient
- F) any other adult who satisfies the requirements stated just above [68-11-1706(c)(3)]

TN Health Care Decisions Act

- **Physician**
  - If no candidate available for surrogate
  - must consult
    - *either* "institutional ethics mechanism"
    - *or* "a second physician who is not directly involved in the patient's health care“ [68-11-1706(c)(5)]

TN Health Care Decisions Act
“Conscience Clauses”

- "A health care provider may decline to comply with an individual instruction or health care decision for reasons of conscience.“ [68-11-1708(c)]
- Institutions may also refuse on conscience grounds [68-11-1707(d)]
- "A health care provider may decline to comply with an individual instruction or health care decision that requires medically inappropriate health care or health care contrary to generally accepted health care standards" ***i.e. "futile" care*** *[*68-11-1708(e)*]*

TN Health Care Decisions Act
"Conscience Clauses"

- Refusal still requires
  - informing the patient promptly
  - continuing care until a transfer has been effected or determination has been made that no transfer is possible
  - assist in arranging a transfer [68-11-1708(f)]

TN Health Care Decisions Act
Universal Do Not Resuscitate Order

- A universal do not resuscitate order may be issued by a physician for his patient [68-11-224(a)]
- (1) qualified emergency medical services personnel, and (2) licensed health care practitioners . . . are authorized to follow universal do not resuscitate orders [68-11-224(c)]

TN Health Care Decisions Act
Universal Do Not Resuscitate Order

- If a person with a universal do not resuscitate order is transferred from one health care facility to another health care facility, the health care facility initiating the transfer shall communicate the existence of the universal do not resuscitate order to the receiving facility prior to the transfer.
- The transferring facility shall assure that a copy of the universal do not resuscitate order accompanies the patient in transport to the receiving health care facility.
- Upon admission, the receiving facility shall make the universal do not resuscitate order a part of the patient's record. [68-11-224(f)]

Who decides? - SUMMARY

- Patient
- Attorney in fact
- Guardian or Conservator
- Agent
- Surrogate
  - Patient-appointed
  - Physician chosen
- Physician