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]
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)]
**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)]

**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)]

"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)]

"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)]

**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