

LAC+USC MEDICAL CENTER POLICY

Subject: LEGAL/SURROGATE REPRESENTATIVE		Original Issue Date: 7/11/75	Policy # 221
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Departments Consulted: Ethics Resource Committee Office of Risk Management	Reviewed & Approved by: Attending Staff Association Executive Committee Senior Executive Council	Approved by: (Signature on File) Chief Medical Officer	
		(Signature on File) Chief Executive Officer	

PURPOSE

To assure that a patient's right to legal or surrogate representation for making health care decisions are understood and respected.

POLICY

All staff shall honor the patient's right to legal or surrogate representation. Each legal representative or surrogate shall have the same rights to make health care decisions for the patient as granted to the patient, unless the patient has designated otherwise, and within the limits and conditions prescribed by law.

The legal representative/surrogate may be one of the following:

- An agent named in a valid durable power of attorney for health care
- An adult designated by the patient, orally or in writing, as a surrogate to make health care decisions if the patient loses decision-making capacity or at any time as designated by the patient
- A guardian or conservator who has authority to make health care decisions on behalf of the patient
- Closest relative or may be a close friend

Parents are usually the appropriate surrogates for a child.

If a patient loses decision-making capacity, an agent designated in a previously executed Durable Power of Attorney has priority over all other persons to make health care decisions for the patient. That is, given the agent is reasonably available and willing to make health care decisions and that the patient, before losing capacity, did not designate another person to replace the agent.

California law does not have a priority order for selection of a surrogate when a patient is without capacity and without an advance directive or conservator. Whenever possible, the surrogate should be the person most likely to know of any previously expressed wishes by the patient and the patient's values. The surrogate should make health care decisions as much as possible as the patient would want (substituted judgment). If no information is available about what the patient would want, the surrogate should make treatment choices in accord with the best interest of the patient.

		Page 2	Of 2
Subject: LEGAL/SURROGATE REPRESENTATIVE	Effective Date: 9/16/20	Policy # 221	

The health care team should challenge any of the surrogate's decisions that appear inconsistent with the patient's values, not in the patient's best interests, or unreasonable. Any possible conflict of interest should be considered in evaluating questionable surrogate decisions.

DEFINITIONS

Advance Directive

Either an individual health care instruction or a durable power of attorney for health care.

Agent

A person designated in a durable power of attorney for health care to make health care decisions for a patient.

Capacity

A patient's ability to understand the nature and consequences of proposed health care, including its significant benefits, risks, and alternatives, and to make and communicate a health care decision.

Conservator

A court-appointed conservator having authority to make a health care decision for a patient. The extent of a conservator's authority is defined by the court.

Surrogate

An adult, other than a patient's agent or conservator, authorized under the Health Care Decisions Law to make a health care decision for the patient.

RESPONSIBILITY

Attending Staff, Housestaff, and Allied Health Professionals
Nursing Staff
Administration

PROCEDURE DOCUMENTATION

Attending Staff Manual
Nursing Services and Education Generic Structure Standards

REFERENCES

California Probate Code Sections 4600 - 4805
Code of Civil Procedure, Section 372
California Code of Regulations, Title 22, Section 70707
DHS Policy #326, An Adult Patient's Right to Participate in and Direct Decisions Affecting His or Her Health Care
Medical Center Policies #s 204, Advance Directives; 205, Consent for Care; 211, Leaving Against Medical Advice; 214, Decision-Making, Patient; 215; Refusal of Treatment
California Healthcare Association Consent Manual
Joint Commission Standards (Patient Rights and Organizational Ethics)

REVISION DATES

August 31, 1995; November 13, 1998; April 16, 2002; October 15, 2008; February 11, 2014; March 14, 2017; September 16, 2020