

# Consent Requirements for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization and abortion)

Person who can consent to treatment	Definition
<i>The following hierarchy must be followed:</i>	
1. Adult patient with capacity	Able to understand the nature and consequences of the decision; adult is a person age 18 or older
2. Surrogate decision maker	Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days
3. Agent	Appointed in an Advance Health Care Directive or Power of Attorney for Health Care
4. Conservator	
5. Court appointed surrogate decision maker	Court appoints a surrogate to make health care decisions
6. Closest available relative	See “Closest Available Relative” table, below
7. Multi-disciplinary committee	Authorized for skilled nursing facilities; consider for patients who have no known relatives

**Emergency Exception** When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision-maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.

## Closest Available Relative

General	Autopsy	Gift of Remains	Disposition of Remains
<i>No statutory hierarchy<sup>1</sup></i>	<i>No statutory hierarchy</i>	<i>In the order listed</i>	<i>In the order listed</i>
Spouse/domestic partner	Spouse/domestic partner	An agent who could have made an anatomical gift immediately before decedent’s death	Spouse/domestic partner
Adult child	Adult child	Spouse/domestic partner	Adult child or majority of children
Either parent	Either parent	Adult child	Either parent
Adult sibling	Adult sibling	Either parent	Adult sibling or majority of siblings
Grandparent	Any other kin or person who has the right to control disposition of remains	Adult sibling	Surviving adults in degree of kinship or a majority of the same degree
Adult aunt/uncle	Public administrator, coroner or other official, such as the curator of the unclaimed dead	Adult grandchildren	Public administrator, if the patient has assets
Adult niece/nephew		Grandparent	Curator of the unclaimed dead
		An adult who exhibited special care and concern for the decedent during the decedent’s lifetime	
		Guardian or conservator of the decedent at the time of death	
		Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above	

<sup>1</sup>For general medical decisions, case law and not a statute authorize decisions by the “closest available relative” and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient’s values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor’s recommendations is not a proper criterion for selection.