

BERGEN GASTROENTEROLOGY AMBULATORY ENDOSCOPY CENTER

EMERSON, NJ

ADVANCE DIRECTIVE

Section: Unit Direction,
Administration & Staffing

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POLICY

To establish a procedure to determine if patients admitted to Bergen Gastroenterology Ambulatory Surgical Center have completed an advance directive, to establish a procedure to determine if such advance directives are valid under the New Jersey Advance Directives for Health Care Act (N.J.S.A. 26:2H-53, et seq.) and the Federal statute The Patient Self-Determination Act, to establish procedures when a patient has a valid advance directive in place and to educate patients, and employees, regarding all aspects relating to advance directives. It is the Center's responsibility to inform their patients about Advance Directives, which may include a living will, durable power of attorney, DNR (Do Not Resuscitate order and expresses the patient's preferences. The patient keeps the original and the Center makes a copy for the Medical Record.

PURPOSE

To provide guidelines for (1) patient self-determination, (2) a patient's right to make decisions regarding medical care, including the right to accept or refuse treatment, (3) supplying information about advance directives to patients and their families, and (4) giving assistance, where appropriate, to patients and their families with respect to the execution of advance directives. To ensure compliance with both federal and state law respecting advance directives within the institution.

I. DEFINITIONS

I.DECLARANT: A competent adult who executes an advance directive.

II.SELF-DETERMINATION: The right of a patient to make health care decisions. This includes the right to accept or refuse treatment (forego), the right to informed consent and the right to formulate advance directives.

III.ADVANCE DIRECTIVE: May include a proxy directive, an instruction directive or both (a combined directive).

1. Instruction Directive (living will) - a written document which provides instructions and directions regarding the declarant's wishes for health care in the event the declarant subsequently lacks decision making capacity.
2. Proxy Directive (Durable Power of Attorney for Health Care) - a written document, which designates a health care representative in the event the declarant subsequently, lacks decision-making capacity.
3. Combined Directive - this single document designates a proxy, along with having a statement discussing your medical treatment preferences.

See also Section II (J) of this Policy for the definition of a valid advance directive.

IV.DECISION MAKING CAPACITY: A patient's ability to understand and appreciate the nature and consequences of health care decisions, including the benefits and risks of each, and alternatives to any proposed health care and to reach an informed decision. A patient's decision-making capacity shall be evaluated relative to the demands of each particular health care decision.

V.HEALTH CARE DECISION: A decision to accept or refuse any treatment, service or procedure used to diagnose, treat or care for patient's physical or mental condition, including life-sustaining treatment. Health care decision also means a decision to accept or to refuse the services of a particular physician, nurse, other health care professional or health care institution, including a decision to accept or to refuse a transfer of care.

VI.HEALTH CARE REPRESENTATIVE: The individual designated by a declarant pursuant to the proxy directive part of an advance directive for the purpose of making health care decisions on the declarant's behalf, and includes an individual designated as a alternate health care representative who is acting as the declarant's health care representative in accordance with the terms and order of priority stated in an advance directive.

VII.LIFE-SUSTAINING TREATMENT: The use of any medical device or procedure, artificially providing fluids or nutrition, drugs, performing surgery or therapy that uses mechanical or other artificial means to sustain, restore, or supplant a vital bodily function, and thereby increase the expected life-span of a patient.

VIII.PERMANENTLY UNCONSCIOUS: A medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes without limitation a persistent vegetative state or irreversible coma.

IX.TERMINAL CONDITION: The terminal stage of an irreversibly fatal illness, disease or condition. A determination of a specific life-expectancy is not required as a pre-condition for a diagnosis of a terminal condition, but a prognosis of a life expectancy of six months or less, with or without the provision of life-sustaining treatment, based upon reasonable medical certainty, shall be deemed to constitute a terminal condition.

II. POLICY

- A. It is the policy of Bergen Gastroenterology Ambulatory Surgical Center to honor a patient's wishes regarding health care decisions whenever possible. Caregivers will honor provisions of valid advance directives in accordance with New Jersey law and Surgery Center policies and procedures. (See, however, Paragraphs O and P below).
- B. No patient will be discriminated against based on whether or not that individual has executed an advance directive.

- C. Written information shall be provided to all adult patients at the time of admission concerning:
1. An individual's rights under State law to make health care decisions, including the rights to accept or refuse medical or surgical treatment and the right to formulate advance directives; and
 2. The Surgery Center's policy respects these rights.
- D. Written follow-up information will be provided to all interested adult patients, their families and health care representatives soon after admission. Said information shall include information and materials about advance directives and a description of the process by which a patient may obtain assistance in the execution of an advance directive.
- E. Physicians shall be encouraged to discuss advance directives with their patients prior to admission.
- F. Patient and staff education regarding patient rights and advance directives will be provided by Bergen Gastroenterology Ambulatory Surgical Center.
- G. A competent adult may execute an advance directive at any time. Once executed, the declarant may revoke an advance directive by the following means:
1. Notification, orally or in writing, to the patient's health care representative (if any), physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or
 2. Execution of a subsequent advance directive.
 - i. An incompetent patient may suspend an advance directive by notification, orally or in writing, to the patient's health care representative (if any), physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing intent to revoke the document.
- H. Valid advance directives will become a permanent part of a patient's medical record when made available.
- I. To be valid, an advance directive must be signed and dated by, or at the direction of, the declarant. There must also appear on the document the signatures of two adult witnesses who attested that the declarant was of sound mind and free of duress and undue influence; alternatively, the document may bear the acknowledgment of the declarant before a notary public or attorney at law. A designated health care representative, if any or the attending physician shall not act as a witness. Any Surgery Center employee may witness any advance directive. Surgery Center employees cannot serve as a patient's designated health care representative unless related to the patient by blood, marriage, or adoption; this restriction does not apply to a physician if the physician does not serve as the patient's attending physician and the patient's health care representative at the same time.
- J. A valid advance directive which has been given to the patient's attending physician or an appropriate representative of the Surgery Center shall become operative when it is determined pursuant to Section IV (C) of the Policy that the patient lacks capacity to make a particular health care decision.

- K. Emergency personnel shall not withhold or withdraw emergency care in circumstances which do not afford reasonable opportunity for careful review and evaluation of an advance directive without endangering the life of the patient.
- L. Consistent with the terms of a valid advance directive and the provisions of the New Jersey Advance Directives for Health Care Act, life-sustaining treatment may be withheld or withdrawn from a patient in the following circumstances:
1. When the life-sustaining treatment is experimental and not a proven therapy, or is likely to be ineffective or futile in prolonging life, or is likely to merely prolong an eminent dying process;
 2. When the patient is permanently unconscious, as determined by the attending physician and confirmed by a second qualified physician;
 3. When the patient is in a terminal condition, as determined by the attending physician and confirmed by a second qualified physician; or
 4. In the event none of the above circumstances applies, when the patient has a serious irreversible illness or condition, and the likely risks and burdens associated with the medical intervention to be withheld or withdrawn may reasonably be judged to outweigh the likely benefits to the patient from such intervention, or imposition of the medical intervention on an unwilling patient would be inhumane.
- M. Where it has been determined that a patient lacks the capacity to make a particular health care decision (see Section IV (C) below), and a valid advance directive is not present, then legal counsel must be sought because the procedures vary depending upon the circumstances.
- N. A physician may decline to participate in the withholding or withdrawing of measures utilized to sustain life, in accordance with his or her sincerely held personal or professional convictions. In such circumstances, the physician shall act in good faith to inform the patient and the health care representative, and the chief of the medical staff of this decision as soon as practicable, to effect an appropriate, respectful and timely transfer of care, and to assure that the patient is not abandoned or treated disrespectfully. In the event of transfer of a patient's care, the attending physician shall assure the timely transfer of the patient's medical records, including a copy of the patient's advance directive.
- O. A nurse or other health care professional may decline to participate in the withholding or withdrawing of measures utilized to sustain life, in accordance with his or her sincerely held personal or professional convictions. In these circumstances, the nurse or other health care professional shall act in good faith to inform the patient and the health care representative, and the head of the nursing or other professional staff of this decision as soon as practicable, to cooperate in effecting an appropriate, respectful and timely transfer of care, and to assure that the patient is not abandoned or treated disrespectfully.
- P. In the event of disagreement or question among any relevant party involved (including, but not limited to, the attending physician, any member of the health care team, the patient, family, or health care representative), concerning a patient's decision making capacity or the appropriate interpretation and application of the terms of an advance directive to the patient's course of treatment, the parties may

seek to resolve the disagreement or question through a court of competent jurisdiction. The foregoing of life-sustaining treatment will not be initiated until all significant disagreements or questions have been resolved.

III. PROCEDURE

- B. All adult patients will be asked, when possible, by admissions personnel at the time of admission about the existence of an advance directive. If the patient is incapable of responding to this inquiry, the information will be requested of the patient's family or in the absence of family, another individual with personal knowledge of the patient. Follow-up procedures will be in place, however, to assure that information on Advance Directives is given to incapacitated patients if, and when, they are no longer incapacitated. This follow-up shall be the responsibility of the center's administration.
- B. The information will be documented in the medical record as a required entry.
- C. Upon admission, each adult patient, upon request, shall receive a patient information sheet which shall contain (1) the Surgery Center's policies relevant to self-determination and, (2) an individual's rights under the New Jersey Advance Directives for Health Care Act. Upon request, said materials shall also be made available to a patient's family members and health care representative.
- D. If, (1) a patient or a patient's family members or health care representative requests further explanation or information regarding patient self-determination or, (2) a patient wishes to exercise his or her right to execute an advance directive, the Director of Nursing will be notified. If the Director of Nursing is not available to assist in this task, then the Nurse Manager of the RECOVERY ROOM will be notified. The outcome of this discussion shall be noted in the patient's medical record.
- E. Standard advance directive forms will be made available to patients upon request.
- F. When a patient provides the Surgery Center with his/her advance directive, a copy will be made and placed in the medical record as a permanent part of the chart. A copy of a patient's advance directive, where available, shall be included in a transferring patient's transfer record.
- G. The attending physician shall be notified about the existence of a patient's advance directive. The staff is encouraged to promptly alert physicians, nurses, and other professionals providing care to patients who have informed the Surgery Center of the existence of an advance directive in instances where a copy is not immediately available for the medical record. The staff is encouraged to obtain a copy of a currently executed advance directive from inpatients and other critically ill patients who are under treatment at the Surgery Center. These shall be entered when received into the medical record of the patient.
- H. All Surgery Center personnel shall be informed of their rights and responsibilities, under state law, federal law and Surgery Center policy, with respect to the issue of advance directives. This shall be done through in-service programs and educational materials in order to (1) ensure that such rights and responsibilities are understood and, (2) provide a forum for discussion and consultation regarding the requirements of state law, federal law and Surgery Center policy.

- I. Written information shall be available to the public.
- J. The Medical Board will periodically evaluate the Surgery Center's responsibilities of furthering patient self-determination according to the requirements set forth in the Patient Self-Determination Act of 1990, and the New Jersey Advance Directives for Health Care Act.

IV. PHYSICIAN RESPONSIBILITIES

- A. The attending physician shall make an affirmative inquiry of the patient, his family or others, as appropriate under the circumstances, concerning the existence of an advance directive.
- B. The attending physician shall document in the patient's medical record whether an advance directive exists, the name of the patient's health care representative, if any, and place a COPY of the document in the patient's medical record. The attending physician shall document in the same manner the reaffirmation, modification, or revocation of an advance directive, if he or she has knowledge of such action.
- C. When appropriate, and where the patient has a valid advance directive in place, a determination shall be made of the patient's incapacity to make a particular health care decision in accordance with the following procedures:
 - 1. The attending physician shall determine whether the patient lacks capacity to make a particular health care decision. The determination shall be stated in writing, shall include the attending physician's opinion concerning the nature, cause, extent, and probable duration of the patient's incapacity, and shall be made a part of the patient's medical records.
 - 2. The attending physician's determination of a lack of decision making capacity shall be confirmed by one or more physicians. The opinion of the confirming physician shall be stated in writing and made a part of the patient's medical records in the same manner as that of the attending physician. Confirmation of a lack of decision making capacity is not required when the patient's lack of decision making capacity is clearly apparent, and the attending physician and the health care representative agree that confirmation is unnecessary.
 - 3. If the attending physician or the confirming physician determines that patient lacks decision making capacity because of a mental nor psychological impairment or a developmental disability, and neither the attending physician or the confirming physician has specialized training or experience in diagnosing mental or psychological conditions or developmental disabilities of the same or similar nature, a determination of a lack of decision making capacity shall be confirmed by one or more physicians with appropriate specialized training or experience. The opinion of the confirming physician shall be stated in writing and made a part of the patient's medical records in the same manner as that of the attending physician.
 - 4. A physician designated by the patient's advance directive as a health care representative shall not make or confirm the determination of a lack of decision-making capacity.

5. If, pursuant to the above procedure, it has been determined that a patient lacks decision making capacity to make a particular health care decision, then the attending physician shall inform the patient, if the patient has any ability to comprehend, and the health care representative that: (1) the patient has been determined to lack decision making capacity to make a particular health care decision; (2) each has the right to contest this determination; and (3) each may have recourse to the dispute resolution process pursuant to Section II(Q) of this policy. Notice to the patient and the health care representative shall be documented in the patient's medical records.
 6. For purposes of this section, a determination that a patient lacks decision making capacity shall be based upon, but need not be limited to, an evaluation of the patient's ability to understand and appreciate the nature and consequences of a particular health care decision, including the benefits and risks of, and alternatives to, the proposed health care, and to reach an informed decision.
- D. After determination of patient incapacity where a health care representative has been appointed pursuant to a valid advance directive:
1. If it has been determined that a patient lacks decision making capacity, a health care representative appointed pursuant to a valid advance directive shall have authority to make health care decisions on behalf of the patient.
 2. The attending physician, the health care representative and, when appropriate, any additional physician responsible for the patient's care, shall discuss the nature and consequences of the patient's medical condition, and the risks, benefits and burdens of the proposed health care and its alternatives. Discussion of the proposed treatment and its alternatives shall include, as appropriate under the circumstances, the availability, benefits, and burdens of rehabilitative treatment, therapy, and services. The attending physician shall allow, as appropriate under the circumstances, adequate time for the health care representative to understand and deliberate about all relevant information before a treatment decision is implemented. Except as provided in Paragraph 3, 4 and 5 below, the attending physician shall obtain informed consent for, or refusal of, health care from the health care representative.
 3. Even after a patient has been determined to lack decision making capacity, the attending physician shall, to a reasonable extent, discuss the treatment options with the patient, and seek to involve the patient as a participant in the decision-making process. The attending physician shall seek to promote the patient's capacity for effective participation and shall take the patient's expressed wishes into account in the decision-making process.
 4. Once decision-making authority has been conferred upon a health care representative pursuant to a valid advance directive, if the patient is subsequently found to possess adequate decision-making capacity with respect to a particular health care decision, the patient shall retain legal authority to make that decision.

5. Notwithstanding any other provision of this Policy to the contrary, if a patient who lacks decision making capacity clearly expresses or manifests the contemporaneous wish that medically appropriate measures utilized to sustain life be provided, that wish shall take precedence over any contrary decision of the health care representative and any contrary statement in the patient's instruction directive.
- E. Procedure after determination of patient incapacity where there is no health care representative (or the health care representative is unavailable) and there is a valid instruction directive in place:
1. If the patient has executed a valid instruction directive but has not designated a health care representative, or if neither the designated health care representative nor any alternate designee is able or available to serve, the instruction directive shall be legally operative. If the instruction directive provided clear and unambiguous guidance under the circumstances, it shall be honored in accordance with its specific terms by the physicians, nurses, other health care professionals, the Surgery Center, and others acting on the patient's behalf.
 2. If the instruction directive is, in the exercise of reasonable judgment, not specific to the patient's medical condition and the treatment alternatives, the attending physician, in consultation with a legally appointed guardian, if any, family members, or others acting on the patient's behalf, shall exercise reasonable judgment to effectuate the wishes of the patient, giving full weight to the terms, intent, and spirit of the instruction directive. Departure from the specific terms and provisions of the instruction directive shall be based upon clearly articulate factors not foreseen or contemplated by the instruction directive, including, but not limited to, the circumstance of the patient's medical condition.

V. DNR ORDERS

Bergen Gastroenterology Ambulatory Surgical Center does not honor DNR orders when a patient presents themselves for surgery at the Center. This is discussed with the patient prior to commencement of their surgical procedure, and this discussion is then documented in their Medical Record.

Where patient incapacity has been determined, an attending physician may, consistent with the terms of a valid advance directive, and the provisions of the New Jersey Advance Directive for Health Care Act and this Policy, issue a DNR order. Under these circumstances (i.e., where there is valid advance directive in place), the involvement of any physicians other than the attending physician is not required.

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