# Clinical Ethics Ready Reference Guide-Adults

| Perceived Problem | Pertinent Principle and *Ethical Religious Directive (ERD) for Catholic Health Care Services* | SJHMC Policy Provision | Legal Provision |
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| **1. Patient's decision making capacity being questioned or challenged.** | Patient is presumed to have decision-making capacity unless facts indicate it is lacking. | **Policy #10005.8 IV.B.1 (Informed Consent)** Patients who are (18) years of age or older and who are mentally competent must give their own consent. The law assumes that an individual is mentally competent unless there is evidence to the contrary. | ***The Consent and Health Information Resource Manual (AZHHA) Chapter 2, II .A. Determining Incapacity: "***In most situations-such as a patient who is awake and lucid or an unresponsive patient in a comatose state-the patient's capacity or incapacity under this standard will be clear. In other situations, however, the patient's decision making ability may not be as easily determined." "We recommend this determination be made by a physician with appropriate clinical training.<br><br>Consultation with a psychiatrist or psychologist may be advisable in some situations, but is not required when treatment is for conditions unrelated to the patient's mental health. In difficult situations, we suggest providers seek advice from outside resources such as a facility's Ethics Committee, risk management, or legal department. However, the determination of the patient's incapacity remains a clinical decision." |

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| **2. Patient not receiving adequate information for informed consent.** | Each person has the moral right to information needed to make informed decisions about his or her life and health.<br><br>***ERD #27***<br>***Free and informed consent requires that the person or the person's surrogate receive all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and any reasonable and morally legitimate alternatives, including no treatment at all.*** | **Policy #10004 III.B.1 (Patient Rights and Responsibilities)** Each patient has the right to be informed of his/her diagnoses and prognoses, the reasonable options for medical treatment, the benefits and burdens of each option and the consequences of foregoing medical treatment. Based on this information, each patient has the right to refuse medical treatments, even life-threatening ones. Patients also have the right to formulate advanced directives and to communicate their preferences regarding treatment should they lose decision making capacity. | Every adult of sound mind has the fundamental right to determine what should be done with his body. **AZ--*Hales v. Pittman,* 576 P.2d 493 (1978)** |

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| **3. Patient being misled or deceived about treatment alternatives, risks, foreseen suffering, probable functional outcome OR patient being pressured by others into making a decision.** | The primary responsibility of healthcare professionals in the process of reaching decisions about treatment is to provide the patient or surrogate with sufficient medical information and adequate psychological-social-spiritual support to enable a free and informed choice.<br><br>***ERD #27***<br>***Free and informed consent requires that the person or the person's surrogate receive all reasonable information about the essential nature of the proposed treatment and its benefits; its risks, side-effects, consequences, and cost; and any reasonable and morally legitimate alternatives, including no treatment at all.***<br><br>***ERD #32***<br>***While every person is obliged to use ordinary means to preserve his or her health, no person should be obliged to submit to a health care procedure that the person has judged, with free and informed conscience, not to provide a reasonable hope of benefit without imposing excessive risks and burdens on the patient or excessive expense to family or community.*** | **Policy #10005.8 1.C (Informed Consent)** The provider is responsible for obtaining the patient's informed consent by explaining the nature and purpose of the proposed treatment, the material risks involved, and any available alternative treatments, and by answering questions about the proposed treatment or alternative treatments. The provider is also responsible for documenting in the medical record that informed consent / education has been provided to the patient. | Every adult of sound mind has the fundamental right to determine what should be done with his body. **AZ--*Hales v. Pittman,* 576 P.2d 493 (1978)** |

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| **4. Patient's choice being disregarded or overridden** | Each patient is the primary decision-maker for his or her treatment. In no case may family members or healthcare professionals override the ethically appropriate decision of a patient who has decision-making capacity.<br><br>**ERD #28**<br>**Each person or the person's surrogate should have access to medical and *moral information and counseling so as to be able to form his or her conscience. The free and informed health care decision of the person or the person's surrogate is to be followed so long as it does not contradict Catholic principles.*** | **Policy #10003 I.B.3 (Advance Directives)** SJHMC is committed to healing and to the respect of the dignity of each person. It is the intent of the institution to respect the rights of its patients and to make decisions concerning their care. However, as a Catholic hospital SJHMC operates according to the Ethical and Religious Directives for Catholic Healthcare Facilities. Therefore, SJHMC may not be able to implement a particular treatment decision. In such cases, efforts will be made to find an acceptable resolution, including, if necessary, assisting in the transfer of the patient to an alternative facility.<br>**II.B** To promote each patient's ability and right to participate in medical decision making as well as to comply with the Federal Patient Self-Determination Act and Arizona Revised Statutes.<br><br>**Policy # 10004 II.A (Patient Rights and Responsibilities)** To assure that all patients who present for services at SJHMC are treated with respect and dignity and to recognize that each patient is an individual with unique values, beliefs, and health care needs. | Every adult of sound mind has the fundamental right to determine what should be done with his body. **AZ--*Hales v. Pittman,* 576 P.2d 493 (1978)**<br><br>A person may revoke his own health care directive or disqualify a surrogate by doing any of the following:<br><br>1. Making a written revocation of a health care directive or a written statement to disqualify a surrogate.<br><br>2. Orally notifying the surrogate or a health care provider.<br><br>3. Making a new health care directive.<br><br>4. Any other act that demonstrates a specific intent to revoke or to disqualify a surrogate. **ARS 36-3202** |
| **5. Patient requests to forgo life-sustaining treatment** | A person may ethically forgo disproportionate means of preserving Life. Disproportionate means are those that **in the patient's** judgment do not offer a reasonable hope of benefit or entail excessive burden or impose excessive expense on the family or the community.<br><br>***ERD #57***<br>***A person may forgo extra-ordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the*** | **Policy #27053 IV.C.1 (End of Life)** The patient with capacity is the primary decision maker and has the right to refuse treatment, even if the decisions to decline treatment may hasten death. The patient must be informed of the benefits, risks, and consequences of such a decision. | **ARS 36-3262** Any writing that meets the requirements of this article may be used to create a living will. A person may write and use a living will without writing a health care power of attorney or may attach a living will to the person's health care power of attorney. If a person has a health care power of attorney, the agent must make health care decisions that are consistent with the person's known desires and that are medically reasonable and appropriate. A person can, but is not required to, state the person's desires in a living will. The following form is offered as a sample only and does not prevent a person from using other language or another form**.** |

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| | ***community.*** | | |
| **6. Patient requests to forgo artificial nutrition and hydration.** | Since artificial hydration and nutrition are medical treatments, the same ethical principle about disproportionate means of preserving life applies. There should be a presumption in favor of providing artificial nutrition and hydration as long as this is of sufficient benefit to outweigh the burdens involved to the patient.<br><br>***ERD #57***<br>***A person may forgo extra-ordinary or disproportionate means of preserving life. Disproportionate means are those that in the patient's judgment do not offer a reasonable hope of benefit or entail an excessive burden, or impose excessive expense on the family or the community.***<br><br>***ERD #58***<br>***In principle, there is an obligation to provide patients with food and water, including medically assisted nutrition and hydration for those who cannot take food orally….Medically assisted nutrition and hydration become morally optional when they cannot reasonably be expected to prolong life or when they would be "excessively burdensome for the patient or cause significant physical discomfort, for example resulting from complications in the use of the means employed."*** | **Policy #27053 IV.C.1 (End of Life)** The patient with capacity is the primary decision maker and has the right to refuse treatment, even if the decisions to decline treatment may hasten death. The patient must be informed of the benefits, risks, and consequences of such a decision.<br><br>**Policy #10790 IV.A (Withholding and Withdrawing Life Prolonging Medical Treatment)** By law (AZ Revised Statutes Sec 36-3203-E) a decision to withdraw/withhold fluids and nutrition shall only be honored if that decision has been made by the patient or by the patient's agent or guardian, but not by other LAR's. | **ARS 36-3262** Any writing that meets the requirements of this article may be used to create a living will. A person may write and use a living will without writing a health care power of attorney or may attach a living will to the person's health care power of attorney. If a person has a health care power of attorney, the agent must make health care decisions that are consistent with the person's known desires and that are medically reasonable and appropriate. A person can, but is not required to, state the person's desires in a living will. The following form is offered as a sample only and does not prevent a person from using other language or another form.<br><br>**ARS 36-3203(E) "**A health care decision maker who has not been appointed an agent through a power of attorney or has not been appointed as a guardian for the express purpose of making health care decisions, may not make decisions to withdraw the artificial administration of food or fluid, unless the health care decision maker is acting under express written direction found in the patient's health care directive."<br><br>*(This does not state that the surrogate must start artificial administration of food or fluid)* |

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| **7. Patient lacks capacity to make a decision** | An individual with capacity has the right to designate an agent to act on his/her behalf if he loses capacity. If an individual has not named an agent and does not have capacity to do so, then a surrogate should be agreed upon to act on behalf of the patient. | **Policy #10005 IV.B.5.a (Informed Consent)** Consents on behalf of adults who are unable to make or communicate their own health care decisions, including adults who are mentally incompetent or under the influence of sedatives, narcotics, alcohol, and/or recreational drugs should have a surrogate decision maker, per AZ Statute 36-3231. | "Surrogate" means an adult, other than an agent named by the patient in a power of attorney for health care or conservator, who is authorized to make health care decisions for a patient**.** **AZ Statute 36-3231:** Surrogate priority list is outlined in statute. A surrogate will only be chosen to make health care decisions when the patient does not have a conservator and has not designated an agent. |
| **8. Who is the legal surrogate decision maker** | The surrogate decision-maker should be a person concerned for the welfare of the patient with knowledge about the patient's previously expressed preferences regarding treatment.<br><br>***ERD #25***<br>***In the event that an advance directive is not executed, those who are in a position to know best the patient's wishes – usually family members and loved ones – should participate in the treatment decisions for the person who has lost the capacity to make health care decisions.*** | **Policy #10005 IV.B.5.a (Informed Consent)** Consents on behalf of adults who are unable to make or communicate their own health care decisions, including adults who are mentally incompetent or under the influence of sedatives, narcotics, alcohol, and/or recreational drugs, should have a surrogate decision maker, per AZ Statute 36-3231.<br>The priority list is outlined in statue AND in P&P. | An appropriate surrogate must be reasonably available, willing and able to make decisions**. AZ Statute 36-3231:** A surrogate will only be chosen to make health care decisions when the patient does not have a conservator and has not designated an agent.<br><br>**AZ Statute 36-3202:** A person may revoke his own health care directive or disqualify a surrogate by doing any of the following:<br><br>1. Making a written revocation of a health care directive or a written statement to disqualify a surrogate.<br><br>2. Orally notifying the surrogate or a health care provider.<br><br>3. Making a new health care directive.<br><br>4. Any other act that demonstrates a specific intent to revoke or to disqualify a surrogate. |
| **9. The patient does not have a conservator, has not designated an agent, and no surrogate is available.** | When no surrogate is available and the patient is not known by caregivers, a treatment decision should promote the patient's previously expressed wishes, if known, and/or best interests in accord with respect for human dignity and the patient's personal values, to the extent known.<br><br>***ERD #33*** | **Policy #10005 IV.B.6.a (Informed Consent)** A patient may be treated without consent only if no legally authorized individuals are available to give consent and a physician has determined that a medical emergency exists.<br><br>**Policy #27053 III.F.5 (End of Life)** If a surrogate cannot be located, the attending physician may make health care treatment decisions after consulting with and obtaining the | **AZ Statute 36-3231:** A surrogate will only be chosen to make health care decisions when the patient does not have a conservator and has not designated an agent.<br>**Surrogate Decision Makers, in order of priority:**<br><br>1. Health care power of attorney / the patient's designated surrogate /A court appointed guardian<br><br>2. Or individuals in the following order of priority, who are **willing**, **able** and **available** to serve as |

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| | ***The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.*** | recommendations of the Ethics Consultation Team. If this is not possible, the attending physician will make treatment decisions for the patient after consulting with a second physician who concurs with the physician's decision. | the surrogate:<br><br>a. The patient's spouse, unless the patient and spouse are legally separated.<br><br>b. An adult child of the patient. If the patient has more than one adult child - seek the consent of a majority of the adult children.<br><br>c. A parent of the patient.<br><br>d. If the patient is unmarried, the patient's domestic partner.<br><br>e. Adult sibling of the patient - seek the consent of a majority of the adult siblings.<br><br>f. A close friend of the patient - an adult who has exhibited special care and concern for the patient.<br><br>g. If none of the above are available, the attending physician may make healthcare decisions on behalf of the patient after consulting with the hospital ethics committee; if is not possible to consult the ethics committee, the attending physician may make decisions after consulting with and obtaining the concurring opinion of another physician. |

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| **10. Patient's Advance directives not being honored <u>OR</u> patient's known preferences being disregarded.** | The surrogate's duty is to choose the ethically appropriate alternative most in accord with the patient's previously expressed wishes and personal values or, if not known, the patient's best interest.<br><br>***ERD #25***<br>***Each person may identify in advance a representative to make health care decisions as his or her surrogate in the event that the person loses the capacity to make health care decisions. Decisions by the designated surrogate should be faithful to Catholic moral principles and to the persons intentions and values, or if the person's intentions are unknown, to the person's best interests.*** | **Policy #10003 III.E.1. (Advance Directives)** A Medical Living Will declaration (Advanced Directive) is an expression of the patient's desires to have performed, withheld or withdrawn certain life sustaining measures when the patient meets specific requirement of the law. Unless there is an actual knowledge of revocation, staff may presume that the declaration was properly signed and is a valid document.<br><br>**Policy #10004 II.A (Patient Rights and Responsibilities)** To assure that all patients who present for services at SJHMC are treated with respect and dignity and to recognize that each patient is an individual with unique values, beliefs, and health care needs. | **AZ 36-3203(C)—**A surrogate shall make healthcare decisions for the patient in accordance with the patient's expressed wishes or, if none expressed, in the good faith belief as to what is in the patient's best interest.<br><br>**(AZ 36-3203(D))** A surrogate who makes good faith health care decisions for a patient is not subject to civil or criminal liability for those decisions. Acts and refusals to act made in reliance on the provisions of a health care directive are presumed to be made in good faith. A court shall base a finding of an absence of good faith on information known to the surrogate and shall enter its finding only after it has made a determination of bad faith in written findings of fact based on clear and convincing evidence of improper motive. For the purposes of this subsection, "good faith" includes all health care decisions, acts and refusals to act based on a surrogate's reasonable belief of a patient's desires or a patient's best interest if these decisions, acts or refusals to act are not contrary to the patient's express written directions in a valid health care directive. |

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| **11. Staff member believing plan of care between healthcare team and surrogate decision makers is cruel/inhumane** | Any staff member who disagrees with the plan of care has the right to request an ethics consult.<br><br>***ERD #23***<br>***The inherent dignity of the human person must be respected and protected regardless of the nature of the person's health problem or social status.***<br><br>***ERD #33***<br>***The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.***<br><br>***ERD # 59***<br>***The free and informed judgment made by a competent adult patient concerning the use or withdrawal of life-sustaining procedures should always be respected and normally complied with, unless contrary to Catholic moral teaching.*** | **Policy #10000.2 III.C.2 (Role of the Ethics Committee and the Ethics Consultation Team)** When a conflict cannot be resolved through informal means, members of the hospital Ethics Consultation Team may be called to provide recommendations.<br><br>**Policy #10003 1.B.3 (Advance Directives)** SJHMC and SJWMC are Catholic hospitals, and as such, are committed to healing and to the respect of the dignity of each person. It is the intent of this institution to respect the rights of its patients and to make decisions concerning their care. However, as Catholic hospitals, SJHMC and SJWMC operate according the Ethical and Religions Directives for Catholic Healthcare Facilities. Therefore, the hospital may not be able to implement a particular treatment decision. In such cases, efforts will be made to find an acceptable resolution, including, if necessary, assisting in the transfer of the patient to an alternative facility.<br><br>**Policy #10004 II.A (Patient Rights and Responsibilities)** To assure that all patients who present for services at SJHMC are treated with respect and dignity and to recognize that each patient is an individual with unique values, beliefs, and health care needs. | **AZ 36-2305(C)(1)—**A healthcare provider may refuse to comply with an individual healthcare instruction for reasons of conscience if the provider promptly makes known the provider's unwillingness to comply and promptly transfers responsibility for the patient's care to another provider who is willing to act in accordance with the instruction. |

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| **12. Patient/surrogate insisting on medically, i.e., physiologically, inappropriate treatment.** | Healthcare givers are not ethically obligated to initiate or continue medical treatment that is outside the standard of care.<br><br>***ERD #33***<br>***The well-being of the whole person must be taken into account in deciding about any therapeutic intervention or use of technology. Therapeutic procedures that are likely to cause harm or undesirable side-effects can be justified only by a proportionate benefit to the patient.*** | **Policy #10004 III.A.1 (Patient Rights and Responsibilities)** Patients have a right to receive a timely and appropriate response to their requests for treatment or service. This does not require that the hospital or its staff provide all services or treatments requested by patients, family members or guardians.<br><br>**Policy #10793 I.A (Conflict Resolution in Medical Decision Making)** It is the intent of the organization to balance the patient's goals of care with the standards in medicine and to anticipate and prevent conflicts before they arise.<br>**IV.B** After unit leadership involvement, if a conflict cannot be resolved, members of the Ethics Consultation Team are asked to participate in the decision making process. If circumstances warrant, the Ethics Consultation Team may seek assistance of risk management. | Physicians must meet the standard of care in treating patients. If the standard of care would not be met by providing treatment at the insistence of a patient/surrogate that the physician believes is medically inappropriate, the physician may discontinue such treatment.<br><br>In addition, if a surrogate insists on treatment a physician considers inappropriate, **AZ 36-2501(c)** provides that the health care provider is not subject to criminal or civil liability or professional discipline for failing to comply with a decision or a direction that violates the provider's conscience if the provider promptly makes known the provider's unwillingness and promptly transfers the responsibility for the patient's care to another provider who is willing to act in accordance with the agent's direction. |
| **13. Surrogate or caregivers being unwilling to stop an existing treatment.** | There is no ethical or legal difference between withholding and withdrawing treatment. Considerations that justify not initiating treatment also justify withdrawing treatment. | **Policy #10004 III.A.1 (Patient Rights and Responsibilities)** Patients have a right to receive a timely and appropriate response to their requests for treatment or service. This does not require that the hospital or its staff provide all services or treatments requested by patients, family members or guardians.<br><br>**Policy #27053 IV.E (End of Life)** In the event of conflicts among physicians, nurses, the patient or the patient's LAR or family members, the matter will be addressed in the following manner: a. Members of the healthcare team will consult with social service, spiritual care, palliative care team, or supervisors as appropriate: b. A patient care conference will be held with all the concerned parties, including the patient / LAR, family members and multidisciplinary members of the healthcare team, to address the concerns: c. The patient, | **AZ 36-2305(C)(1)—**A healthcare provider may refuse to comply with an individual healthcare instruction for reasons of conscience if the provider promptly makes known the provider's unwillingness to comply and promptly transfers responsibility for the patient's care to another provider who is willing to act in accordance with the instruction. |

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| | | surrogate, physicians, nurses, or other members of the healthcare team may consult the Ethics Consultation Team. | |

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| **14. Surrogate or health care provider is insisting that treatment be continued after patient has been pronounced dead in accordance with neurological criteria, i.e., "brain death."** | Once the patient has been pronounced dead, medicines and machines ought to be discontinued as soon as possible (giving loved ones a reasonable opportunity to say "goodbye").<br>***ERD #62***<br>The determination of death should be made by the physician or competent medical authority in accordance with responsible and commonly accepted scientific criteria. | **Policy #10792 III.E (Determination of Brain Death)** The time of death is the time brain death is declared.<br><br>**Policy #10004 III.A.1 (Patient Rights and Responsibilities)** Patients have a right to receive a timely and appropriate response to their requests for treatment or service. This does not require that the hospital or its staff provide all services requested by patients, family members or guardians. | |

***ADDITIONAL SJHMC POLICIES and RESOURCES FOR REFERENCE:***

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| # 10000.1 | Ethical Environment of Care |
| # 10000.2 | Role of the Ethics Committee and the Ethics Consultation Team |
| # 10003 | Advance Directives |
| # 10004 | Patient Rights and Responsibilities |
| # 10005.1 | Anatomical Donations |
| # 10005.8 | Informed Consent |
| # 10039.1 | Emergency Medical Treatment and Labor Act (EMTALA) |
| # 10790 | Withholding / Withdrawing Life Prolonging Medical Treatment |
| # 10792 | Determination of Brain Death for the Purpose of Organ Donation |
| # 10793 | Conflict Resolution in Medical Decision Making |
| # 10794 | Allow Natural Death |
| # 25800 | Abortion and Sterilization |
| # 27030 | Patient Care Chain of Command |
| # 27031 | Care of Patients in Legal Custody |
| # 27053 | End of life Care |