

# Decision Makers for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, abortion, experimental treatment and aid-in-dying medication)

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	Appointed by a court
5. Court-appointed surrogate decision maker	Court appoints a surrogate to make health care decisions
6. Relative or friend	See “Relative or Friend” table, below
7. Interdisciplinary team	See V. “Unrepresented Patients” in chapter 3 of CHA’s Consent Manual for important information

**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 without patient consent 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.

## Relative or Friend

Health Care Decisions	Autopsy	Anatomical Gifts	Disposition of Remains
<b>No statutory hierarchy<sup>1</sup></b> <ul style="list-style-type: none"> <li>Spouse/domestic partner</li> <li>Adult child</li> <li>Either parent</li> <li>Adult sibling</li> <li>Adult grandchild</li> <li>Adult relative or close personal friend</li> </ul>	<b>No statutory hierarchy</b> <ul style="list-style-type: none"> <li>Spouse/domestic partner</li> <li>Adult child or parent</li> <li>Adult sibling</li> <li>Any other kin or person who has the right to control disposition of remains</li> <li>Public administrator</li> <li>Coroner or other official, such as the California Curator of the Unclaimed Dead</li> </ul>	<b>In the order listed</b> <ol style="list-style-type: none"> <li>An agent who could have made an anatomical gift immediately before decedent’s death</li> <li>Spouse/domestic partner</li> <li>Adult child</li> <li>Either parent</li> <li>Adult sibling</li> <li>Adult grandchildren</li> <li>Grandparent</li> <li>An adult who exhibited special care and concern for the decedent during the decedent’s lifetime</li> <li>Guardian or conservator of the decedent at the time of death</li> <li>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</li> </ol>	<b>In the order listed</b> <ol style="list-style-type: none"> <li>An agent named in an advance directive</li> <li>Spouse/domestic partner</li> <li>Adult child or majority of children</li> <li>Parent</li> <li>Adult sibling or majority of siblings</li> <li>Surviving adults in degree of kinship or a majority of the same degree</li> <li>Conservator of person</li> <li>Conservator of estate</li> <li>Public administrator, if the patient has assets</li> </ol>
Reference: Probate Code Section 4712	Reference: Health and Safety Code Section 7113	Reference: Health and Safety Code Section 7150.40	Reference: Health and Safety Code Section 7100

<sup>1</sup>For general medical decisions, there is no specific hierarchy or order that doctors or hospitals must follow. 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.

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