



Ohio Revised Code

Section 2133.08 Consenting to withholding or withdrawing life-sustaining treatment from patient.

Effective: April 6, 2017

Legislation: House Bill 451 - 131st General Assembly

(A)(1) If written consent to the withholding or withdrawal of life-sustaining treatment, witnessed by two individuals who satisfy the witness eligibility criteria set forth in division (B)(1) of section 2133.02 of the Revised Code, is given by the appropriate individual or individuals as specified in division (B) of this section to the attending physician of a patient who is an adult, and if all of the following apply in connection with the patient, then, subject to section 2133.09 of the Revised Code, the patient's attending physician may withhold or withdraw the life-sustaining treatment:

- (a) The attending physician and one other physician who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient is in a terminal condition or the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state, and the attending physician additionally determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment and that there is no reasonable possibility that the patient will regain the capacity to make those informed decisions.
- (b) The patient does not have a declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a durable power of attorney for health care, or has a document that purports to be such a declaration or durable power of attorney for health care but that document is not legally effective.
- (c) The consent of the appropriate individual or individuals is given after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.
- (d) The appropriate individual or individuals who give a consent are of sound mind and voluntarily give the consent.



(e) If a consent would be given under division (B)(3) of this section, the attending physician made a good faith effort, and used reasonable diligence, to notify the patient's adult children who are available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(2) The consulting physician under division (A)(1)(a) of this section associated with a patient allegedly in a permanently unconscious state shall be a physician who, by virtue of advanced education or training, of a practice limited to particular diseases, illnesses, injuries, therapies, or branches of medicine or surgery or osteopathic medicine and surgery, of certification as a specialist in a particular branch of medicine or surgery or osteopathic medicine and surgery, or of experience acquired in the practice of medicine or surgery or osteopathic medicine and surgery, is qualified to determine whether the patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.

(B) For purposes of division (A) of this section and subject to division (C) of this section, a consent to withhold or withdraw life-sustaining treatment may be given by the appropriate individual or individuals, in accordance with the following descending order of priority:

(1) If any, the guardian of the patient. This division does not permit or require, and shall not be construed as permitting or requiring, the appointment of a guardian for the patient.

(2) The patient's spouse;

(3) An adult child of the patient or, if there is more than one adult child, a majority of the patient's adult children who are available within a reasonable period of time for consultation with the patient's attending physician;

(4) The patient's parents;

(5) An adult sibling of the patient or, if there is more than one adult sibling, a majority of the patient's adult siblings who are available within a reasonable period of time for that consultation;



(6) The nearest adult who is not described in divisions (B)(1) to (5) of this section, who is related to the patient by blood or adoption, and who is available within a reasonable period of time for that consultation.

(C) (1) If an appropriate individual or class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is not available within a reasonable period of time for the consultation and competent to so decide, or declines to so decide, then the next priority individual or class of individuals specified in that division is authorized to make the decision. However, an equal division in a priority class of individuals under that division does not authorize the next class of individuals specified in that division to make the decision. If an equal division in a priority class of individuals under that division occurs, no written consent to the withholding or withdrawal of life-sustaining treatment from the patient can be given pursuant to this section.

(2)(a) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawing of life-sustaining treatment for a patient and that patient are married and are the parties to a pending divorce, dissolution, legal separation, or annulment proceeding, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make the decision.

(b) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawing of life-sustaining treatment for a patient is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state and the patient is the alleged victim, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make that decision.

(c) If a member of a class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient is subject to a temporary protection order, civil protection order, or any other protection order issued by a court in this state or another state and the patient is the alleged victim, the member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.



(d) If an appropriate individual entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient has been charged with the offense of felonious assault under section 2903.11 of the Revised Code or the offense of aggravated assault under section 2903.12 of the Revised Code against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, the individual is not competent to so decide, and the next priority individual or class of individuals specified in that division is authorized to make the decision.

(e) If a member of a class of individuals entitled to decide under division (B) of this section whether or not to consent to the withholding or withdrawal of life-sustaining treatment for a patient has been charged with the offense of felonious assault under section 2903.11 of the Revised Code or the offense of aggravated assault under section 2903.12 of the Revised Code against the patient and the serious physical harm or physical harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition, that member is not competent to so decide, and the other members of the class of individuals are authorized to make the decision.

(D)(1) A decision to consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient shall be made in good faith.

(2) Except as provided in division (D)(4) of this section, if the patient previously expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, a consent given pursuant to this section shall be valid only if it is consistent with that previously expressed intention.

(3) Except as provided in division (D)(4) of this section, if the patient did not previously express an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, a consent given pursuant to this section shall be valid only if it is consistent with the type of informed consent decision that the patient would have made if the patient



previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment, as inferred from the lifestyle and character of the patient, and from any other evidence of the desires of the patient, prior to the patient's becoming no longer able to make informed decisions regarding the administration of life-sustaining treatment. The Rules of Evidence shall not be binding for purposes of this division.

(4)(a) The attending physician of the patient, and other health care personnel acting under the direction of the attending physician, who do not have actual knowledge of a previously expressed intention as described in division (D)(2) of this section or who do not have actual knowledge that the patient would have made a different type of informed consent decision under the circumstances described in division (D)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (E) of this section.

(b) The immunity conferred by division (C)(1) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment for a patient under division (B) of this section if the individual gives the consent in good faith and without actual knowledge, at the time of giving the consent, of either a contrary previously expressed intention of the patient, or a previously expressed intention of the patient, as described in division (D)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.

(E)(1) Within forty-eight hours after a priority individual or class of individuals gives a consent pursuant to this section to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and communicates the consent to the patient's attending physician, any individual described in divisions (B)(1) to (5) of this section, except an individual who is not competent to give consent under division (C)(2) of this section, who objects to the application of this section to the patient shall advise the attending physician of the grounds for the objection. If an objection is so communicated to the attending physician, then, within two business days after that communication, the objecting individual shall file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician associated with the determination that the patient is in a terminal condition or that the patient currently is and for at least



the immediately preceding twelve months has been in a permanently unconscious state, in the probate court of the county in which the patient is located for the issuance of an order reversing the consent of the priority individual or class of individuals. If the objecting individual fails to so file a complaint, the individual's objections shall be considered to be void.

A probate court in which a complaint is filed in accordance with this division shall conduct a hearing on the complaint after a copy of the complaint and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after the service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether the decision of the priority individual or class of individuals to consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment in connection with the patient will be confirmed or reversed.

(2) If the decision of the priority individual or class of individuals was to consent to the use or continuation of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:

- (a) The patient is able to make informed decisions regarding the administration of life-sustaining treatment.
- (b) The patient has a legally effective declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.
- (c) The decision to use or continue life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.
- (d) The decision to use or continue life-sustaining treatment is not consistent with the type of



informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as described in division (D)(3) of this section.

(e) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(f) The priority individual, or any member of the priority class of individuals, who made the decision to use or continue life-sustaining treatment was not of sound mind or did not voluntarily make the decision.

(g) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(h) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with this section.

(3) If the decision of the priority individual or class of individuals was to consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient, the court only may reverse that consent if the objecting individual establishes, by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, one or more of the following:

(a) The patient is not in a terminal condition, the patient is not in a permanently unconscious state, or the patient has not been in a permanently unconscious state for at least the immediately preceding twelve months.

(b) The patient is able to make informed decisions regarding the administration of life-sustaining



treatment.

(c) There is a reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.

(d) The patient has a legally effective declaration that addresses the patient's intent should the patient be determined to be in a terminal condition or in a permanently unconscious state, whichever applies, or a legally effective durable power of attorney for health care.

(e) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient as described in division (D)(2) of this section.

(f) The decision to withhold or withdraw life-sustaining treatment is not consistent with the type of informed consent decision that the patient would have made if the patient previously had expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment should the patient subsequently be in a terminal condition or in a permanently unconscious state, whichever applies, and no longer able to make informed decisions regarding the administration of life-sustaining treatment as described in division (D)(3) of this section.

(g) The decision of the priority individual or class of individuals was not made after consultation with the patient's attending physician and after receipt of information from the patient's attending physician or a consulting physician that is sufficient to satisfy the requirements of informed consent.

(h) The priority individual, or any member of the priority class of individuals, who made the decision to withhold or withdraw life-sustaining treatment was not of sound mind, was not competent to make the decision under division (C)(2) of this section, or did not voluntarily make the decision.

(i) If the decision of a priority class of individuals under division (B)(3) of this section is involved, the patient's attending physician did not make a good faith effort, and use reasonable diligence, to notify the patient's adult children who were available within a reasonable period of time for consultation as described in division (A)(1)(c) of this section.

(j) The decision of the priority individual or class of individuals otherwise was made in a manner that



does not comply with this section.

(4) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in divisions (B)(1) to (5) of this section are prohibited from filing a complaint under division (E) of this section and from joining or being joined as parties to a hearing conducted under division (E) of this section, including joining by way of intervention.

(F) A valid consent given in accordance with this section supersedes any general consent to treatment form signed by or on behalf of the patient prior to, upon, or after the patient's admission to a health care facility to the extent there is a conflict between the consent and the form.

(G) Life-sustaining treatment shall not be withheld or withdrawn from a patient pursuant to a consent given in accordance with this section if the patient is pregnant and if the withholding or withdrawal of the treatment would terminate the pregnancy, unless the patient's attending physician and one other physician who has examined the patient determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that the fetus would not be born alive.

(H) As used in this section, "civil protection order" and "temporary protection order" have the same meanings as in section 2923.124 of the Revised Code.