



## Ohio Revised Code

### Section 2133.09 Withholding or withdrawing nutrition and hydration from patient who has been in permanently unconscious state for at least 12 months.

Effective: January 13, 2012

Legislation: Senate Bill 124 - 129th General Assembly

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(A) The attending physician of a patient who is an adult and who currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state may withhold or withdraw nutrition and hydration in connection with the patient only if all of the following apply:

(1) Written consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient has been given by an appropriate individual or individuals in accordance with section 2133.08 of the Revised Code, and divisions (A)(1)(a) to (e) and (2) of that section have been satisfied.

(2) A probate court has not reversed the consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient pursuant to division (E) of section 2133.08 of the Revised Code.

(3) The attending physician of the patient and one other physician as described in division (A)(2) of section 2133.08 of the Revised Code who examines the patient determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.

(4) Written consent to the withholding or withdrawal of nutrition and hydration in connection with the patient, 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 to the attending physician of the patient by an appropriate individual or individuals as specified in division (B) of section 2133.08 of the Revised Code.

(5) The written consent to the withholding or withdrawal of the nutrition and hydration in connection with the patient is given in accordance with division (B) of this section.



(6) The probate court of the county in which the patient is located issues an order to withhold or withdraw the nutrition and hydration in connection with the patient pursuant to division (C) of this section.

(B)(1) A decision to consent pursuant to this section to the withholding or withdrawal of nutrition and hydration in connection with a patient shall be made in good faith.

(2) Except as provided in division (B)(4) of this section, if the patient previously expressed an intention with respect to the use or continuation, or the withholding or withdrawal, of nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, 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 (B)(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 nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, 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 nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration, 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 nutrition and hydration. 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 (B)(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 (B)(3) of this section, may rely on a consent given in accordance with this section unless a probate court decides differently under division (C) of this section.



(b) The immunity conferred by division (C)(2) of section 2133.11 of the Revised Code is not forfeited by an individual who gives a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient under division (A)(4) 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 (B)(2) of this section, that is revealed to the individual subsequent to the time of giving the consent.

(C)(1) Prior to the withholding or withdrawal of nutrition and hydration in connection with a patient pursuant to this section, the priority individual or class of individuals that consented to the withholding or withdrawal of the nutrition and hydration shall apply to the probate court of the county in which the patient is located for the issuance of an order that authorizes the attending physician of the patient to commence the withholding or withdrawal of the nutrition and hydration in connection with the patient. Upon the filing of the application, the clerk of the probate court shall schedule a hearing on it and cause a copy of it and a notice of the hearing to be served in accordance with the Rules of Civil Procedure upon the applicant, the attending physician, the consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient, and the individuals described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who are not applicants, which service shall be made, if possible, within three days after the filing of the application. The hearing shall be conducted at the earliest possible time, but no sooner than the thirtieth business day, and no later than the sixtieth business day, after the service has been completed.

At the hearing, any individual described in divisions (B)(1) to (5) of section 2133.08 of the Revised Code who is not an applicant and who disagrees with the decision of the priority individual or class of individuals to consent to the withholding or withdrawal of nutrition and hydration in connection with the patient shall be permitted to testify and present evidence relative to the use or continuation of nutrition and hydration in connection with the patient. Immediately following the hearing, the court shall enter on its journal its determination whether the requested order will be issued.

(2) The court shall issue an order that authorizes the patient's attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the patient only if the



applicants establish, by clear and convincing evidence, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, all of the following:

- (a) The patient currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state.
  - (b) The patient no longer is able to make informed decisions regarding the administration of life-sustaining treatment.
  - (c) There is no reasonable possibility that the patient will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment.
  - (d) The conditions specified in divisions (A)(1) to (4) of this section have been satisfied.
  - (e) The decision to withhold or withdraw nutrition and hydration in connection with the patient is consistent with the previously expressed intention of the patient as described in division (B)(2) of this section or 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 nutrition and hydration should the patient subsequently be in a permanently unconscious state and no longer able to make informed decisions regarding the administration of nutrition and hydration as described in division (B)(3) of this section.
- (3) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in division (A)(4) of this section or in divisions (B)(1) to (5) of section 2133.08 of the Revised Code and other than the attending physician and consulting physician associated with the determination that nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient are prohibited from filing an application under this division and from joining or being joined as parties to a hearing conducted under this division, including joining by way of intervention.
- (D) 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.