

## Determining the Appropriate Decision Maker

---

The patient with decision-making capacity is the appropriate decision maker unless the patient has delegated that authority to another.

For patients who have lost decision-making capacity, the following hierarchy should prevail:

### Legally Authorized Decision Makers

1. Has the patient designated a legal surrogate by informing the supervising healthcare provider or designee orally or in writing?
  - If “Yes,” the supervising healthcare provider or designee should document the surrogate designation in the medical record. Note: The designation lasts only for the course of treatment, the length of stay in the medical facility within which the designation was made, or for 60 days, whichever is shorter. The authority of a surrogate designated in this manner supersedes that of a healthcare agent appointed by an Advance Health Care Directive during that period.
2. Has the patient appointed a healthcare agent through an Advance Health Care Directive, Power of Attorney for Health Care, or Durable Power of Attorney for Health Care?
  - If “Yes,” obtain and place a copy of the Advance Directive in the chart. The physician/supervising healthcare provider should document it in the medical record.
3. Does the patient have a court-appointed guardian or conservator with medical decision-making authority?
  - If “Yes,” the physician/supervising healthcare provider should place a copy of the appointment in the chart and document it in the medical record. Note: Not all guardians or conservators have medical decision-making authority – check with the county Public Guardian if there is any question.

***If “No” to all of the above, the physician/supervising healthcare provider should document that there is no legal surrogate and proceed below.***

### Informally Accepted/Default Decision Makers

In California, unlike in many other states, there is no legally mandated hierarchy of default decision makers in this type of situation. Amendments to the California Health Care Decisions Act passed in 2022, specify that when there is no legal surrogate, the healthcare provider must select a decision maker, from **any ONE** of the following persons, in no particular order:

- The spouse or domestic partner of the patient
- An adult child of the patient
- A parent of the patient
- An adult sibling of the patient
- An adult grandchild of the patient
- An adult relative or close personal friend of the patient

The person selected should “be an adult who has demonstrated special care and concern for the patient, is familiar with the patient’s personal values and beliefs to the extent known, and is reasonably available and willing to serve.”

***If there is more than one person meeting the above criteria, consider the following process. This is not “law,” but an effective practice.***

1. Is there consensus among these individuals as to the proper decision or decision maker?
  - If “Yes,” then document in chart and inform the patient.
  - If “No,” then proceed below.
    - Encourage the group to agree on the most appropriate decision maker based on which candidate is most familiar with the patient’s wishes and values.
    - If the group can’t agree, consider interviews and/or family meetings involving the primary physician and social services, consultation with the hospital ethics committees, to guide your selection of the best decision maker.
    - If an impasse persists after the above efforts and an urgent treatment decision is needed, a Petition for Court Authorization to Make a Health Care Decision can be filed, with a decision within 24–48 hours.
    - In all cases, the physician should attempt to inform the patient lacking decision-making capacity who will serve as healthcare agent or surrogate and the decisions authorized by that person.

## **Decision-Making Standards for All Surrogates**

(from the California Health Care Decisions Law, Probate Sec.)

Both legally authorized and informal/default decision makers are to use the following decision-making standard:

- Healthcare decisions must be in accord with the patient’s individual healthcare instructions, if any, and other wishes to the extent known to the decision maker.
- If the patient’s wishes are not known, decisions are to be made in accord with the decision maker’s determination of the patient’s best interest in light of the patient’s personal values and beliefs to the extent they are known.
- In the rare situation where a patient has a conservator, has not made an advance directive and is not terminally ill, permanently unconscious, or in a permanent vegetative state, decision to forgo life-sustaining treatments must be supported with clear and convincing evidence of the patient’s wishes or personal values, or best interests concerning such treatment.