

# Pennsylvania State Law Related to Surrogate Decision-Making

PA Act 169 (2007), *Advance Health Care Directives and Health Care Decision-Making for Incompetent Patients*, defines two types of surrogate decision-makers: agents and representatives.

- **Agents.** When a patient formally appoints a surrogate decision maker (e.g., via a Durable Power of Attorney), the appointee is considered a healthcare agent. Agents have the same level of authority to make medical decisions as patients.
- **Representatives.** When there is no formally appointed healthcare agent, the surrogate is considered a healthcare representative. Representatives have a limited scope of decision-making authority, and, without first petitioning the court, cannot withhold or withdraw life sustaining medical treatment unless the patient is in an end-stage condition or permanently unconscious.
  - The rationale for this limitation is to provide an added layer of protection for the patient, since someone the patient did not formally appoint is making decisions.
  - ‘End-stage’ is defined in the law as: “An incurable and irreversible medical condition in an advanced state...”

Recently, a case—*In RE: D.L.H (2010)*—went to the PA Supreme Court to test one facet of Act 169. A 53 y/o with profound intellectual disability since birth was hospitalized with aspiration pneumonia requiring mechanical ventilation (MV). The parents, who were court-appointed guardians, requested no MV, because it was “not in David’s best interests.” The physicians disagreed and

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the case went to court. The PA Supreme Court ruled that the parents were not healthcare agents, and therefore did not have the legal authority to withhold MV because David was not in an end-stage condition or permanently unconscious. Key Points:

- **Surrogates of never-competent patients (like David) can never be agents**, because the patient lacks the ability to formally appoint someone.
- This is true even if the surrogate is a court-appointed guardian.
- Therefore, surrogates for never-competent patients cannot withhold or withdraw life sustaining medical treatment from a patient unless the patient is in an end-stage condition or permanently unconscious without first petitioning the court.
  - If the surrogate chooses to petition the court, the surrogate must show by *clear and convincing evidence* that *death is in the patient's best interests* (e.g., because they are suffering).

In sum, there are two categories of people who can withhold/withdraw life sustaining medical treatment from a patient who is not in an end-stage condition nor permanently unconscious:

**1) a capacitated patient him/her-self and 2) a healthcare agent.**

*If you wish to request a clinical ethics consultation, call the operator at extension 8521 and ask for the on-call ethics consultant. If you have questions about state law, please call Risk Management (extension 6302).*

### Want more information?

Search, "Facts on Act 169" @ <http://www.pamedsoc.org/> to see Facts on Act 169 (Advance Directives).

### Questions?

Call the operator (ext. 8521) and ask for the ethicist on-call.