

## Surrogate Decision-Making

### Who decides?

When patient's lack *decision-making capacity* **or** voluntarily cede decision-making, medical decisions must be made by an authorized person acting on the patient's behalf. These people are called *surrogates*.

When an advance directive (e.g., Living Will or Durable Power of Attorney for Healthcare) is in the medical record and appoints an individual as a decision-maker, this person generally serves in the role of surrogate.

When there is no advance directive in the medical record, Pennsylvania Act 169 gives a default **priority list for identifying decision-makers**:

- Spouse (*unless one of the parties has filed for divorce*)
- Adult child
- Parent
- Adult sibling
- Adult grandchild
- Close friend (i.e., individual who is knowledgeable of the patient's preferences)

*(over)*



**PennState**  
College of Medicine

Ethics Committee  
Penn State Milton S. Hershey Medical Center  
Phone: (717) 531-8778 • Fax: (717) 531-3894

## How?

Surrogates should make decisions for patients using one of two standards of surrogate decision-making.

1. **Substituted Judgment** is when the surrogate relies on known preferences and is the **preferred standard**. This is used in two situations:
  - a. Where the patient has previously expressed his or her preferences explicitly, and
  - b. Where the surrogate can **reasonably infer** the patient's preferences from past statements or actions.
2. **Best Interests** is used when the patient's preferences are unknown or unclear. This requires that the surrogate promote the patient's welfare by making choices about preservation or restoration of function, quality of life, and relief of pain/suffering that a **reasonable person in similar circumstances** would be likely to choose.

Studies indicate that patients vary in how much leeway they would give surrogates to **override their advance directive**: 1/3rd of patients do not want their surrogate to have any leeway, 1/3rd of patients want their surrogate to have complete leeway and the final 1/3rd fall somewhere in the middle.

## Want more information?

Check HMC Policy: Guide to Advance Directives, PC-13 HAM.  
Search "Surrogate Decision-Making" at [www.ama-assn.org/](http://www.ama-assn.org/) to see *Code of Medical Ethics of the American Medical Association* policy E-8.081

## Questions?

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