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Bill Analysis
Legislative Service Commission

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**Sens. Jacobson, Jordan, Cates, Amstutz, Mumper, Wachtmann, Padgett,
Clancy, Austria, Hottinger**

BILL SUMMARY

- Includes the patient's grandparents in the list of priority individuals who may consent to withhold or withdraw life-sustaining treatment.
- Provides that the attending physician may not withhold or withdraw nutrition and hydration in connection with the patient if certain specified individuals disagree with the consent to the withholding or withdrawal of nutrition and hydration and present some evidence that the decision to withhold or withdraw nutrition and hydration is not consistent with the previously expressed intention of the patient or is not consistent with the type of informed consent decision that the patient would have made.
- Requires the clerk of the probate court to provide notice of a hearing on an application to withhold or withdraw nutrition and hydration to the Attorney General and the prosecuting attorney of the county in which the patient resides, and the prosecuting attorney of the county in which the facility where the patient is being treated is located, if that county is different from the county in which the patient resides.
- Allows any one or more of the adult siblings, if there is less than a majority of the patient's adult siblings, if applicable, who disagree with the decision to the consent to the withholding or withdrawal of nutrition and hydration, and allows the patient's grandparents and nearest adult relative of the patient who disagrees with that decision, to testify and present evidence relative to the use or continuation of nutrition and hydration in connection with the patient.
- Requires the court to appoint a physician to examine the patient if certain specified individuals disagree with the decision of the priority individual

or class of individuals to consent to the withholding or withdrawal of nutrition and hydration and present some evidence disputing the facts surrounding the determinations of the attending physician and consulting physician regarding the condition of the patient, and requires the court to only consider the determinations of the court-appointed physician and the physicians selected by either party, if applicable, in determining whether nutrition and hydration should be withdrawn or withheld.

- Provides that, if certain specified individuals disagree with a consent to the withholding or withdrawal of nutrition and hydration in connection with the patient and present some evidence that the decision is not consistent with the previously expressed intention of the patient, the court must prohibit the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient.
- Allows the Attorney General or the prosecuting attorney to file an action or to intervene to present evidence and argue that a decision to withhold or withdraw life-sustaining treatment or nutrition and hydration is not consistent with the law.
- Removes the time requirement for when an individual who objects to the application of the law regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment must advise the attending physician of the grounds for the objection and removes the time requirement for when the objecting individual must file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician after communicating the individual's objections to the attending physician.

TABLE OF CONTENTS

Background information	3
Consent to withholding or withdrawal of life-sustaining treatment	3
Who may consent to the withholding or withdrawal of life-sustaining treatment ..	4
Consent to withholding or withdrawal of nutrition and hydration	5
Current law	5
Operation of the bill	6
Objection to the withholding or withdrawal of nutrition and hydration.....	6
Who may testify and present evidence relative to use or continuation of nutrition and hydration	6

Dispute regarding the facts surrounding the determinations of the attending physician and consulting physician regarding the patient's condition	8
Order prohibiting the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient.....	8
Issuance of order authorizing attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the patient	9
Authority of Attorney General or prosecuting attorney to file an action or join the hearing on withholding or withdrawing nutrition and hydration by way of intervention	10
Current law	10
Operation of the bill	10
Objection to the withholding or withdrawal of life-sustaining treatment.....	10
Current law	10
Operation of the bill	11
Document executed prior to October 10, 1991	11
Authority of Attorney General or prosecuting attorney to file an action or join the hearing on withholding or withdrawing life-sustaining treatment by way of intervention	13

CONTENT AND OPERATION

Background information

Consent to withholding or withdrawal of life-sustaining treatment

Under current law, unchanged by the bill, if written consent to the withholding or withdrawal of life-sustaining treatment is given by the appropriate individual or individuals listed below in the "priority individuals or class of individuals" to the attending physician of an adult patient, and if all of the following apply in connection with the patient, then, generally, the patient's attending physician may withhold or withdraw the life-sustaining treatment (R.C. 2133.08(A)(1)):

(1) 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 (hereafter referred to as "reasonable determination") that the patient is in a terminal condition or the patient currently is and for at least the immediately preceding 12 months has been in a permanently unconscious state (hereafter referred to as "terminal condition or permanently unconscious state"), and the attending physician additionally makes a reasonable determination 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.

(2) 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 (hereafter referred to as "declaration"), whichever applies, or a durable power of attorney for health care (hereafter referred to as "DPAFHC"), or has a document that purports to be such a declaration or a DPAFHC but that document is not legally effective.

(3) 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.

(4) The appropriate individual or individuals who give a consent are of sound mind and voluntarily give the consent.

(5) If a consent would be given by 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, the attending physician made a good faith effort, and used reasonable diligence, to notify those children.

Current law, unchanged by the bill, also requires that the consulting physician associated with a patient allegedly in a permanently unconscious state 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 12 months has been in a permanently unconscious state (R.C. 2133.08(A)(2)).

Who may consent to the withholding or withdrawal of life-sustaining treatment

Current law provides that certain individuals and classes of individuals may give consent to withhold or withdraw life-sustaining treatment from a patient in a permanently unconscious state or a terminal condition. The appropriate individual or class of individuals, in accordance with the following descending order of priority, are as follows (hereafter "priority individuals or class of individuals") (R.C. 2133.08(B)):

(1) If any, the guardian of 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 such consultation;

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

The bill includes the patient's grandparents within this priority list of individuals or class of individuals and provides that the grandparents are sixth in the priority list (R.C. 2133.08(B)(6)).

Consent to withholding or withdrawal of nutrition and hydration

Current law

Under current law, the attending physician of a patient who is an adult and who currently is and for at least the immediately preceding 12 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 (R.C. 2133.09(A)):

(1) Written consent to the withholding or withdrawal of life-sustaining treatment in connection with the patient has been given by the "priority individuals or class of individuals" and the provisions under "**Consent to withholding or withdrawal of life-sustaining treatment,**" above, 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.

(3) The attending physician of the patient and one other physician described under "**Consent to withholding or withdrawal of life-sustaining treatment,**" above, 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 (see **COMMENT 1**), is given to the attending physician of the patient by one of the "priority individuals or class of individuals."

(5) The written consent to the withholding or withdrawal of the nutrition and hydration in connection with the patient is given in accordance with statutory requirements (see **COMMENT 2**).

(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.

Operation of the bill

The bill maintains current law but includes a provision that the attending physician may withhold or withdraw nutrition and hydration in connection with the patient if no individual or class of individuals in the first five categories of the "priority individuals or class of individuals" disagrees with the consent to the withholding or withdrawal of nutrition and hydration in connection with the patient and presents some evidence that the decision to withhold or withdraw nutrition and hydration in connection with the patient is not consistent with the previously expressed intention of the patient or 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 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 (hereafter "intention or type of informed consent decision of the patient"). Therefore, under the bill, the physician may not withhold or withdraw nutrition and hydration in connection with the patient if any "priority individuals or class of individuals" disagrees and presents some evidence of that nature. (R.C. 2133.09(A)(7).)

Objection to the withholding or withdrawal of nutrition and hydration

Who may testify and present evidence relative to use or continuation of nutrition and hydration

Current law. Under current law, prior to the withholding or withdrawal of nutrition and hydration in connection with the patient, the priority individual or class of individuals that consented to the withholding or withdrawal of the nutrition and hydration must 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. The clerk of the probate court must schedule a hearing upon the filing of the application and must serve notice of the hearing on the applicant for the hearing, the attending physician, the consulting physician, and the individuals in the first five categories of the "priority individuals or class of individuals" who are not applicants. The service must be made if possible within three days after the filing of the application, and the hearing must be conducted at the earliest possible time but no sooner than the 30th business day and no later than the 60th business day after service. At the hearing, any of the "priority individuals or class of individuals" 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 is permitted to testify and present evidence relative to the use or continuation of nutrition and hydration in connection with the patient. (R.C. 2133.09(C)(1).)

Operation of the bill. The bill modifies the above application, hearing, and notice procedure in several ways. It requires the clerk of the probate court to provide notice of the application for the withholding or withdrawal of nutrition and hydration and the hearing on the application to the Attorney General, the prosecuting attorney of the county in which the patient resides, the prosecuting attorney of the county in which the facility where the patient is being treated is located, if that county is different from the county in which the patient resides, the patient's grandparents, and the nearest relative of the patient in addition to the persons who are required to be given notice under current law. At the hearing on the application, in addition to the persons who testify under current law, it also allows, if the patient has more than one adult sibling and less than a majority of the patient's adult siblings disagree with the decision to consent to the withholding or withdrawal of nutrition and hydration in connection with the patient, any one or more of the adult siblings who disagrees with the decision, the patient's grandparents, and the nearest adult relative of the patient who disagrees with the decision to testify and present evidence relative to the use or continuation of nutrition and hydration in connection with the patient. The bill also provides that the provisions described under "**Who may testify and present evidence relative to use or continuation of nutrition and hydration,**" above, are subject to the provisions under "**Order prohibiting the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient.**" (R.C. 2133.09(C)(1)(a) and (b)(i).)

Dispute regarding the facts surrounding the determinations of the attending physician and consulting physician regarding the patient's condition

Under the bill, except as otherwise provided under "**Order prohibiting the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient,**" below, if any of the "priority individuals or class of individuals" under the bill testifies at the hearing on the application to withhold or withdraw nutrition and hydration, presents evidence relative to the use or continuation of nutrition and hydration in connection with the patient, and presents some evidence disputing the facts surrounding the determinations of the attending physician and consulting physician with respect to the patient's condition (see **COMMENT 3**), the court must appoint a physician to examine the patient and determine, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards all of the following (R.C. 2133.09(C)(1)(b)(ii)):

(1) Whether or not the patient is in a terminal condition or the patient currently is and for at least the immediately preceding 12 months has been in a permanently unconscious state;

(2) Whether or not the patient is no longer 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;

(3) Whether or not nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.

In addition, under the bill, the individual and the applicant may each have a separate physician examine the patient and make the determinations listed in paragraphs (1) through (3) above. The facility where the patient is being treated must give the physicians access to the patient. If the above-described provisions apply, the court at the hearing is prohibited from considering the determinations of the attending physician and the consulting physician regarding the patient's condition in its determination whether the requested order will be issued and may only consider the determinations of the physician appointed by the court and the determinations of any physician selected by the individual, and any physician selected by the applicant, if applicable. (R.C. 2133.09(C)(1)(b)(iii).)

Order prohibiting the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient

Under the bill, at the hearing held on the application to withhold or withdraw nutrition and hydration, if any individual described in paragraphs (1)

through (5) under "*Who may consent to the withholding or withdrawal of life-sustaining treatment,*" above (hereafter "first priority individuals or class of individuals"), who is not an applicant 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 and presents some evidence that the decision to withhold or withdraw nutrition and hydration in connection with the patient is not consistent with the "intention or type of informed consent decision of the patient," the court must issue an order that prohibits the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient. The bill further provides that if a court issues such an order, the court is prohibited from appointing a physician pursuant to the provisions under "*Dispute regarding the facts surrounding the determinations of the attending physician and consulting physician regarding the patient's condition,*" above, but may consider at the hearing held on the application to withhold or withdraw nutrition and hydration evidence presented by the individual or class of individuals under those provisions. (R.C. 2133.09(C)(1)(c)(i) and (ii).)

Issuance of order authorizing attending physician to commence the withholding or withdrawal of nutrition and hydration in connection with the patient

Current law provides that the court must 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 (R.C. 2133.09(C)(2)):

(a) The patient currently is and for at least the immediately preceding 12 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 paragraphs (1) through (4) under "*Consent to withholding or withdrawal of nutrition and hydration,*" above, 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 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.

The bill states that the above-described provisions are subject to the provisions under "**Order prohibiting the attending physician from withholding or withdrawing nutrition and hydration in connection with the patient,**" above.

Authority of Attorney General or prosecuting attorney to file an action or join the hearing on withholding or withdrawing nutrition and hydration by way of intervention

Current law

Under current law, notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than individuals described in "**Who may consent to the withholding or withdrawal of life-sustaining treatment,**" above, 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 for an order authorizing a physician to withhold or withdraw nutrition and hydration and from joining or being joined as parties to a hearing conducted on such an application, including joining by way of intervention (R.C. 2133.09(C)(3)).

Operation of the bill

The bill allows the Attorney General or the prosecuting attorney of the county in which the patient resides or of the county in which the facility where the patient is being treated is located to file an action or join by way of intervention the hearing to present evidence on the application for an order authorizing the withholding or withdrawal of nutrition and hydration and argue that a decision to withhold or withdraw nutrition and hydration is not consistent with the law (R.C. 2133.09(C)(3)).

Objection to the withholding or withdrawal of life-sustaining treatment

Current law

Current law provides that, within 48 hours after a priority individual or class of individuals gives a consent 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 of the "first priority individuals or class of

individuals" who objects to the application of the law regarding the use or continuation, or the withholding or withdrawal of, life-sustaining treatment, must 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 must 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 currently is and for at least the immediately preceding 12 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 must be considered void. (R.C. 2133.08(E)(1).)

Operation of the bill

The bill modifies the above-described procedure for objecting to the application of the law regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and advising the attending physician of the grounds for the objection. Under the bill, the individual is no longer required to advise the physician of the objection within 48 hours after a priority individual or class of individuals gives a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment and communicates the consent to the patient's attending physician. There is no time requirement under the bill for an individual who objects to the application of the law to advise the attending physician of the grounds of the objection other than to do so prior to the death of the patient. The bill also removes the requirement that the objecting individual file a complaint against the priority individual or class of individuals, the patient's attending physician, and the consulting physician within two business days after communicating the individual's objection to the attending physician. The bill instead provides that, if an objection is communicated to the attending physician *prior to the death of the patient*, then after that communication, the objecting party *may file prior to the death of the patient* a complaint. The bill expands the list of individuals who may object to the life-sustaining treatment decision to also include the patient's grandparents and nearest adult relative of the patient not in the list of "first priority individuals or class of individuals" in addition to the individuals in the "first priority individuals or class of individuals." (R.C. 2133.08(E)(1).)

Document executed prior to October 10, 1991

Current R.C. 2133.15 provides that R.C. 2133.01 to 2133.15 (Modified Uniform Rights of the Terminally Ill Act) apply to any written document that was executed anywhere prior to October 10, 1991 (the effective date of the Modified Uniform Rights of the Terminally Ill Act), that voluntarily was so executed by an

adult who was of sound mind, that was signed by the adult or by another individual at the direction of the adult, that was or was not witnessed or acknowledged before a notary public, and that specifies the adult's intention with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if the adult is at any time in a terminal condition, in a permanently unconscious state, or in either condition or state, if the adult is at the time no longer able to make informed decisions regarding the administration of life-sustaining treatment, and if at that time there is no reasonable possibility that the adult will regain the capacity to make those informed decisions. That document is considered to be a declaration, must be given effect as if it had been executed on or after October 10, 1991, in accordance with the Modified Uniform Rights of the Terminally Ill Act, and, except as otherwise provided below, is subject to all provisions of the Modified Uniform Rights of the Terminally Ill Act pertaining to declarations. (R.C. 2133.15(A).)

If a declaration described above does not state that, or does not contain a checked or marked box or line adjacent to a statement indicating that, the declarant authorizes the declarant's attending physician to withhold or withdraw nutrition or hydration when the declarant is in a permanently unconscious state and when the declarant's attending physician and at least one other physician who has examined the declarant determine, to a reasonable degree of medical certainty and in accordance with reasonable medical standards, that nutrition and hydration will not or no longer will serve to provide comfort to the declarant or alleviate the declarant's pain, then, if the declaration becomes operative because the declarant is in a permanently unconscious state, the attending physician of the declarant must apply to the probate court of the county in which the declarant is located for the issuance of an order whether or not the attending physician is required to provide the declarant with nutrition and hydration for as long as the declarant is in a permanently unconscious state. Upon the filing of the application, the clerk of the probate court must 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 attending physician and the individuals in the first five categories of the "priority individuals or class of individuals."

The bill includes the declarant's grandparents and the nearest adult who is not one of the individuals in the first five categories of the "priority individuals or class of individuals" who is related to the patient by blood or adoption, and who is available within a reasonable period of time for consultation with the declarant's attending physician within this list of individuals who must receive a copy of the application and a notice of the hearing from the clerk. (R.C. 2133.15(B)(1).)

Current law also provides that, at the hearing, the attending physician and the individuals in the first five categories of the "priority individuals or class of

individuals" must be permitted to testify and present evidence relative to the use or continuation, or the withholding or withdrawal, of nutrition and hydration for as long as the declarant is in a permanently unconscious state. The bill requires that the declarant's grandparents and the nearest adult who is not one of the individuals in the first five categories of the "priority individuals or class of individuals" who is related to the patient by blood or adoption, and who is available within a reasonable period of time for consultation with the declarant's attending physician be permitted to testify and present such evidence as well. (R.C. 2133.15(B)(2).)

Under current law, notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than the individuals in the first five categories of the "priority individuals or class of individuals" and other than the attending physician of the declarant are prohibited from filing an application and from joining or being joined as parties to a hearing, including by way of intervention. The bill includes the declarant's grandparents and the nearest adult who is not one of the individuals in the first five categories of the "priority individuals or class of individuals" who is related to the patient by blood or adoption, and who is available within a reasonable period of time for consultation with the declarant's attending physician within the exception of this provision. (R.C. 2133.15(B)(4).)

Authority of Attorney General or prosecuting attorney to file an action or join the hearing on withholding or withdrawing life-sustaining treatment by way of intervention

Current law provides that, notwithstanding any contrary provision of the Revised Code or the Rules of Civil Procedure, the state and persons other than the individuals in the first five categories of individuals described in "**Who may consent to the withholding or withdrawal of life-sustaining treatment,**" above, are prohibited from filing a complaint as described in "**Objection to the withholding or withdrawal of life-sustaining treatment,**" above, and from joining or being joined as parties to a hearing conducted by the probate court, including joining by way of intervention. The bill removes the prohibition against the state filing a complaint or joining or being joined as parties to a hearing on an objection to the withholding or withdrawal of life-sustaining treatment and allows the Attorney General or the prosecuting attorney of the county in which the patient resides or of the county in which the facility where the patient is being treated is located to file an action or join by way of intervention the hearing to present evidence and argue that a decision to withhold or withdraw life-sustaining treatment should be reversed because one or more of the provisions of the law regarding the condition of the patient apply (see **COMMENT 4**). (R.C. 2133.08(E)(4).)

COMMENT

1. R.C. 2133.02(B)(1) provides that the witnesses to a declaration must be adults who are not related to the declarant by blood, marriage, or adoption, who are not the attending physician of the declarant, and who are not the administrator of any nursing home in which the declarant is receiving care. Each witness must subscribe the witness' signature after the signature of the declarant or other individual at the direction of the declarant and, by doing so, attest to the witness' belief that the declarant appears to be of sound mind and not under or subject to duress, fraud, or undue influence.

2. R.C. 2133.09(B) provides the following:

(a) A decision to consent to the withholding or withdrawal of nutrition and hydration in connection with a patient must be made in good faith.

(b) Except as provided in (d), below, 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 is valid only if it is consistent with that previously expressed intention.

(c) Except as provided in (d), below, 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 is 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 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 are not binding for the purposes of this provision.

(d)(i) 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 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 (c), above, may rely on a consent given in accordance with these provisions unless a probate court decides differently.

(ii) The immunity conferred by law is not forfeited by an individual who gives a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient 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 (b), above, that is revealed to the individual subsequent to the time of giving consent.

3. R.C. 2133.08(A)(1)(a) states that, with regard to whether or not the patient's attending physician may withhold or withdraw life-sustaining treatment, 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 12 months has been in a permanently unconscious state, and the attending physician additionally makes a reasonable determination 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.

R.C. 2133.09(A)(3) states that, with regard to whether or not the attending physician of a patient who is an adult and who currently is and for at least the immediately preceding 12 months has been in a permanently unconscious state may withhold or withdraw nutrition and hydration, the attending physician of the patient 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 nutrition and hydration will not or no longer will provide comfort or alleviate pain in connection with the patient.

4. R.C. 2133.08(E)(3) provides that 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, a reasonable determination, one or more of the following (R.C. 2133.08(E)(3)):

(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 12 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 or a legally effective DPAFHC.

(e) The decision to withhold or withdraw life-sustaining treatment is not consistent with the previously expressed intention of the patient.

(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.

(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 or did not voluntarily make the decision.

(i) If the decision of a priority class of individuals 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.

(j) The decision of the priority individual or class of individuals otherwise was made in a manner that does not comply with R.C. 2133.08.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-20-05	p. 428

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