



# WITHDRAWING OR REFUSING CARE IN IDAHO

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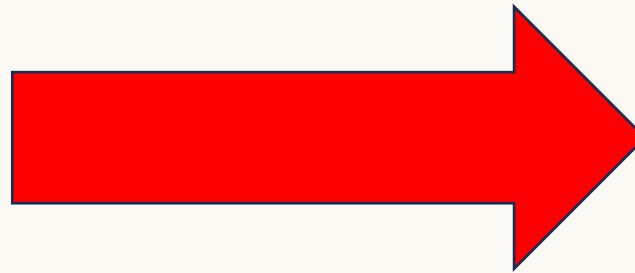
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# Potential Consequences of Unjustified Refusal to Provide Care

Once you undertake care of patient, you assume duty to care for patient consistent with (i) standard of care and (ii) patient's/surrogate's consent. Failure to do so may result in:

- Malpractice
- Patient abandonment
- Lack of informed consent
- Civil rights violation
- EMTALA liability
- Board of Medicine complaint
- Adverse hospital action against privileges
- Exclusion from insurance networks
- Other?



*Make sure you understand the law and circumstances in which you may justifiably decline to provide requested care.*

# Idaho Law

## ASSUMPTION



## REALITY



# Consent by Competent Patient

- “Any person ... who comprehends the need for, the nature of, and the significant risks ordinarily inherent in any contemplated health care services is competent to consent thereto on his or her own behalf. Any health care provider may provide such health care services in reliance upon such a consent.”

(IC 39-4503)

- “ ‘Consent to treatment’ ... includes:
  - (a) Refusal to consent to treatment; and
  - (b) Consent to withholding or withdrawal of health care services.”

(IC 39-4502(8))

# Consent for Incompetent Persons

- “Consent for the furnishing of health care services to any person who is not then capable of giving such consent ... may be given or refused in the order of priority set forth hereafter; provided however, that [i] the surrogate decision-maker shall have sufficient comprehension as required to consent to his or her own health care services ...; and [ii] the surrogate decision-maker shall not have authority to consent to or refuse health care services contrary to such person’s advance care planning document or wishes expressed by such person while the person was capable of consenting to his or her own health care services:
  - (a) The court-appointed guardian of such person;
  - (b) The person named in another person’s advance care planning document as the health care agent of such person...
  - (c) If married, the spouse of such person;
  - (d) An adult child of such person;
  - (e) A parent of such person;
  - (f) The person named in a delegation of parental authority executed pursuant to section 15-5-104, Idaho Code;
  - (g) Any relative of such person;
  - (h) Any other competent individual representing himself or herself to be responsible for the health care of such person.”

(IC 39-4504)

# Advanced Care Planning Document

- “Advance care planning document ... means a document that:
  - (a) Substantially meets the requirements of section I.C. 39-4510(1);
  - (b) Is a POST form; or
  - (c) Is another document that represents a competent person’s authentic expression of such person’s wishes concerning health care services.”

(IC 39-4502(1))

# Consent for Minors

## Effective 3/31/26

- Healthcare providers may not render healthcare services to unemancipated minors without informed consent of parent unless:
  - Obtain blanket consent meeting statutory requirements.
  - Care needed to prevent death or address serious bodily injury, or after reasonable efforts cannot locate parents and care furnished to prevent loss of life or serious injury to child.
  - Care related to an alleged crime of physical violence against the child.
  - Non-emergency first aid and care to child who appears to be sick or injured.
  - 988 crisis line.
  - Detecting or diagnosing pregnancy or providing prenatal or peripartum care, but not abortion.
  - Newborn infant drug tests for illegal drugs.

(IC 32-1015)

# Withdrawal of Care; Non-Beneficial Care

- “Assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient, by a patient’s advance care planning document, or by a patient’s surrogate decision-maker.
- “Health care services necessary to sustain life or to provide appropriate comfort for a patient other than assisted feeding or artificial nutrition and hydration may not be withdrawn or denied if its provision is directed by a competent patient, by a patient’s advance care planning document, or by a patient’s surrogate decision-maker ..., unless such care would be nonbeneficial medical treatment.
- “Except [for developmentally disabled persons], health care services, assisted feeding, or artificial nutrition and hydration, the denial of which is directed by a competent patient, by a patient’s advance care planning document, or by a patient’s surrogate decision-maker, shall be withdrawn and denied in accordance with a valid advance care planning document.”

(IC 39-4514(3)).

- “Nothing in this chapter shall be construed to require nonbeneficial medical treatment; provided that this subsection does not authorize any violation of subsection (3) of this section.”

(IC 39-4514(6))

# Non-Beneficial Care

- “Nonbeneficial medical treatment’ means treatment:
  - (a) For a patient whose death, according to the reasonable medical judgment of a licensed independent practitioner, is imminent within hours or a few days regardless of whether the treatment is provided; or
  - (b) That, according to the reasonable medical judgment of a licensed independent practitioner, will not benefit the patient’s condition.”

(IC 39-4502(14))

*But...*

- *What does “not benefit the patient’s condition” mean...?*
- *What is “death”...?*

# But what is “death” in Idaho?

- Formerly, I.C. 54-1819 stated: “An individual who has sustained either (a) irreversible cessation of circulatory and respiratory functions, or (b) irreversible cessation of all functions of the entire brain, including the brain stem, is dead” (Uniform Determination of Death Act).

*But wait: Idaho repealed the statute in 2019...*

- That standard is likely still valid. For example, Idaho’s fetal heartbeat statute (2021) states,
  - “(2) The cardiopulmonary definition of death, which is the reigning common law standard for determining death, is defined as the ‘irreversible cessation of circulatory and respiratory functions.’ This cardiopulmonary definition of death was included in the uniform determination of death act, a model law that was adopted by numerous medical and ethics organizations, including the national conference of commissioners on uniform state laws, the American medical association, and almost all states in the United States.
  - “(3) Legal standards and the medical community at large both affirm that a consistent human heartbeat, independent of life support, is a core determining factor in establishing the legal presence of human life in a full range of circumstances, for old and young alike.”

(IC 18-8802)

# Developmentally Disabled Persons

Special rules if patient has been declared “Developmentally Disabled” under process in IC 66-401 et seq.

- “(7) Except as otherwise provided in subsection (8) of this section, no health care provider or caregiver shall, based on such guardian’s direction or refusal to consent to care, withhold or withdraw [medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the **respondent**]. If the health care provider cannot obtain valid consent for such medically necessary treatment from the guardian, the health care provider or caregiver shall provide the medically necessary treatment as authorized by I.C. 39-4504(1)(i).
- “(8) A **guardian appointed under this chapter** may consent to withholding or withdrawing treatment other than appropriate nutrition or hydration to a respondent, and a health care provider may withhold or withdraw such treatment in reliance upon such consent, when in the treating [provider’s] reasonable medical judgment any of the following circumstances apply:
  - (a) The attending [provider] and at least one (1) other [provider] certifies that the respondent is chronically and irreversibly comatose;
  - (b) The treatment would merely prolong dying, would not be effective in ameliorating or correcting all of the respondent’s life-threatening conditions, or would otherwise be futile in terms of the survival of the respondent; or
  - (c) The treatment would be virtually futile in terms of the survival of the respondent and would be inhumane under such circumstances.”

(IC 66-405)

# Conscience

- “Any ... health care provider who for ethical or professional reasons is unwilling to conform to the desires of the patient or the patient’s surrogate decision-maker may, subject to the requirements of section I.C. 39-4514(3), withdraw without incurring any civil or criminal liability provided the ... health care provider, before withdrawal of his or her participation, makes a good faith effort to assist the patient in obtaining the services of another ... health care provider who is willing to provide care for the patient in accordance with the patient’s expressed or documented wishes.”

(IC 39-4513(2))

- To avoid patient abandonment, generally need to provide:
  - Notice to patient or surrogate,
  - Time to transfer care (e.g., 30 days, although no definitive time limit), and
  - Needed care in the meantime.

(See, e.g., IC 54-1814(15); <https://www.hollandhart.com/firing-patients-avoiding-patient-abandonment>).

# Conscience

- “(1) Health care providers shall have the right of conscience and ... shall not be required to participate in ... a medical procedure, treatment, or service that violates such health care provider’s conscience.
- “(2) The exercise of the right of conscience is limited to conscience-based objections to a particular medical procedure, treatment, or service. This section may not be construed to waive or modify any duty a health care provider may have to provide ... medical procedures, treatments, or services that do not violate the provider’s conscience.”
- Exceptions:
  - EMTALA
  - Failure to comply with the applicable standard of care.

(IC 54-1304)

- “’Conscience’ means the ethical, moral, or religious beliefs or principles sincerely held by any health care provider.”

(IC 54-1303(1))

- *But this statute and its remedies appear to be relevant to relationship with employer or hospital, not patient; for relationship to patient, see IC 39-4513.*

# Life-Sustaining Treatment for Minors “Simon’s Law”

- DNR or order to withhold life-sustaining care shall not be instituted for an unemancipated minor unless:
  - At least 1 parent has been notified, and
  - Reasonable attempts have been made to notify the other parent.
- Notice must be written and oral or, if it is an emergency, oral.
- Must wait 48 hours to institute the order to give parents time to effect a transfer within 15 days.
- If no transfer occurs, may initiate the order after 15 days.

(IC 39-4516)

# Summary: Withdrawing or Refusing Care

- **Assisted feeding, artificial nutrition and hydration:** must provide if requested.
- **Other life-sustaining care:** must provide if requested unless nonbeneficial medical treatment, i.e.,
  - Death is imminent within hours or a few days regardless of whether the treatment is provided; or
  - Requested care will not benefit the patient's condition.
- **Subject to the foregoing, may refuse to provide requested care for ethical or professional reasons if make good faith effort to transfer care, i.e.,**
  - Notice to patient/surrogate,
  - Reasonable time to transfer care, and
  - Necessary care in the meantime.



**Don't abandon the patient**

# Questions?



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