BY ORDER OF THE COMMANDER
59TH MEDICAL WING

59TH MEDICAL WING INSTRUCTION
44-150

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Medical

ADVANCE DIRECTIVES AND END-OF-LIFE

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This instruction implements Air Force Policy Directive 44-1, *Medical Operations*. This instruction provides policies and procedures for implementing the Patient Self-Determination Act Section of the 1990 Omnibus Budget Reconciliation Act (OBRA) and the Texas Advance Directive Act, Chapter 166 of the Texas Health & Safety Code. It addresses the components of compliance with the law, policy, procedure, education and publicity and assigns responsibility for implementing the provisions of the law and identifies the process by which compliance is achieved. This instruction applies to all personnel assigned, attached, or on contract to the 59th Medical Wing (59 MDW) with the exception of the 959th Medical Group, Air National Guard, or Air Force Reserve. This publication requires the collection and or maintenance of information protected by the Privacy Act of 1974 authorized by 10 U.S.C. 55, *Medical and Dental Care*, and E.O. 9397 (SSN). The applicable SORN F044 AF SG D, and Automated Medical/Dental Record System is available at: **http://dpclo.defense.gov/privacy/SORNs/SORNs.html**. Ensure that all records created as a result of processes prescribed in this publication are maintained IAW AFI 33-322, *Records Management and Information Governance Program*, and disposed of IAW Air Force Records Information Management System (AFRIMS) Records Disposition Schedule (RDS).

SUMMARY OF CHANGES

The publication has been revised. This rewrite of 59 MDWI 44-150 includes updated policies and procedures.

1. Overview. This instruction is intended to give medical treatment teams the appropriate guidelines when dealing with end-of-life issues to include Advance Directives (ADs).

2. Policy and Procedures.

2.1. The Department of Defense and 59 MDW are technically not covered under the provisions of the OBRA, which implements the Patient Self-Determination Act. However, 59 MDW voluntarily complies with the law out of concern for the best interests of the patients served. The 59 MDW will comply with Texas law on ADs and the law regarding informed consent and the patient's right to accept or refuse medical or surgical treatment. Questions regarding active duty patients and whether they can execute ADs can be addressed to Defense Health Agency Office of General Counsel (DHA/OGC).

2.2. In order to honor the wishes of the patient or patient's legal representative regarding medical treatment, it is the policy of 59 MDW to:

2.2.1. Inquire regarding the existence of an AD and provide written information about the opportunity to obtain an AD via the Base Legal Office.

2.2.2. Encourage execution of an AD while the patient is in the outpatient setting and has assistance from the patient's primary care manager (PCM).

2.2.3. Treat all patients equally in the provision of medical care without regard as to whether the patient has executed an AD.

2.2.4. Provide educational opportunities to staff and the community on issues concerning ADs.

2.2.5. Honor ADs completed in other states, so long as the document appears valid (signed, dated, and witnessed).

2.3. Specific Responsibilities.

2.3.1. Defense Health Agency Office of General Counsel. (DHA/OGC) and the Ethics Function will consult with the staff on issues relating to ADs. The DHA/OGC can be reached at 210-292-6089 for legal guidance during normal duty hours. The DHA/OGC may also be reached via the Medical Control Center (210-292-5990), who will contact the DHA/OGC if a question arises after duty hours.

2.3.2. TRICARE Operations and Patient Administration (TOPA) will provide information regarding ADs upon request by patient(s).

2.4. Actions.

2.4.1. The PCM will discuss with interested patients the information necessary for the patient to make an informed decision to either make or not make an AD. Should the provider wish to discuss ADs with the patient's family or potential surrogate decision makers, the provider should document in the medical record that the patient has given permission for the provider to discuss the patient's care with others, and with whom the patient's care information may be shared. The patient will be referred to the Base Legal Office to complete an AD. Once signed, the patient may provide a copy of the AD to the clinic or Medical Records, and the document will be scanned into the electronic health record.

2.4.2. Same Day Surgery.

2.4.2.1. Patients scheduled for same day surgery will complete a Pre-Operative Same Day Surgery Checklist, initiated by the scheduling clinic. A question on the checklist asks if the patient has an AD. If the answer is yes and the AD is not yet uploaded in Genesis, the clinic will instruct the patient to bring a copy of their AD on the day of surgery. The AD may also be uploaded into Genesis the day of the patient's consult appointment if a copy is provided at that time. If the patient would like to complete an AD, they are referred to the Base Legal Office. 2.4.2.2. The Pre-Anesthesia clinic initiates the patient's record using the information from a Pre-Operative Same Day Surgery Checklist. Additionally, there is a question under the PreAdmission Visit Assessment called Advanced Directive Notification/Screening where the pre-op admin checks if the patient has an AD, is or is not on file etc. Under the Pre-Operative Same Day Surgery Checklist, the patient is asked if they have an Advance Directive/Living Will/Medical Power of Attorney, if a copy is provided for the record, and if not, why. The patient is also asked if they require assistance, information or referral for an Advance Directive/Living Will/Medical Power of Attorney. If the answer is yes, the patient is advised where to obtain the Advance Directive/Living Will/Medical Power of Attorney. If the answer is no, staff will document the reason for the patient's denial.

2.5. Do Not Resuscitate Orders in the Operating Room, for procedures involving deep or moderate sedation, or cardiac stress testing.

2.5.1. Advance Directive will not affect other treatment decisions. Accordingly, surgery or the planned procedure may be reasonable for selected patients with DNR orders.

2.5.2. If the patient is being considered for major invasive procedures (such as operations) the indications for the procedure and the rationale behind the intervention and the patient's wishes will be reviewed.

2.5.3. Surgery should not be ruled out solely because a DNR order has been written.

2.5.4. If surgery can achieve no beneficial objective for the patient, it should not be undertaken.

2.5.5. Surgery performed under general anesthesia requires certain measures such as intubation and assisted ventilation that are often precluded by a DNR order.

2.5.6. When surgery is deemed reasonable for the patient, the DNR order and goals of the surgery will be discussed and reevaluated by the privileged physician, the surgeon (if not the privileged physician), the anesthesia provider, and the patient.

2.5.7. As a result of this review, the status of these directives will be clarified or modified based on the preference of the patient.

2.5.8. When a decision is made to suspend or alter a DNR order, the patient will have the opportunity to discuss the circumstances under which it will be restored. The substance of this discussion and the patient's wishes should be clearly documented in the medical record.

2.5.9. If the patient no longer has decision making capacity, an appropriate surrogate will speak on his/her behalf.

2.5.10. When the rationale for a patient's DNR order does not preclude surgery and there is a reasonable chance of achieving the treatment objectives, surgery should be advised and the DNR order will be modified using one of the three following alternatives:

2.5.11. Full attempt at resuscitation. The patient or designated surrogate may request the full suspension of existing directives during the anesthetic and immediate postoperative period, thereby consenting to the use of any resuscitation procedures that may be appropriate to treat clinical events that occur during this time.

2.5.12. Limited attempt at resuscitation defined with regard to specific procedures. The patient or designated surrogate may elect to continue to refuse certain specific resuscitation procedures (for example, chest compressions, defibrillation or tracheal intubation). The anesthesia provider should inform the patient or designated surrogate about which procedures are 1) essential to the success of the anesthesia and the proposed procedure, and 2) which procedures are not essential and may be refused.

2.5.13. Limited attempt at resuscitation defined with regard to the patient's goals and values. The patient or designated surrogate may allow the anesthesiologist and surgical team to use clinical judgment in determining which resuscitation procedures are appropriate in the context of the situation and the patient's stated goals and values.

3. Directives in an Out-of-Hospital Setting [Out-of-Hospital Do Not Resuscitate (DNR) Order]. Out-of-Hospital DNR (OOH DNR) Order is a legally binding order in the form specified by the state under the Advance Directive Act. It is prepared and signed by the attending physician of a person, that documents the instruction of a person or the person's legally authorized representative. The OOH DNR directs health care professionals acting in an OOH DNR setting not to initiate or continue the following life sustaining treatment: Cardiopulmonary resuscitation; advanced airway management; artificial ventilation; defibrillation; transcutaneous cardiac pacing; and other life sustaining treatment as the term may be defined by the state. The OOH DNR does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care, alleviate pain, or provide water or nutrition. This OUT-OF-HOSPITAL DO NOT RESUSCITATE FORM may be obtained through the Texas Department of Health and Safety website at **http://www.dshs.state.tx.us/emstraumasystems/dnr.shtm**. The form of the OOH DNR Order must be the exact form specified by the state of Texas.

3.1. Where the OOH DNR Order is Effective. The advance directive called the "Out-of-Hospital DNR Order" can be honored in out-of-hospital settings only.

3.2. Executing an OOH DNR Order.

3.2.1. A Person with Capacity Executes an OOH DNR Order. A person with capacity may at any time execute a written OOH DNR Order directing health care professionals acting in an out-of-hospital setting to withhold cardiopulmonary resuscitation and certain other life sustaining treatment as found in the definition of OOH DNR Order.

3.2.2. The declarant must sign the OOH DNR Order in the presence of two witnesses, as defined above. The attending physician of the declarant must sign the OOH DNR Order and shall record the existence of the order and the reasons for the order in the declarant's medical records.

3.2.3. A photocopy or facsimile of the original form executed may be honored just as the original.

3.2.4. The attending physician must state on the form that he/she is the attending physician of the individual and that the physician is directing health care professionals acting in out-of-hospital settings, including a hospital emergency department, not to initiate or continue certain life sustaining treatment on behalf of the person, and they must include a listing of those procedures not to be initiated or continued.

3.3. Procedures when a patient lacks capacity or is incapable of communication.

3.3.1. If an adult person has not executed or issued an OOH DNR order and is incompetent, lacks capacity or is otherwise mentally or physically incapable of communication, the attending physician and the person's legal guardian, or agent named in a Medical Power of Attorney (MPOA) or Directive to Physicians, may execute an OOH DNR order on behalf of the person.

3.3.2. If the person does not have a legal guardian, an agent under a MPOA or Directive to Physicians, the attending physician and at least one qualified relative, may execute an OOH DNR order.

3.3.3. If the person who lacks capacity has not previously executed an AD and has no legal guardian or agent under a MPOA or Directive to Physicians and has no qualified relative available to act for the person, an OOH DNR Order must be concurred with by another physician who is not involved in the treatment of the patient, or who is a representative of the Ethics Function of 59 MDW. **Note:** A qualified relative who wishes to challenge a decision made under this section must apply for temporary guardianship under Texas Estates Code 1251.

3.3.4. Pregnant patients. According to Texas law, a DNR order cannot be written for a pregnant patient.

3.4. A decision to execute an OOH DNR Order must be based on knowledge of what the person would desire, if known, and must be made in the presence of at least two witnesses. The fact that an adult person has not executed or issued an OOH DNR Order does not create a presumption that the person does not want a treatment decision made to withhold cardiopulmonary resuscitation and certain other designated life-sustaining treatment.

3.5. Execution of OOH DNR Orders on Behalf of a Minor.

3.5.1. The following persons may execute an OOH DNR Order on behalf of a minor.

3.5.1.1. The minor’s parents.

3.5.1.2. The minor’s legal guardian, or

3.5.1.3. The minor’s managing conservator (guardian/custodian).

3.5.2. A person listed in 3.5.1 may not execute an OOH DNR Order unless the minor has been diagnosed by a physician as suffering from a terminal or irreversible condition.

3.6. Compliance with OOH DNR Order. If the conditions are not determined to exist by the responding health care professionals at the scene, the OOH DNR Order will not be honored, and life-sustaining procedures shall be initiated or continued. Health care professionals acting

in an out-of-hospital setting will not accept or interpret an OOH DNR Order that does not meet the requirements of the Advance Directives Act.

3.6.1. When responding to a call for assistance, health care professionals shall honor an OOH DNR Order if:

3.6.1.1. The responding health care professionals discover an executed or issued OOH DNR Order on their arrival at the scene; and

3.6.1.2. The responding health care professionals establish the identity of the person as the person who executed or issued the OOH DNR Order, or for whom the OOH DNR Order was executed or issued.

3.6.2. If the person is wearing a DNR identification device, the responding health care professionals must comply.

3.6.3. The responding health care professionals must determine that the OOH DNR Order form appears to be valid in that it includes:

3.6.3.1. Written responses in the places designated on the form for the names, signatures, and other information required of persons executing, issuing, or witnessing the execution or issuance of the Order.

3.6.3.2. Date in the place designated on the form for the date the order was executed or issued.

3.6.3.3. The signatures of the declarant, or persons executing or issuing the Order, and the attending physician in the appropriate places designated on the form for indicating that the form has been properly completed.

3.7. DNR Identification Device.

3.7.1. A person who has a valid OOH DNR Order may wear a DNR identification device around the neck or on the wrist as prescribed by state rules.

3.7.2. The presence of a DNR identification device on the body of a person is conclusive evidence that the person has executed or issued a valid OOH DNR Order or has a valid OOH DNR Order executed or issued on the person's behalf. Responding health care professionals shall honor the validly executed OOH DNR Order executed or issued by the person when found in the possession of the person.

3.8. The OOH DNR Order form, or a copy of the form, when available, must accompany the person during transport.

3.9. A record shall be made and maintained of the circumstances of each emergency medical service's response in which an OOH DNR Order or DNR identification device is encountered.

3.10. An OOH DNR Order executed or issued and documented or evidenced in the manner prescribed by the *Advance Directives Act*, Texas Health and Safety Code Section 166.001, is valid and shall be honored by responding health care professionals unless the person or persons found at the scene identify himself or herself as the declarant or as the attending physician, legal guardian, qualified relative, or agent of the person having a MPOA who executed or issued the OOH DNR Order on behalf of the person request that cardiopulmonary resuscitation or certain other life sustaining treatment designated by the board be initiated or continued.

3.11. Duration of OOH DNR Order. An OOH DNR Order is effective until it is revoked.

3.12. Revocation of OOH DNR Order.

3.12.1. A declarant may revoke an OOH DNR Order at any time without regard to the declarant's mental state or capacity. An order may be revoked by:

3.12.1.1. The declarant or someone in the declarant's presence and at the declarant's direction destroying the order form and removing the DNR identification device, if any.

3.12.1.2. A person who identifies himself or herself as the legal guardian, a qualified relative, or the agent of the declarant having a MPOA who executed the OOH DNR order, or another person in the declarant's presence and at the declarant's direction.

3.12.1.3. The declarant communicating the declarant's intent to revoke the order.

3.12.1.4. A person who identifies themselves as the legal guardian, a qualified relative, or the agent of the declarant having a MPOA who executed the OOH DNR Order orally stating the person's intent to revoke the order.

3.12.2. An oral revocation takes effect only when the declarant or a person who identifies themselves as the legal guardian, a qualified relative, or agent having a MPOA who executed the OOH DNR Order communicates the intent to revoke the order to the responding health care professionals or the attending physician at the scene. The responding health care professionals shall record the time, date, and place of the revocation. The attending physician or the physician's designee shall record in the person's medical record the time, date, and place of the revocation and, if different, the time, date, and place of the notice of the revocation. The attending physician or the physician's designee shall also enter the word "VOID" on each page of the copy of the order in the patient's medical record.

3.12.3. A person is generally not civilly or criminally liable for failure to act on a revocation made under this section unless the person has actual knowledge of the revocation.

3.13. Re-execution of OOH DNR Order. A declarant may at any time re-execute or reissue an OOH DNR Order IAW procedures prescribed as long as they have been determined to have capacity to make medical decisions. This includes re-execution or reissuance after the declarant is diagnosed as having a terminal or irreversible condition.

3.14. A licensed nurse or person providing health care services in an out-of-hospital setting may honor a physician's DNR order. However, when responding to a call for assistance, emergency medical services personnel shall honor only a properly executed or issued OOH DNR order or prescribed DNR identification device in accordance with Texas law.

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Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

AFMAN 41-210, *TRICARE Operations and Patient Administration Functions,* 10 September 2019

AFPD 44-1, *Medical Operations*, 9 June 2016

AFI 44-119, *Medical Quality Operations,* 16 August 2011

59 MDWI 51-302, *Informed Consent and Refusal of Care,* 6 November 2020

Advance Directive Act, Chapter 166, *Texas Health and Safety Code*, 1 September 1999

Health Insurance Portability and Accountability Act of 1996

Omnibus Budget Reconciliation Act (OBRA) 1990

Patient Self-Determination Act (PSDA), 1866 of Social Security Administrative Services Act; 42 U.S.C. 1395cc, 27 July 1995

Texas Health Safety Code; Section 166.034, Issuance of Non-Written Directive by Competent Adult Qualified Patient, 1 September 1999

Texas Health Safety Code: Section 166.005, Enforceability of Advance Directives Executed in Another Jurisdiction, 1 September 1999

Texas Determination of Death Statute, Texas Health and Safety Code, 2 April 2015

Chapter 137. Declaration For Mental Health Treatment, Texas Civil Practice and Remedies Code, 18 June 1999

Chapter 597. Capacity of Clients to Consent to Treatment, Texas Health & Safety Code, 2 April 2015

Chapter 313. Consent to Medical Treatment Act, Texas Health & Safety Code, 1 September 2011

Adopted Form

AF Form 847, *Recommendation for Change of Publication*

Abbreviations and Acronyms

AD—Advance Directive

DHA/OGC—Defense Health Agency Office of General Counsel

DNR—Do Not Resuscitate

HAIMS—Healthcare Artifact and Image Management Solution

IAW—In Accordance With

MDW—Medical Wing

MPOA—Medical Power of Attorney

OBRA—Omnibus Budget Reconciliation Act

OOH DNR—Out of Hospital Do Not Resuscitate Order

PCM—Primary Care Manager

TOPA—Tricare Operations and Patient Administration

Terms

Adult—A person 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed.

Advance Directive—A legal document (refers to the Directive to Physicians and Family or Surrogates, commonly referred to as a Living Will, Medical Power of Attorney [formerly known as Durable Power of Attorney for Health Care], Declaration for Mental Health Treatment and Out-of-Hospital-Do-Not-Resuscitate Order) allowing a person to give directions about future medical or mental health care or to designate another person to make medical decisions if they should lose decision-making capacity.

Cardiopulmonary Resuscitation—Any medical intervention used to restore circulatory or respiratory function that has ceased.

Competent Patient—A patient possessing the legal ability, based on reasonable medical judgment that assesses capacity, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of the treatment decision, and the reasonable alternatives to the proposed treatment decision.

Do Not Resuscitate (DNR) Identification Device—An identification device specified by the state that is worn for the purpose of identifying a person who has executed or issued an Out-of-Hospital DNR order, or on whose behalf an Out-of-Hospital DNR order has been executed or issued. Example: Patient wears a white hospital band with red "STOP DO NOT RESUSCITATE" or carries Texas Department of Health DO NOT RESUSCITATE form.

DNR Order—An attending staff physician's order to withhold or withdraw life-sustaining procedures. A DNR order permits delivery of vigorous therapeutic support not otherwise included within the definition of a life sustaining procedure. A DNR order must be based on (1) a valid written or non-written Directive to Physicians, (2) Medical Power of Attorney granting the agent the power to withhold or withdraw life sustaining procedures, or (3) the decision of a qualified legal guardian or next-of-kin and physician, or two physicians in certain circumstances under the provisions of Texas law and this instruction. In other words, a DNR order is not an advance directive under Texas law, and it cannot, by itself, serve as the basis for withholding or withdrawing care.

Health Care Provider—An individual or facility licensed, certified, or otherwise authorized to administer health care or treatment, for profit or otherwise, in the ordinary course of business or professional practice and includes a physician or other health care provider, a residential care provider, or an inpatient mental health facility. This also includes the term "Health Care Professional," which includes physicians, physician assistants, nurses, emergency medical services personnel and, unless the context requires otherwise, includes hospital emergency personnel.

Healthcare or Treatment Decision—Means consent, refusal to consent, or withdrawal of consent to healthcare, treatment, service or a procedure to maintain, diagnose or treat an individual's physical or mental condition, including such a decision on behalf of a minor.

Medical Record—Unless otherwise noted, this reference means a patient's inpatient medical record.

Mental Health Treatment—Means electroconvulsive or other convulsive treatment, treatment of mental illness with psychoactive medication, or emergency mental health treatment.

Minor Patient—Any patient under eighteen (l8) years of age who has not had the disabilities of minority removed. Active duty patients are considered adults regardless of age. Address questions regarding minority status to the DHA/OGC at 292-6089.

Non—Written Directive—An expression by the patient to have life-sustaining procedures withheld. Life-sustaining procedures are to be defined by the patient at the time of issuing the non-written Directive.

Out—of-Hospital DNR Order—A legally binding Out-of-Hospital DNR Order, in the form specified by the state under the Advance Directive Act, prepared and **signed by the attending physician** of a person, that documents the instruction of a person or the person's legally authorized representative and directs health care professionals acting in an Out-of-Hospital setting not to initiate or continue the following life sustaining treatment: Cardiopulmonary resuscitation; advanced airway management; artificial ventilation; defibrillation; transcutaneous cardiac pacing; and other life sustaining treatment as the term may be defined by the state, but does not include authorization to withhold medical interventions or therapies considered necessary to provide comfort care, alleviate pain, or provide water or nutrition. Staff may obtain the form through the Texas Department of Health and Safety website at **http://www.dshs.state.tx.us/emstraumasystems/dnr.shtm**.

Out—of-Hospital—"Out-of-Hospital setting" means a location in which health care professionals are called for assistance, including long-term care facilities, in-patient hospice facilities, private homes, hospital outpatient or emergency departments, physician's offices, and vehicles during transport.