SESLHD GUIDELINE
COVER SHEET

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SUMMARY	Brief checklist of steps to take when there is conflict with patient and /or family over end-of-life clinical management.

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Dealing with family conflict in end-of-life decision-making– checklist for senior medical staff

Section 1 - Background

End-of-life decision making in medicine is complex and occasionally leads to conflict. Differing expectations and goals between patients and their relatives, patients and clinicians, as well as clinicians and patients' relatives can lead to disagreement about the most appropriate management plan. Matters are further complicated when the patient does not have capacity to make their own decisions and a legal substitute decision-maker is required.

Refractory conflict is rare, but it has a profound effect on all parties involved and is a source of moral distress for staff, patients, and families. Where conflict does arise between clinical staff and patients or substitute decision makers, effective communication can help all parties gain a shared understanding of the situation and help resolve any perceived or actual conflict. Staff should remain mindful of the importance of fair process in managing next steps.

This brief checklist provides a guide to the steps that should be taken when there is conflict with a patient and/or family over end-of-life clinical management.

This guideline complements other policies related to end-of-life care, including:
- [NSW Health Guideline GL2021_004 - End of Life Care and Decision-Making](#)
- [SESLHDPD/308 - Terminal Care / End of Life Plan](#)

Section 2 - Process

Checklist: Dealing with conflict in end-of-life clinical decision making

1. **Ensure consistency from the clinical team**
   - It is vitally important that families and patients do not receive mixed messages.
   - Resolve issues or disagreements between teams or team members first.
   - Choose one or two senior staff members to be the main source of family communication.
   - Ensure that all other staff involved are aware of the management plan and document this clearly. 'Family (or consultant) wants everything done' or 'NFR' is not adequate.

2. **Establish the legal decision-maker**
   - If the patient is competent, they are the primary decision-maker. If not, either a valid Enduring Guardianship document or the application of the *Guardianship Act* determines who the substitute decision-maker is. An outspoken family member cannot simply 'take over' decision-making.
   - In New South Wales, the legally empowered substitute decision maker is known as the 'person responsible'. For further information, see 'Person responsible' fact sheet: https://ncat.nsw.gov.au/publications-and-resources/fact-sheets/guardianship-division-fact-sheets.html#Consent4
   - If in doubt, contact the Guardianship Division of the NSW Civil and Administrative Tribunal (Phone 1300 006 228 and press 2 for Guardianship Division).

3. **Communication**
   - Difficult family discussions should not take place at the bedside, but in a quiet room, with all parties seated. Steps should be taken to minimise interruptions, including the use of phones and pagers.
   - At least two staff members should attend a family discussion. A senior doctor plus a senior nurse and/or a social worker is a good minimum combination.
   - Speak firmly and clearly and maintain eye contact.
   - Encourage family members to speak or ask questions.
   - Show interest in the patient as a person and what is important to them. Don't make assumptions about how they view quality of life.
   - Avoid medical jargon and euphemisms. Use the words 'death' and 'dying' if needed. Do not say or imply that treatment will be withdrawn, rather that the goals of treatment need to be revised.
   - Stay focused on the big picture. Do not get caught up or distracted in details of drugs, dosages, administration times, etc, though these may need to be explained.
   - Make clear recommendations based on clinical consensus. Don't offer a menu of options and ask the family to choose. Their wishes and preferences are very important, but they are not the only relevant consideration.
   - The aim is to agree on goals that are important to the patient and realistically (that is, medically) achievable. Treatments that do not contribute to these agreed goals may be considered futile and should not be provided. This includes cardiopulmonary resuscitation (CPR).
   - Outcomes of each discussion should be clearly documented.

- Ensure culturally appropriate support is provided when needed. Whenever possible, use professionals rather than family members for language interpretation.

4. **Timing**
   - Allow enough time, wherever possible, for families and patients to come to grips with what is happening. Several discussions may be needed. Information may need to be repeated. How much time is reasonable depends on the clinical circumstances and family dynamics.

5. **Second Opinion**
   - Offer second opinions, including external opinions nominated by the patient or family.

6. **Consider transfer of care**
   - If communication between the primary consultant and the family has broken down, consider transfer of care to another consultant, or even another hospital, if possible.

7. **Consider a professional facilitator or senior third party**
   - Consider using a professional facilitator. Options include a formal clinical ethics consultation, an external mediator engaged by the hospital, or the Health Care Complaints Commission (HCCC).

8. **NCAT Guardianship Division**
   - If there are issues around consent, or concerns about substitute decision-makers, consider consulting the Guardianship Division of the NSW Civil and Administrative Tribunal (telephone 1300 006 228 and press 2).

9. **Involve the Director of Medical Services**
   - If conflict is becoming intractable, the Director of Medical Services (DMS) should become actively involved early, meeting the patient and family, participating in discussions and supporting clinical staff.

10. **Legal advice**
    - If no solution can be found, seek the approval of the DMS to obtain legal assistance. This request should not be unduly delayed because of any excessive risk aversion and should be based on the DMS' decision that all the above steps have been adequately addressed.
    - Legal assistance can be sought through the Legal Services Unit (telephone phone 9382 7625 or email SESLHD-LegalServicesUnit@health.nsw.gov.au) and/or the Ministry of Health Legal Branch (telephone 9391 9606 or email NSWH-LegalMail@health.nsw.gov.au).

Section 3 - Definitions

Substitute decision maker:

▪ A 'substitute decision maker' is a collective term for those appointed or identified by law to make decisions on behalf a person whose decision-making capacity is impaired.

Person responsible:

▪ In New South Wales, the legally empowered substitute decision maker is known as the 'person responsible'. If a patient is not capable of consenting to their own treatment, the practitioner may need to seek consent from the patient's 'person responsible' (not the 'next of kin' as is commonly assumed). Under the Guardianship Act NSW (1987), there is a hierarchy of people who can provide legal substitute consent. In order of hierarchy these are: i) an appointed guardian given the right to consent to medical treatments; ii) spouse or partner; iii) unpaid carer; and iv) relative or friend in close and relationship. For further information see NCAT's 'Person responsible' fact sheet: [Guardianship Division fact sheets (nsw.gov.au)](nsw.gov.au)

Senior clinician:

▪ A senior clinician is the medical officer with primary responsibility for the care of the patient, or an adequately experienced clinician nominated by them to facilitate end-of-life discussions.

Senior third party:

▪ A senior third party is any staff member not involved in the patient's management that has been identified by the treating team as having adequate expertise, experience and skills, to facilitate discussions around end-of-life management. This may include the SESLHD Clinical Ethics Consultants who are able to assist staff navigate ethically challenging clinical situations and conflicts. For a clinical ethics consultation call 0420 360 144 or visit http://seslhdweb.seslhd.health.nsw.gov.au/Clinical_Ethics/.

Section 4 - Responsibilities

Consultants are responsible for:
- Leading communication with patient and family.
- Coordinating and facilitating clinical consensus from the interdisciplinary team.
- Ensuring all staff involved in the patient's care are aware of the management plan, and that all relevant information is documented clearly.
- Establishing the 'person responsible' if a patient is not capable of consenting to their own treatment.
- Arranging early involvement of the Director of Medical Services (DMS) if issues cannot be resolved in a timely manner.

Medical officers are responsible for:
- Ensuring any conflict arising between patients and families regarding end-of-life treatment is escalated to a senior medical officer.
- Maintaining clear and open communication between all teams.
- Ensuring documentation of all conversations and decisions.

Director of Medical Services are responsible for:
- In intractable cases where no resolution can be found, making a judgement about whether to escalate the matter for formal legal advice, or offer an alternative strategy for resolution.

Section 5 - References and document history

References

- Hillman K, Chen J. *Conflict resolution in end of life treatment decisions: a rapid review*. Brokered by the Sax Institute for the Centre for Epidemiology and Research, NSW Department of Health, 2008.

- Australian and New Zealand Intensive Care Society (ANZICS). *Statement on Care and Decision-Making at the End of Life for the Critically Ill* (Edition 1.0). Melbourne: ANZICS, 2014.

- *Conflict Resolution in End of Life Settings (CRELS): Final CRELS Project Working Group Report Including Consultation Summary*. NSW Department of Health, 2010.

- End-of-Life Care and Decision-Making - Guidelines (GL2005_057), NSW Health, 2021.

- Terminal Care/ End of Life Care Plan (SESLHDPD/308), SESLHD, 2021.

- The End of Life Decisions, the Law and Clinical Practice - Information for NSW Health practitioners. https://www.health.nsw.gov.au/patients/acp/law/Pages/default.aspx

Version and Approval History

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