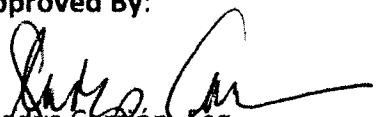


Consent to Withhold or Withdraw Life-Sustaining Treatment

<p>Approved By:  Gladys Carrion, Esq. Commissioner</p>	<p>Date Issued: <u>6/13/2014</u></p>	<p>Number of Pages: 9</p>	<p>Number of Attachments: 4</p>
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<p>Supporting Regulations: 18 NYCRR §§4 41.22(d); 428.3; 428.6, 428.7;</p>	<p>Supporting Case Law: N/A</p>	<p>Bulletins & Directives: N/A</p>	
<p>Key Words: consent, withhold, withdraw, life-sustaining, medical, treatment, resuscitate</p>	<p>Related Policies: Policy & Procedure #2014/08, Guidelines for Providing Medical Consents for Children in Foster Care</p>	<p>Supersedes: Procedure 102/Bulletin 99-1 (Amended) Guidelines for Providing Medical Consents for Children in Foster Care, dated October 18, 1999.</p>	
<p>Related Forms: Request for Consent to Withhold or Withdraw Life-Sustaining Treatment (Forms DYFJ 005, FPS 005, FSS 003, and OGC 001).</p>			
<p>SUMMARY: Sometimes children placed in the custody of the Administration for Children's Services ("ACS") face potentially terminal health problems for which an attending physician requests consent to withhold or withdraw life-sustaining treatment. Life-sustaining treatment means any medical treatment or procedure without which the patient will die within a relatively short time, as determined by an attending physician to a reasonable degree of medical certainty. Examples of life-sustaining treatments include, but are not limited to, cardiopulmonary resuscitation, dialysis, mechanical ventilation, artificial nutrition, artificial hydration, chemotherapy, and vaso-active drugs. This policy articulates the responsibilities of ACS and provider agency staff whenever a request for consent to withhold or withdraw life-sustaining treatment has been made.</p>			

POLICY HIGHLIGHTS

- Only the commissioner may consent to requests to withhold or withdraw life-sustaining treatment for a minor for whom parental rights have been terminated or surrendered and who is in the custody and guardianship of ACS.
- If a provider or ACS staff member receives a request from a physician for consent to withhold or withdraw life-sustaining treatment, that staff member shall contact the Office of Shared Response immediately.
- If a youth has decision-making capacity, the youth must be consulted and must provide consent regarding any decision to withhold or withdraw life-sustaining treatment.
- If a youth is 18 or older, is married, or is a parent, the youth must provide his or her own consent to withhold or withdraw life-sustaining treatment.
- There are special circumstances in which ACS cannot consent to a request to withhold or withdraw life-sustaining treatment (see page 5).

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I. INTRODUCTION

A. Overview

Sometimes children placed in the custody of the Administration for Children’s Services (“ACS”) face potentially terminal health problems for which an attending physician requests consent to withhold or withdraw life-sustaining treatment. Life-sustaining treatment means any medical treatment or procedure without which the patient will die within a relatively short time, as determined by an attending physician to a reasonable degree of medical certainty.¹ Examples of life-sustaining treatments include, but are not limited to, cardiopulmonary resuscitation², dialysis, mechanical ventilation, artificial nutrition, artificial hydration, chemotherapy, and vaso-active drugs. This policy articulates the responsibilities of ACS and provider agency staff whenever a request for consent to withhold or withdraw life-sustaining treatment has been made.

B. Authorization to Consent

Only the commissioner of ACS may consent to requests to withhold or withdraw life-sustaining treatment for a minor for whom parental rights have been terminated or surrendered and who is in the custody and guardianship of ACS.

C. ACS’ Standard for Culturally Respectful Practice

ACS is committed to working with children, youth, and families in a manner that is respectful of all cultural backgrounds. Accordingly, ACS and provider agency staff must be sensitive to the beliefs and values of clients when discussing consent to withhold or withdraw life-sustaining treatment. Staff should never allow their own cultural values to interfere with their responsibility to provide unbiased information and quality services.

II. OVERVIEW OF REQUIRED COMMUNICATION

A. Request from an Attending Physician

When a provider agency or ACS staff member receives a request from an attending physician for consent to withhold or withdraw life-sustaining treatment for a child in the custody and guardianship of ACS, the staff member shall contact the Division of

¹ See Public Health Law § 2994-a.

² Cardiopulmonary resuscitation means measures to restore cardiac function or to support ventilation in the event of a cardiac or respiratory arrest. Cardiopulmonary resuscitation shall not include measures to improve ventilation and cardiac function in the absence of an arrest. See Public Health Law § 2994-a.

Family Permanency Services (FPS) Office of Shared Response (OSR) immediately at (212) 676-6630.

B. Office of Shared Response's Responsibilities

1. OSR shall immediately:

- a. Verify that the minor is in the legal custody and guardianship of the commissioner of ACS; and
- b. Determine if either parent's rights have been terminated or surrendered.
 - i. If the minor is **not** in the legal custody and guardianship of the commissioner, or parental rights **have not** been terminated or surrendered, OSR will advise the foster care agency or ACS staff member to inform the attending physician that the commissioner is not the legal guardian of the minor and cannot consent.³ If it is determined that the minor is not in the custody and guardianship of the commissioner, the physician/hospital must contact the hospital ethics review committee and follow the hospital's own policies on withholding or withdrawing life-sustaining treatment, and then seek consent from the parent(s)/legal guardian(s) of the minor.
 - ii. If parental rights **have** been terminated or surrendered, and the minor is in the legal custody and guardianship of the commissioner, OSR will notify the assistant commissioner of the Office of Child and Family Health (OCFH) or his or her designee. ACS or provider agency staff must submit all required medical documents (via fax or courier) immediately to OSR in order to facilitate the request for consent to withhold or withdraw life-sustaining treatment [see section V(C) below for documentation requirements].

III. COMMISSIONER'S CONSENT TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING TREATMENT

If parental rights have been terminated or surrendered, and the minor is in the legal custody and guardianship of the commissioner of ACS, the commissioner has the legal authority to grant consent to a request to withhold or withdraw life-sustaining treatment for that minor. Consent must be in accordance with the minor's best interests and the minor's wishes as appropriate under the circumstances. In instances in which the minor

³ See Public Health Law § 2504.

has decision-making capacity⁴, the decision to consent to a request to withhold or withdraw life-sustaining treatment may not be implemented without the minor's consent.⁵

IV. SPECIAL CIRCUMSTANCES

A. Youth with Mental Retardation or Developmental Disabilities or Youth Who Have Been Transferred from an Office of Mental Health Facility

1. In cases in which the "attending physician has reason to believe that the patient has a history of receiving services for mental retardation or a developmental disability; it reasonably appears to the attending physician that the patient has mental retardation or a developmental disability; or the attending physician has reason to believe that the patient has been transferred from, a mental hygiene facility operated or licensed by the office of mental health,"⁶ ACS cannot consent to a request to withhold or withdraw life-sustaining treatment. Appropriate documentation to determine if children or youth fall into this category includes psychiatric, psychological, or other clinical records that confirm whether or not the minor has an intellectual or developmental disability or is in, or has been transferred from, a mental hygiene facility.
2. Whenever a youth has been diagnosed with a mental illness, the foster care provider agency must submit relevant documentation concerning the youth's diagnosis and treatment to assist ACS in the review process pursuant to this policy.

B. Youth Placed In ACS' Custody Who are 18 and Older

A youth in the custody of ACS who is 18 years of age or older, is married, or is a parenting youth must provide his or her own consent to withhold or withdraw life-sustaining treatment. In this circumstance there cannot be an override by anyone of the youth's decision.

C. Youth Who Are Emancipated Minor Patients

1. An "emancipated minor patient" is a minor patient who is the parent of a child or is 16 years of age or older and living independently from his or her parents or guardian;⁷ and

⁴ Decision-making capacity means the ability to understand and appreciate the nature and consequences of proposed healthcare including the benefits and risk of alternatives to proposed healthcare, and to reach an informed decision (Public Health Law § 2994-a).

⁵ See Public Health Law § 2994-e(2)(b).

⁶ See Public Health Law § 2994-b(3).

⁷ See Public Health Law § 2994-a(8).

2. If an attending physician determines that a patient is an emancipated minor patient with decision-making capacity, the patient shall have the authority to decide about his or her own life-sustaining treatment. “Such authority shall include a decision to withhold or withdraw life-sustaining treatment if an attending physician and the hospital’s ethics review committee determine that the decision accords with the standards for surrogate decisions for adults, and the ethics review committee approves the decision. If the hospital can, with reasonable efforts, ascertain the identity of the parents or guardian of an emancipated minor patient, the hospital shall notify such persons prior to withholding or withdrawing life-sustaining treatment.”⁸

V. PROCESSING CONSENT TO WITHHOLD OR WITHDRAW LIFE-SUSTAINING MEDICAL TREATMENT

A. In the Case of a Request for Consent to Withhold or Withdraw Life-Sustaining Treatment for a Minor Youth, ACS or Provider Agency Staff Shall:

1. Contact OSR
 - a. On weekdays, between the hours of 9:00 AM and 5:00 PM, at (212) 676-7480;
 - b. After hours and on weekends, at (646) 784-1851.
2. Contact family members and the foster parent(s) to provide support for the youth as necessary.

B. ACS’ Responsibilities

1. Only the commissioner of ACS may decide whether consent shall be granted. OSR and the OCFH will follow the steps discussed below to gather all necessary information and documentation. OSR will share information about the status of the case with the deputy commissioner of Family Court Legal Services (FCLS), the assistant commissioner of OCFH or his or her designee, the deputy commissioner/general counsel of the Office of the General Counsel (OGC), the deputy commissioner of Family Permanency Services (FPS), or the deputy commissioner of Youth and Family Justice (DYFJ), and the commissioner as the information is received.
 - a. Upon the receipt of the request to withhold or withdraw life-sustaining treatment, OSR shall attempt to consult with any other “parties in interest” for their input. Parties in interest may include relatives of the minor, siblings, or the foster/pre-adoptive parents.

⁸ See Public Health Law § 2994-e(3).

2. Upon the receipt of the request to withhold or withdraw life-sustaining treatment, the assistant commissioner of OCFH or his or her designee shall:
 - a. Discuss the case with the minor's attending physician and obtain from him or her a written statement explaining why the decision to withhold or withdraw life-sustaining treatment is appropriate;
 - b. Detail any attempts the attending physician has made to determine the minor's decision-making capacity for him- or herself and to obtain the consent of the minor to withhold or withdraw life-sustaining treatment;
 - c. Discuss the case with a concurring licensed physician, a physician (who is selected from the hospital) who has also examined the minor and has confirmed that the determination to withhold or withdraw life-sustaining treatment is appropriate;
 - d. Solicit input from the hospital's ethics committee; and
 - e. If the hospital's ethicist or ethics committee is not in agreement with the attending physician's medical judgment that life-sustaining treatment should be withheld or withdrawn, a recommendation to consent to such an order shall *not* be forwarded to the commissioner of ACS.
3. OSR and OCFH shall compile the following documents and submit copies to OGC:
 - a. OSR will submit the completed *Request for Consent to Withhold or Withdraw Life-Sustaining Treatment FPS* (Form FPS 005), accompanied by the documents listed on Form FPS 005 (see Attachment B);
 - b. OCFH will submit the completed *Request for Consent to Withhold or Withdraw Life-Sustaining Treatment FSS* (Form FSS 003) accompanied by the documents listed on the Form FSS 003, to the commissioner (see Attachment C); and
 - c. OSR and OCFH will share information and documents with OGC as they are received.
4. OGC will review the documents received from OCFH and OSR for legal sufficiency and will request additional information or documentation as needed. Upon determining that the information provided meets the applicable legal standards, OGC will inform OCFH and OSR via the completed *Request for Consent to Withhold or Withdraw Life-Sustaining Treatment OGC* (Form OGC 001) that the applicable legal standards are met (See Attachment D).

5. OSR will forward all gathered documentation to the deputy commissioner of DCP, FPS, or DYFJ.
6. The deputy commissioner of DCP, FPS, or DYFJ will then present the packet to the commissioner's office, as appropriate.
7. The commissioner may consult with OCFH, OSR, and OGC to inform his or her decision; however, the commissioner has the final authority in making decisions to consent to a request to withhold or withdraw life-sustaining treatment. The commissioner will inform the deputy commissioner of DCP, FPS, or DYFJ of the final decision, who will then inform OSR, OCFH, OGC, and FCLS.
8. OCFH will notify the hospital, and OSR will notify and fax the decision to the executive director of the provider agency or the deputy commissioner of DCP if appropriate. A copy of the decision will be given to the deputy commissioner of DCP, FPS, or DYFJ and the assistant commissioner of OCFH.

C. Provider Agency's/Division of Child Protection's Documentation Responsibilities

The following documentation is required from the provider agency or DCP for immediate submission to OSR to facilitate the request for consent to withhold or withdraw life-sustaining treatment:

1. Written request from the foster care provider agency or DYFJ provider agency for the minor in question to the deputy commissioner of FPS or DYFJ for consent to be provided by ACS to withhold or withdraw life-sustaining treatment;
2. Documentation that the minor is legally freed for adoption either by voluntary surrender or by court termination of parental rights;
3. Hospital documentation supporting its determination to withhold or withdraw life-sustaining treatment OR a hospital Do Not Resuscitate (DNR) Documentation Sheet as appropriate for review by the assistant commissioner of OCFH or his or her designee;
4. Attending Physician Statement (from the hospital) to be submitted for review by the assistant commissioner of OCFH or his or her designee. This statement must also be signed by the concurring physician;
5. Documentation that the provider agency has discussed the case with the hospital ethicist or ethics committee and the outcome of that discussion;

6. Documentation indicating efforts by the provider agency to contact the child's siblings, other relatives, and current foster/pre-adoptive parents;
7. Documentation of consent from a minor whom the attending physician has determined has the capacity to make a decision regarding resuscitation (e.g., the physician's statement that the minor with capacity has consented);
8. Psychiatric, psychological, or other clinical documentation confirming whether the minor has a documented developmental disability;
9. Blank Consent by Surrogate (i.e., ACS) to request consent to withhold or withdraw life-sustaining treatment. The Blank Consent by Surrogate may be a form from the hospital, or an individualized letter prepared by ACS and addressed to the appropriate hospital administrator. If the final decision is to consent, the consent form or letter must ultimately be signed and dated by the commissioner in the presence of one adult witness, who must also sign; and
10. FPS or DYFJ must give a copy of the signed consent form or letter to the provider agency to be placed in the minor's case record.

D. Casework Actions Upon the Commissioner's Consent

1. Upon the commissioner's consent to the request to withhold or withdraw life-sustaining treatment, arrangements, as deemed appropriate, shall be made with the family, relatives, former and current foster parents, and friends who may wish to visit the minor. The foster care provider agency or DYFJ provider agency is responsible for arranging the visits; and
2. The foster care provider agency or DYFJ provider agency must maintain its usual level of supervision and involvement in the minor's care. The agency must frequently inquire of the minor's medical professionals if the minor's medical condition has improved so that it might be appropriate to re-evaluate the decision to withhold or withdraw life-sustaining treatment. Reassessments of these decisions shall be documented in the minor's medical record, the Health Narrative section of CONNECTIONS (CNNX), and the Family Assessment and Service Plan (FASP). The foster care provider agency must inform the deputy commissioner of FPS if and when such improvement occurs.

Gladys Carrión, Esq.
Commissioner

Memorandum
Youth and Family Justice

Felipe Franco
Deputy Commissioner
Division of Youth and
Family Justice

TO: [Commissioner]
FROM: [Deputy Commissioner for DYFJ]
RE: Request for Consent to Withhold or Withdraw Life Sustaining Treatment
Minor's Name:
Date of Birth:
ACS Case Name:
ACS Case #:

150 William Street
18th Floor
New York, NY 10038

DATE:

After careful deliberation and consultations with the appropriate health care personnel and upon examination of all medical documents made available to me in connection with the request for consent to withhold or withdraw life sustaining treatment for _____, I recommend/ do not recommend that you provide your consent in response to the said request for the following reasons:

Background/History of Case:

Enclosed documents:

- Written documentation from case planner to the appropriate ACS Deputy Commissioner requesting that consent is given to withhold or withdraw life sustaining treatment
- Documentation that minor is freed for adoption.
Date freed: _____
Check one: TPR _____ Surrender _____
Court: _____ Docket No.: _____
- Psychiatric, psychological or other clinical documentation that confirms whether or not the minor has MRDD.
- Additional consultations with parties of interest:

Name/Relation	Agree	Disagree	Comments

[Deputy Commissioner for DYFJ]

Gladys Carrión, Esq.
Commissioner

Memorandum
Family Permanency Services

Benita Miller
Deputy Commissioner
Division of Family
Permanency Services

TO: [Commissioner]
FROM: [Deputy Commissioner for FPS]
RE: Request for Consent to Withhold or Withdraw Life Sustaining Treatment
Minor's Name:
Date of Birth:
ACS Case Name:
ACS Case #:

150 William Street
18th Floor
New York, NY 10038

DATE:

After careful deliberation and consultations with the appropriate health care personnel and upon examination of all medical documents made available to me in connection with the request for consent to withhold or withdraw life sustaining treatment for _____, I recommend/ do not recommend that you provide your consent in response to the said request for the following reasons:

Background/History of Case:

Enclosed documents:

- Written documentation from case planner to the appropriate ACS Deputy Commissioner requesting that consent is given to withhold or withdraw life sustaining treatment
- Documentation that minor is freed for adoption.
Date freed: _____
Check one: TPR _____ Surrender _____
Court: _____ Docket No.: _____
- Psychiatric, psychological or other clinical documentation that confirms whether or not the minor has MRDD.
- Additional consultations with parties of interest:

Name/Relation	Agree	Disagree	Comments

[Deputy Commissioner for FPS]

Gladys Carrión, Esq.
Commissioner

**Memorandum
Office of Child and Family Health**

Jacqueline McKnight
Deputy Commissioner
Division of Family
Support Services

150 William Street
18th Floor
New York, NY 10038

TO: [Commissioner]
FROM: [Assistant Commissioner, OCFH]
RE: Request for Consent to Withhold or Withdraw Life Sustaining Treatment
Minor's Name:
Date of Birth:
ACS Case Name:
ACS Case #:

DATE:

After careful deliberation and consultations with the appropriate health care personnel and upon examination of all medical documents made available to me in connection with the request for consent to withhold or withdraw life sustaining treatment for _____, I recommend/ do not recommend that you provide your consent in response to the said request for the following reasons:

Summary of minor's diagnosis/medical condition:

Consultants	Agree	Disagree	Comments
Attending MD			
Concurring MD			
Ethicist / Committee			

Enclosed documents:

- Hospital documentation of its determination to withhold or withdraw life sustaining treatment/DNR Documentation Sheet (from Hospital)
- Attending Physician Statement (from hospital with the concurring physician's statement, signature, affiliation, and date):
- Ethicist/Ethics Committee name(s), date:
- Other (describe):

[Assistant Commissioner, OCFH]



Gladys Carrión, Esq.
Commissioner

**Memorandum
Office of General Counsel**

Joseph Cardieri
Deputy
Commissioner
Office of the General
Counsel

TO: [Commissioner]
FROM: General Counsel
RE: Request for Consent to Withhold or Withdraw Life Sustaining Treatment
Minor's Name:
Date of Birth:
ACS Case Name:
ACS Case #:

150 William Street
18th Floor
New York, NY 10038

DATE:

Necessary documentation has been obtained and reviewed for legal sufficiency. This packet contains all the required information that meets applicable legal standards for your final review.

[General Counsel]