

September 2018

Decision-Makers and the Authority to Consent to a DNR Order

The Wisconsin Guardianship Support Center frequently receives questions about do-not-resuscitate (DNR) orders. For example, when is it legally appropriate to request a DNR order? Who can sign a DNR order? The purpose of this publication is to answer these questions and clarify the current law on this subject.

1. What is a DNR order?

A do-not-resuscitate order (DNR) is a “written order ... that directs emergency medical services practitioners, emergency medical responders, and emergency health care facilities personnel not to attempt cardiopulmonary resuscitation on a person for whom the order is issued if that person suffers cardiac or respiratory arrest.” Wis. Stat. § 154.17(2). A DNR is issued by an attending physician. Wis. Stat. § 154.19(1).

For a DNR to be valid, the following criteria and procedures must be met:

- 1) The person subject to the DNR must be a *qualified patient*. Wis. Stat. § 154.19(1)(a);
- 2) The qualified patient, guardian, or health care agent must request the DNR order. Wis. Stat. § 154.19(1)(b);
- 3) An attending physician provides written information about resuscitation procedures and the methods by which the patient may revoke the DNR order. Wis. Stat. § 154.19(2)(a);
- 4) The patient, guardian, or health care agent consents to the order after being provided the information mentioned above. Wis. Stat. § 154.19(1)(bm);
- 5) The do-not-resuscitate order must be in writing and signed by the patient, guardian, or health care agent. Wis. Stat. §§ 154.19(1)(c) and (d);
- 6) The physician does not know the patient to be pregnant. Wis. Stat. § 154.19(1)(e);
- 7) After providing the required information, the attending physician must issue and document the DNR order in the patient’s medical record and either affix a DNR bracelet to their wrist or provide a form so the patient may order a bracelet from a commercial vendor. Wis. Stat. §§ 154.19(1) and (2)(b).

2. What is an “qualified patient”?

A “*qualified patient*” is a person who has attained the age of 18 and has (a) terminal condition, (b) a medical condition that could make resuscitation efforts unsuccessful or repeated cardiac or pulmonary failure would occur before death, or (c) has a condition where resuscitation could cause significant physical pain or harm that would outweigh the possibility that resuscitation would restore function for an indefinite period of time. Wis. Stat. § 154.17(4).



While individuals may sometimes refer to a Health Care Power of Attorney (HCPOA) or a Living Will containing end-of-life wishes for a DNR, these documents are not the same as an official DNR order. Careful language and clarification may be necessary if assisting others with these subjects.

The desire of a patient to be resuscitated always supersedes a DNR. A patient may revoke their DNR at any time. Wis. Stat. §154.21, 154.25(6m).

3. Can a Health Care Agent or a Guardian of the Person Provide Consent to a DNR?

Yes, a guardian or a health care agent may consent to a DNR order. Per Wis. Stat. § 154.225(2), “the guardian or health care agent of an *incapacitated qualified patient* may request a do-not-resuscitate order on behalf of that incapacitated qualified patient and consent to the order and sign it after receiving the information specified in s. 154.19(2)(a).”

“*Incapacitated*” means unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her health care decisions, including decisions about his or her post-hospital care. Wis. Stat. §50.06(1).

a. A DNR Order and a Health Care Agent

A HCPOA agent may only provide consent that is consistent with the principal’s wishes as expressed at any time. Wis. Stat. § 155.20(5). If a HCPOA explicitly states that the principal does not want a DNR order, then the agent may not consent to one. If there is no specific directive by the principal or the principal’s desires are unknown, the health care agent must act in the best interests of the principal when exercising his or her authority. *Id.*

Agents and professionals working with individuals with HCPOAs must be aware that the individual retains the right to change his or her wishes, withdraw the agent’s authority, and revoke the HCPOA at any time. *See* Wis. Stat. §§ 155.20(5) and 155.40.

b. A DNR Order and a Guardian of the Person

A guardian of the person typically has the authority to make health care decisions for his or her ward, including consenting to a do-not-resuscitate order. However, a guardian must “endeavor to secure any necessary care or services for the ward that are in the ward’s best interests, based on “inquiring into the risks and benefits of, and alternatives to, treatment for the ward, particularly if drastic or restrictive treatment is proposed” and they must “consul[t] with providers of health care and social services in making all necessary treatment decisions.” Wis. Stat. § 54.25(1)(b).

Additionally, when making certain decisions, the guardian should “place the least possible restriction on the individual’s personal liberty and exercise of constitutional and statutory rights” and “make diligent efforts to identify and honor the individual’s preferences.” Wis. Stat. § 54.25(2(d))3.

4. Can a Guardian or Health Care Agent revoke a DNR?

Yes, a guardian or health care agent may revoke a do-not-resuscitate order by giving direction to resuscitate the patient; by defacing, burning, cutting, or destroying the DNR bracelet; or by removing the bracelet. Wis. Stat. §154.225(2). In the event the guardian directs emergency medical providers to resuscitate the patient, the emergency medical provider shall remove the DNR bracelet.



5. Can someone wear a necklace or pin instead of a bracelet?

No. The statutes very clearly specify the DNR must be indicated by either a plastic bracelet that the hospital provides or a metal bracelet that can be ordered through an approved vendor. In Wisconsin, the approved vendor is StickyJ® Medical Device. An intact DNR bracelet will be presumed to be valid. Wis. Stat. §154.25(6). More information on ordering can be found at the DHS website here: <https://www.dhs.wisconsin.gov/ems/dnr.htm>.

This publication discusses do-not-resuscitate orders. For information regarding guardians and end-of-life care, you may wish to read the GSC publication entitled, "[May a Guardian Consent to the Withholding or Withdrawal of Life-Sustaining Medical Treatment from Her or His Ward?](#)"

QUESTIONS? Call the Wisconsin Guardianship Support Center at 1-855-409-9410 or email at guardian@gwaar.org.

Reproduction of this brochure is permitted and encouraged, so long as no modifications are made and credit to the Wisconsin Guardianship Support Center of the Greater Wisconsin Agency on Aging Resources, Inc., is retained.

This publication is provided for educational purposes only.

The information contained herein is not intended, and should not be used, as legal advice. Application of the law depends upon individual facts and circumstances. In addition, statutes, regulations and case law are subject to change without notice. Consult a legal professional for assistance with individual legal issues.

