

Surrogate Decision Makers and the Medical /Legal Implications

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Objectives

1. Understand When Proxy Decision Makers are Needed
2. Review the Medical Implications of when to ensure the use of Proxy Decision Makers
3. Share Best Practices
4. Provide Resources for Identifying how and when to ask for surrogate decision makers

“A Brief Legal Disclaimer”

...I do solemnly swear:

- ▶ 1. I am not a Lawyer
- ▶ 2. I do not practice Law without a License
- ▶ 3. My Practice is General Internal Medicine in the Ambulatory, Inpatient, Skilled Nursing Rehab and Community Hospice Settings
- ▶ 4. I do work as a self-employed provider and therefore no one twisted my arm or caused me duress to deliver this topic.
- ▶ 5. This lecture is intended to be informative, discussion prompting and beneficial
- ▶ 5. If you have significant legal concerns, consult your appropriate source of legal counsel, not this lecture.

Who is a Surrogate Decision Maker?



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- ▶ A person who speaks for the patient when that individual is not able to help in their own care pathway

Mechanisms and Source of Authority for Substitute Decision Making

Mechanism

- ▶ Emergency
- ▶ Living Will
- ▶ POLST (Physician Orders Life Sustaining Treatment)
- ▶ Proxy advanced directive (DPOA)
- ▶ Default Surrogate
- ▶ Guardian or Conservator

Source of Authority

- ▶ Implied
- ▶ Patient
- ▶ Patient or Surrogate

- ▶ Appointed by the Patient

- ▶ Appointed by the Clinician
- ▶ Appointed by the court

Source: [Mason, NEJM 2013; 69:1976-1978](#)

“The Best Plan is One you Never Need to Implement”

- ▶ Planning ahead is ideal
- ▶ Statistics point to the fact that many do not have POLST / Advanced Directives or Medical Power of Attorney in place

Two recent articles portray this disconnect

- ▶ 2016 Study indicated that 5% of those who die in the intensive care do not have advanced directives in place
 - ▶ Source: Alexandra Lloyd-Smith Sequeira, Ariane Lewis. . (2017) Ethical and Legal Considerations in the Management of an Unbefriended Patient in a Vegetative State. *Neurocritical Care* 23
- ▶ 2013 data suggest 3 to 4% of the 1.3 Million residents in United States Nursing Home do not have advanced directives / power of attorney
 - ▶ Andrew M. Courtwright, Joshua Abrams, Ellen M. Robinson. . (2017) The Role of a Hospital Ethics Consultation Service in Decision-Making for Unrepresented Patients. *Journal of Bioethical Inquiry* 14:2, 241-250.

Who needs a Surrogate Decision Maker?

- ▶ Children
- ▶ Adults with Mental Disabilities
- ▶ Those undergoing Anesthesia
- ▶ Mentally Ill
- ▶ Homeless
- ▶ Couples without marriage
- ▶ Gay, Lesbian, Transgendered patient's partners
- ▶ Dementia

Who needs a Surrogate Decision Maker?

Legal and Ethical Descriptions

- ▶ “Unbefriended” or “Unrepresented”



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What is Different when Advanced Directives are in Place?

- ▶ In the ICU, family concerns are lessened.
- ▶ After death of a family member, they report a greater sense of resolution, a less intense Post Traumatic Stress Response.
- ▶ Grief is simply judged to be more complete

Who is eligible to provide proxy decision making care?

- ▶ Patient consent
- ▶ Prior Advanced Directives
- ▶ Court Assigned Guardian / Conservator
- ▶ Ethics Committee
 - ▶ (a few states)
- ▶ Physician
 - ▶ (in some states)

Best Practices

Talk About Advanced Directives

- ▶ National Hospice and Palliative Care Organization has a list of State Specific downloadable and sharable advanced directive forms
- ▶ <http://www.caringinfo.org/i4a/pages/index.cfm?pageid=3289>

Best Practices

Talk About Implementing Directives

- ▶ Consider submission to your Regional Health System and Health Information Exchange
- ▶ Reinforce to patients that each health segment will need affirmation of your wishes

Best Practices

- ▶ Have a easy to implement care handout.
- ▶ Prescribe it!
- ▶ Discuss your own steps to put into place for advanced directives

Best Practices

Emphasize the
Value to Your Loved
Ones



Where is the Research Now?

Critical Care



Palliative Care and Hospice

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What should we do when it appears that a proxy decision maker is not acting in the best instances of our patient?

Resources:

1. Navigating Ethical Conflicts Between Advance Directives and Surrogate Decision-Makers' Interpretations of Patient Wishes
Bruce, Courtenay R. et al. CHEST , Volume 149 , Issue 2 , 562 - 567
[http://journal.chestnet.org/article/S0012-3692\(15\)00072-0/fulltext](http://journal.chestnet.org/article/S0012-3692(15)00072-0/fulltext)
2. Pope TM, Hexum M. Legal briefing: POLST: physician orders for life-sustaining treatment. J Clin Ethics. 2012;23(4):353-376.
3. Wendler D, Rid A. Systematic review: the effect on surrogates of making treatment decisions for others. Ann Intern Med. 2011;154(5):336-346.
4. National Hospice and Palliative Care Organization
<http://www.caringinfo.org/i4a/pages/index.cfm?pageid=3289>