Surrogate Decision Makers and the Medical /Legal Implications

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Philadelphia, PA 10-8-2017
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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?

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

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Mechanisms and Source of Authority for Substitute Decision Making

<table>
<thead>
<tr>
<th>Mechanism</th>
<th>Source of Authority</th>
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</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>Implied</td>
</tr>
<tr>
<td>Living Will</td>
<td>Patient</td>
</tr>
<tr>
<td>POLST (Physician Orders Life Sustaining Treatment)</td>
<td>Patient or Surrogate</td>
</tr>
<tr>
<td>Proxy advanced directive (DPOA)</td>
<td>Appointed by the Patient</td>
</tr>
<tr>
<td>Default Surrogate</td>
<td>Appointed by the Clinician</td>
</tr>
<tr>
<td>Guardian or Conservator</td>
<td>Appointed by the court</td>
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“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


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

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”

Photo credit: Pixabay.com
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

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 an 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

Photo credit: Pixabay.com
What should we do when it appears that a proxy decision maker is not acting in the best instances of our patient?
Resources:


