

# Deciding for Incapacitated Patients

## FBN Annual Spring Conference Debates, Decisions, Solutions

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# Clinical Ethics Service

24/7 clinical ethics consultation  
service:

- Identifies and analyzes ethical problems/value conflicts
- Recommends ethically optimal resolutions
- Assistance with implementation of recommendations, documentation
- Consult requests through electronic health record

Educational programs and forums

# Case: The long lost relative

- A Proxy makes medical treatment decisions for incapacitated patients.
- Problem with the proxy list is that there may be someone lower on the list that knows more about the patient than someone high on the list.
- Going down the proxy list...when we get to “other relatives” ...note they should know the patient well, having had regular contact with the patient, and know the patient’s moral views.

# Case: “I” want him to be full resuscitation

- The proxy’s job is to determine what the patient would want if we could ask them...not what they would want.
- We often inadvertently “train” proxies to make decisions based on their own personal wishes.
- How to document proxy decisions.... “The proxy reports that the patient would want X.”
- Proxies should always be asked “what would the patient choose.”

# Case: Too Many Proxies

- When it comes to siblings and children, the medical treatment decision is to be made by a majority of the adult siblings or children.
- This process can be extremely burdensome and time consuming.
- What happens when there is an even split between the proxies?

# Case: I want everything done for my Mother!

- Proxies, like capacitated patients chose among the available medical options, not just anything they have heard about or read about in the grocery store.
- How do you draw the line with inappropriate or non-beneficial medical treatment requests?
- Don't tell the proxy the whole list of things you are not going to do!

# Case: The Proxy with ulterior motives

- The proxy will agree to a recommended withdrawal of aggressive treatment only after the first of the month!
- “I never liked him, but I will make his health care decisions.”
- “I have been taking care of her long enough, she needs to be in a nursing home.”

# Case: I don't care if my Mother has an AD!

- If the capacitated patient tells their physician what they want, it does not matter what the proxy wants (unless the patient now is in an unanticipated prognosis).
- AD carry the presumption of patient instructions which override patient wishes, unless the proxy can present evidence that the patient's AD is invalid.



# Case: We don't need a proxy decision-maker since we are not doing any procedures

- We are always doing “something” to a patient in our hospital.
- Proxies are not just for signing informed consent forms.
- Patients always have the right to refuse care (including the right to leave the hospital).

# Social Worker Proxies

- Appointment process
- End-of-life SWP decisions
- Medical document that must be in place prior to an end-of-life decision
- Clinical Ethics Service review

# Why we should encourage patients to appoint surrogates

- Helping patients to choose a surrogate.
- People often choose the “wrong” surrogate.
- Surrogate should be:
  - Available,
  - Willing,
  - Knowledgeable about the patient’s wishes and values,
  - Will make decisions the patient would want.

# Case: I don't think he is "terminal"

- Two physicians evaluate the patient to determine if the patient has a terminal or end-stage condition.
- If so, both physicians must document that fact in the EMR.
- What counts as being terminal? The legal definition, not a personal definition or even the common use of the term in medical settings.

Terminal Condition: "A condition caused by injury, disease or illness from which there is no reasonable medical probability of recovery and which, without treatment, can be expected to cause death."

- No time limitations on when death will occur. Reasonable medical probability is 50.1%. "Probability of recovery" ... what counts as recovery?
- The "frame" for all of this is the patient's right to refuse unwanted medical treatment, and this right persists even when the patient is incapacitated.