

All About Hospital Ethics Services

Session 3: Valid Consent

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Ray Moseley

Ken Goodman



Informed/Valid Consent

- Adequate Information: risks, benefits and alternatives needed by a reasonable person to make a decision
- Capacity: ability to comprehend, understand, appreciate the information
- Voluntariness: decision is made freely and without beguilement, inducement, coercion, etc.

All elements are required for valid consent.

Valid Refusal

- Same three criteria
- Makes clear why there is no ethical distinction between withdrawing and withholding treatment; e.g., consent for an intervention may be reversed or taken back.
- Undergirds most advance directives

The Process

- Consent forms document that valid consent has been obtained.
- A signed consent form is evidence, not proof.
- Consent should be a process, not an event.
- Hospital settings are inherently coercive; this complicates the consent process.
- Language is important: You ask for or seek consent; you do not “consent the patient.”

Capacity

- Patients are presumed to have capacity unless incapacity is explicitly documented.
- Capacity waxes and wanes. Changes are very difficult to document carefully.
- Patients might be incapacitated in some ways but perfectly able to make medical decisions.
- A psychiatric diagnosis alone does not constitute incapacity. Neither does advanced age.

Special Cases

- Emergencies
- Presumed, implied, latent, tacit consent?
- Waivers of consent

Pediatrics

- Legal determination of adulthood is often inapt.
- Many adolescents have insight and understanding as good as that of adults.
- Assent/dissent when possible?
- Parents can be challenging.

Consent on Behalf of a Patient

- Guardians
- Surrogates
- Proxies

Social Worker Proxies

- What does it mean to have an external social worker serve as a proxy?
- How does the process work?
- Role of the Ethics Service

The Florida Bioethics Network

- <https://fbn.miami.edu/index.html>
- <https://fbn.miami.edu/resources/covid-19-resources/index.html>
- <https://fbn.miami.edu/resources/other-bioethics-networks/index.html>

