All About Hospital Ethics Services

Session 3: Valid Consent
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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