

Older Adults and Health Care Decision-making in Clinical Settings

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Self Direction

In an ideal world

Short illness

Uttering profound words

Reality is 70%

At least a short

Period of not being able to communicate



Health Care Decision Making Laws

Power of Attorney for Health Care

Default Health Care Surrogates (40 over 40 years)

Living will and others



The Project

Made Possible by

THE RETIREMENT RESEARCH FOUNDATION

American Bar Association Commission on Law and Aging

- In collaboration with

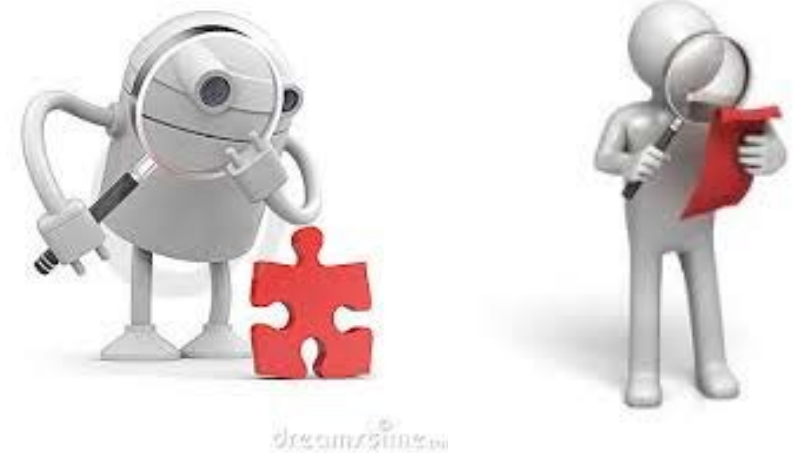
Society for Hospital Medicine

Society for Critical Care Medicine



Research Project

- Literature Review
- Survey – 527 responses
- Round table of national experts
- Review of Hospital Policies



Narrow issue: Patients who lack capacity, who have nothing in writing naming a surrogate

Have state health care decision-making statutes made a difference?

Do the statutes offer meaningful guidance in health care decision making in a clinical setting?



Someone Named in Writing

Less than 1/3rd of adults

Slightly higher for older adults

Agent under a power of attorney that includes health care, designation of health care proxy, guardianship order.



Statutory Defaults

| | | | | |
|---|--------------------------------|----------------------|---|---|
| Statutes provides hierarchy of surrogate decision-makers | | | Authorized surrogates but no hierarchy | No general default surrogate consent statute |
| Hierarchy | Includes “close friend” | Majority rule | | |
| 38 states | 23 states | 19 States | 2 states | 12 states |

Standard of Care – and Consent

- Without consent for less
- All treatment – short of futility
- 98% prefer less



**If I am ever on
life support,
unplug me...
Then plug me back in..
See if that works..**

Consent for Care Ancient Concept

Care without consent is a battery



When Defaults Work Well

- One Clear Answer
- Next of Kin
 - Spouse – options spouse and adult child 90%
 - Adult child – options child and close friend 80%
- Clinical Practice:
 - “Consult” with everyone present who might help decide
 - Consent from nearest family



Disputes Between Surrogates of the Same Class

- Hierarchy statutes – 38 states
 - Spouse
 - Adult child
 - Parent
 - Adult Sibling
 - Adult grandchild





Statutory Dispute Resolution

| | |
|-------------------------------------|--|
| Judicial Review | Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Hawaii, New York, South Carolina – if consensus fails, Texas, |
| Majority Rule | Alaska, Arizona, Florida, Illinois, Iowa, Kentucky, Louisiana, Maine, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Virginia, Wyoming |
| Require consensus | Louisiana, New Jersey, South Carolina, Washington, Wisconsin, |
| Ethics Committee | Delaware, Maryland, |
| Provider or State selects surrogate | Tennessee, West Virginia, |

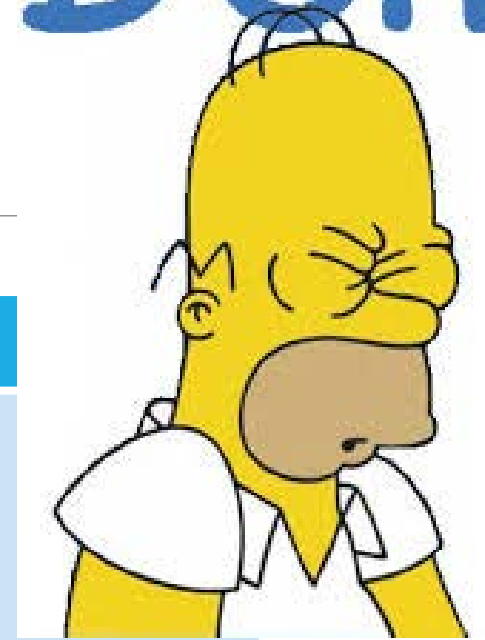
All Data



| | Frequently | |
|--|------------|-----|
| | % | N |
| Accept consent from the two children favoring DNR because they constitute a majority | 13.9% | 53 |
| Accept consent from whichever side you feel supports the best medical option | 4.0% | 15 |
| Accept consent from whomever you feel best knows the patient's wishes | 26.9% | 104 |
| Seek guidance from an ethics committee or consultant. | 59.7% | 250 |
| Seek guidance from risk management, or legal department. | 43.8% | 174 |

D'OH!

Looking Closer



| | Frequently | Never |
|---------------------------|------------|--------|
| States with Majority Rule | 6.74% | 49.06% |

In the two states with statutes saying to seek guidance from an ethics committee, there are 19 responses
10 of them selecting that they would frequently seek help from the ethics committee.

Direction?

- Family harmony is a common theme in narrative answers
- Ethics Committee appear to be the most popular clinical answer
- Narrative Comments reveal a mixed experience with Ethics Committee Good and Weak



Patients without readily identifiable family or friends to make decisions

- Also known as
 - Solos
 - Unrepresented
 - Unbefriended
 - Isolated



Statutory Options



| | |
|--|---|
| Attending Physician & ethics Committee | Alabama, |
| Attending Physician with ethics committee or if none, second Physician | Arizona, |
| Attending and ethics or 2 nd Physician | Arkansas, New York, Tennessee, Texas, Louisiana |
| Social worker selected by the facility & ethics committee if forgoing life prolonging care | Florida |
| Attending & 2 nd Physician & Ethics committee | Georgia – for DNR only. |
| Attending Physician | North Carolina, Oregon, (California for NH only.) |
| Anyone by DHHR regulation | West Virginia |
| Long term care facility staff | Mississippi – routine care only – not end of life |
| Member of the clergy | Texas (Texas has two statutory provisions) |

Survey Data

| | | |
|--|---------------|------------|
| Seek the opinion of a second physician. | 55.25% | 221 |
| Seek guidance from an ethics committee or consultant. | 58.19% | 238 |
| Seek guidance from hospital risk management, or legal department. | 45.23% | 180 |
| Seek court-ordered guardianship. | 39.29% | 156 |
| Make a decision yourself, abiding by professional ethics and standards. | 10.53% | 42 |

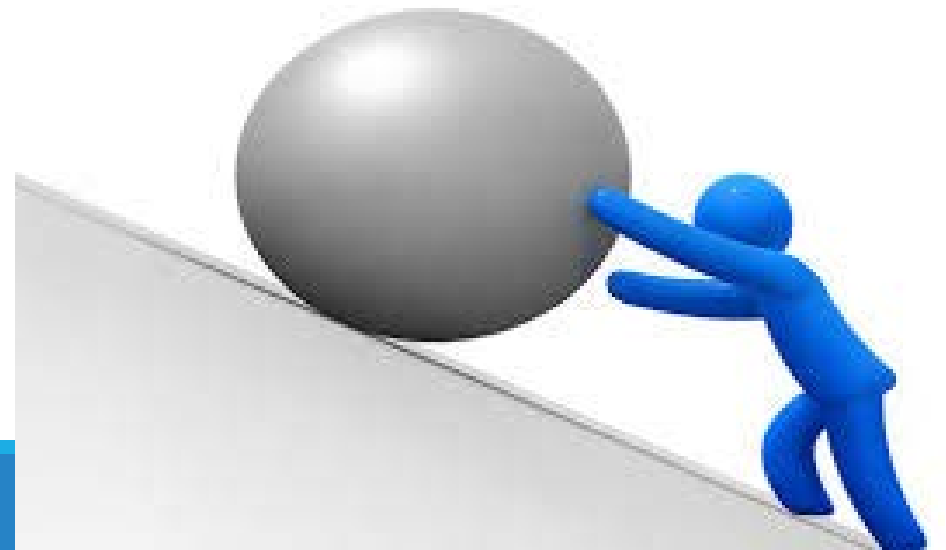


*= preference under state law

| Frequently would | All Data | Florida | Georgia | North Carolina | Texas |
|---|----------|----------------|----------------|----------------|----------------|
| Seek the opinion of a second physician. – Frequently - | 55.25% | 56.25% | *28.57% | 69.23% | *70.00% |
| Seek guidance from an ethics committee or consultant. | 58.19% | *56.25% | 57.14% | 38.46% | 75.00% |
| Seek guidance from hospital risk management, or legal department. | 45.23% | 46.67% | 33.33% | 41.67% | 70.00% |
| Seek court-ordered guardianship. | 39.29% | 60.00% | 25.00% | 33.33% | 20.00% |
| Make a decision yourself, abiding by professional ethics and standards. | 10.53% | 6.25% | 28.57% | *8.33% | 14.29% |

What Does This Tell Us

- No clear standard in the law
- No clear best practice in the data
- The law and clinical practice struggle with this issue



From the narrative comment:

- Greater effort finds a family member or friend for a significant portion of these patients
- Guardianship works well in some states, is a nightmare in other states.
- Prevention is a key



Recommendations:

- Changes in the law need to be based on sound clinical practice
- Training for Health Care Providers is needed on the law (71%.)
- Advance Care Planning is still needed
- Persons without family or friends are the greatest challenge for both the law and medicine

Questions



Thank You!

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