

Treatment Refusal, Guardianship, and Advance Directives

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Disclosures

Neither I nor my spouse/partner has a relevant financial relationship with a commercial interest to disclose.

The Right to Refuse Treatment

- Principle of autonomy: individuals have a right to make decisions about their own medical care, even though the decision may be at odds with the views of others, including the treating clinician
- Default rule: patients choose their own treatment

Mental Illness & Right to Refuse

- What about:
 - the psychotic patient?
 - the manic patient?
 - the depressed patient?
 - the catatonic patient?
- Patient Autonomy vs. Beneficence
- Who decides?

Who Decides about Psychiatric Treatment?

- **Professional judgment model**
 - Physician judgment rules
 - Patients can object to proposed treatment
 - Objection reviewed by medical expert/panel of experts
 - Appropriate treatment allowed
 - Administrative rather than judicial
- **Rights-driven model**
 - Judicial review focused on due process rights
 - To override autonomy, patient must be found incompetent
 - Professional judgment alone is not enough
 - Grounded in common law, statute, and state constitutions

Challenges for the Rights Driven Model

- Patients sit unmedicated waiting for legal proceedings: “Rotting with their Rights On”
- Extended Hospitalizations
- Costs of Litigation: court time, attorneys, expert witness reviews
- Kindling?
- Awareness and acceptance of the sliding scale approach to capacity assessment
- What’s so bad about antipsychotics?

The Newer Antipsychotics

- Highly effective
- Fewer side effects, but not side effect free
 - Metabolic syndrome
 - EKG changes
 - Orthostatic hypotension
 - Dyskinesias

Involuntary Treatment: Differences Among States (adapted from Beinner, 2007)

- Involuntary treatment at time of admission (with clinical authorization): GA, MD, MI, MO, NJ, NC, PA, SC, TN, WV
- Administrative hearing required: DC, ME, NE, NV, NH
- Involuntary medication allowed upon judicial commitment: AL, AR, AZ, DE, KS, ID, IN, LA, MI, MT, WI, WI, WY, UT
- Allowed upon judicial commitment if need presented: MN, FL, IA, OK, RI, WA
- Allowed after separate hearing at time of commitment: AK, IL, TX
- Requires separate judicial hearing, usually after commitment hearing: CA, CO, HI, KY, **MA**, NY, ND, OH, OR, SD, VT, VA
- Requires a separate judicial order for a guardian: CT, NM

Rogers v. Commissioner of Dept. of Mental Health (1983)

- Involuntary commitment does not itself mean a patient is incompetent to make treatment decisions. A judicial determination of incapacity must precede any attempt to override the right to refuse antipsychotic drugs.
- If patient is found incompetent to make medical decisions, the judge makes a “substituted judgment” on behalf of the patient

Clinical Aspects of Substituted Judgment

- Factors considered by the judge: Massachusetts as an example
 - The ward's expressed preferences regarding treatment
 - The ward's religious beliefs
 - The impact upon the ward's family
 - The probability of adverse side effects
 - The consequences if treatment is refused
 - The prognosis with treatment

Rights Driven Model: Differences Among States

- Surrogate decision maker after a determination of incapacity:
Guardian appointed by the court vs. Judge
- Decision making model:
Best interests of the patient vs. Substituted judgment

Current Practice of Rights Driven Model

- General awareness and acceptance when:
 - Patient has a psychotic illness
 - Patient is refusing treatment
- Continued resistance where patient is being treated with antipsychotics
 - For other illnesses
 - In low doses
 - In a non-psychiatric facility, such as nursing homes, medical/surgical units
 - Is consenting/assenting
- Wide acceptance of substituted judgment

Guardianships & Conservatorships

- Legal entity in which another person is given legal responsibility for an individual who has been deemed unable to fulfill some or all personal or financial responsibilities
- Terminology differs among jurisdictions
 - Guardianship/ Conservatorship of the person: decisions re treatment, living situation, other personal day-to-day matters
 - Guardianship/Conservatorship of the estate: decisions regarding finances
 - May have one without the other
 - Tailored to the individual/situation

Advance Directives

- Advance Directives: patient provides instructions on what medical care they should receive in the event of incapacity
- Durable powers of attorney
- Health Care Proxy (HCP)
 - Uniform Probate Code; adopted in many states but may be modified
 - The Principal appoints the Agent to make decisions on his or her behalf in the event of incapacity
 - Agent can make “any and all” decisions that the Agent could have made prior to incapacity
 - Hospitalization
 - Antipsychotics
 - ECT

Thank you!