

THE CODE SAYS

The AMA *Code of Medical Ethics*' Opinions on Patient Decision-Making Capacity and Competence and Surrogate Decision Making

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Although the *Code of Medical Ethics* does not have much to say about mental health per se, the *Code* does consider patient decision-making capacity, mental competence, and surrogate decision making for those who are unable—over the short-term or the long-term—to make their own health care decisions. These concepts are discussed in opinions 2.20, “Withholding or Withdrawing Life-Sustaining Medical Treatment” [1], 8.08, “Informed Consent” [2], and 8.081, “Surrogate Decision Making” [3].

Decision-Making Capacity and Competence

Generally, patients are free to exercise their autonomy in making decisions about their own health care. However, patients can only do so if they are given information about and understand the risks and benefits of a specific treatment and can apply this information to their health. As noted in Opinion 8.08, “Informed Consent,” “the patient’s right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice.” However, we know that not all patients have capacity (a clinical standard applying to a particular decision at a particular point in time) or competence (a legal standard applying to all decisions at all times) to make these informed choices about their health care [4]. For patients with mental illnesses that can interfere with their insight into their health or with their decision making, physicians have obligations to assess their capacity in order to evaluate their ability to make a particular health care decision at a particular point in time.

Because patients with mental illnesses can be vulnerable—particularly when they are severely chronically disabled by an illness or experiencing an acute exacerbation of an illness—they might not fully understand or be able to integrate information about risks and benefits of possible interventions. Opinion 8.081, “Surrogate Decision Making,” explains that “in some instances, a patient with diminished or impaired decision-making capacity can participate in various aspects of health care decision making. The attending physician should promote the autonomy of such individuals by involving them to a degree commensurate with their capabilities.” The higher the risk of a particular decision, the more important it is that the patient has appropriate decision-making capacity. That is, a patient suffering an acute exacerbation of a mental illness at a particular point in time might have capacity to decide what she will eat for breakfast, but she might not have capacity to decide whether to begin a course of psychotropic medications.

More about Surrogate Decision Making

When a patient does not have the capacity to make her own decisions at a particular point in time (or when her decisions are not covered by an advance directive, as noted in Opinion 2.191, "Advance Care Planning" [5]), someone else must do so for her. This person, known as the *surrogate decision maker*, or *proxy*, has either been named by the patient at a time when she had capacity or is a family member or close acquaintance designated by law or statute. Opinion 2.20, "Withholding or Withdrawing Life-Sustaining Medical Treatment," outlines an example of this process for a patient who has been deemed to be incompetent by a court.

If the patient receiving life-sustaining treatment is incompetent, a surrogate decision maker should be identified. Without an advance directive that designates a proxy, the patient's family should become the surrogate decision maker. Family includes persons with whom the patient is closely associated. In the case when there is no person closely associated with the patient, but there are persons who both care about the patient and have sufficient relevant knowledge of the patient, such persons may be appropriate surrogates.

Opinion 8.081, "Surrogate Decision Making," also applies to patients who are competent but can, at a point in time, lack capacity. This opinion notes that "If a patient lacks the capacity to make a health care decision, a reasonable effort should be made to identify ... a health care proxy." Surrogate decision makers should base their decisions on the *substituted judgment* standard; in other words, they should use their knowledge of the patient's preferences and values to determine as best as possible what the patient would have decided herself. If there is not adequate evidence of the incapacitated or incompetent patient's preferences and values, the decision should be based on the best interests of the patient (what outcome would most likely promote the patient's well-being). Opinion 8.081 explains "factors that should be considered when weighing the harms and benefits of various treatment options." These factors "include the pain and suffering associated with treatment, the degree of and potential for benefit, and any impairments that may result from treatment." Opinion 8.081 elaborates that in applying the best interest standard,

Any quality of life considerations should be measured as the worth to the individual whose course of treatment is in question, and not as a measure of social worth. One way to ensure that a decision using the best interest standard is not inappropriately influenced by the surrogate's own values is to determine the course of treatment that most reasonable persons would choose for themselves in similar circumstances.

Opinion 8.081 also dictates that in special circumstances involving incompetent patients, state laws should be consulted and may require court interventions: "When reasonable efforts have failed to uncover relevant documentation [such as a pertinent living will], physicians should consult state law. Physicians should be aware that under special circumstances (for example, reproductive decisions for individuals who are incompetent), state laws may specify court intervention."

References

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