



Hôpital St-Boniface Hospital

Surrogate Decision Making: Advance Care Planning

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Objectives

- Autonomy
- Informed Consent
- Capacity
- Health Care Proxy
- Advance Care Planning

Autonomy

- The ability for an individual to make decisions for themselves in accordance with their philosophical or religious beliefs.

Autonomy cont'd: Informed Consent

- Informed Consent:
 - Providing patients with information regarding procedure/treatment
 - **Including expected benefits, significant risks, consequences and reasonable alternatives**
 - Engaging with the patient/surrogate decision maker regarding questions and concerns

Capacity

Aspect	Definition
Decision Making Capacity	A patient has the ability to understand a procedure including the risks, benefits, consequences and reasonable alternatives.
Lack of Decision Making Capacity	A patient does not have the ability to understand a procedure including the risks, benefits, consequences and reasonable alternatives.

Capacity Cont'd

- Who makes capacity assessments?
 - Physicians
 - Psychiatrists
 - Not Ethicists
- What happens when a clinical determination cannot be made?
 - Legally, the presumption is that patients have capacity
 - Age of capacity is **16**

Capacity Cont'd

- What affects decision-making capacity?
 - Situation, psychosocial, medical, psychiatric and neurological factors
- Are all capacity assessments the same?
 - No, generally legal capacity (or legal competency) requires less stringent requirements than decision making capacity in the medical context

Terminology

- Surrogate Decision Maker AKA Substitute Decision Maker (SDM)
- Health Care Proxy
- Medical Power of Attorney

Surrogate Decision Making

- What happens when the patient does not have the ability to make certain medical decisions?
 - Health Care Proxy
 - Committee
 - Family, friends
- Health Care Directives Act of Manitoba

Surrogate Decision Making

- **Standard 1: Substitute Decision Maker:**
 - Put on the “hat” of the patient
- **Standard 2: Best Interest:**
 - In the event that the SDM does not know what the patient would have wanted, look to best interest of the patient

Health Care Proxy

- **Health Care Proxy:**
 - Individual named in a health care directive
 - Legally binding
 - Often a friend/family member
 - Recommended that when appointing a proxy an individual discusses their medical wishes with their proxy
 - Document often executed with an advance directive

Who can make a Health Care Proxy?

- Individual age 16 or above
 - However, proxy needs to be 18 or above
- Can appoint more than one proxy, can be consecutive or joint proxy
- Proxy cannot appoint another to act as substitute decision maker

Health Care Proxy: How to make one?

- (1) Done with a lawyer
- (2) Created a portion of a power of attorney document
 - Added in medical provision
- (3) Government of Manitoba Form
 - Only the patient needs to sign and date
 - If the patient cannot sign, someone can sign and date on their behalf in front of a witness

Health Care Proxy: How to make a new one?

- Old one is revoked by a new one
- Writing to revoke the old one
- Physically destroying the old one
- Divorce – Removes your spouse as proxy

Health Care Proxy: Where to store it?

- Keep a copy in your home
- Give a copy to your health care proxy
- Give a copy to your lawyer
- Give a copy to your general health care practitioner
- Give a copy when you present to the hospital

Health Care Proxy

- Health Care Proxy Benefits:
 - Individual you can engage with regarding your personal choices
 - A surrogate decision maker is able to engage with care providers
 - More likely to know about changes in preference

Health Care Proxy

- Health Care Proxy Disadvantages:
 - Personal situations may change, may not update the proxy sufficiently
 - Trusting another person to make decisions for you
 - Where is the document?

Limitations on Health Care Proxy

Limitation on proxy's consent

- 14 Unless a directive expressly provides otherwise, a proxy cannot consent to
- (a) medical treatment for the primary purpose of research;
 - (b) sterilization that is not medically necessary for the protection of the maker's health; or
 - (c) the removal of tissue from the maker's body, while living,
 - (i) for transplantation to another person, or
 - (ii) for the purpose of medical education or medical research.

Review of misconduct by a proxy

- 17(1) When the court, on application, is satisfied that a proxy is not acting in good faith in accordance with this Act, the court may, by order,
- (a) suspend or terminate the proxy's appointment and rescind any health care decision made by the proxy; and
 - (b) except where the directive appoints at least one other proxy who can continue to act, substitute a decision of its own for any health care decision made by the proxy.

Committee

- Committee:
 - Court determined or order determined under the Mental Health Act of Manitoba
 - Substitute Decision-Maker for Personal Care under the Vulnerable Persons Living with a Mental Disability Act
 - Committee may be an individual or a public trustee

WRHA Policy: Informed Consent

- Family/Friends:
 - Not legally binding and thus must have support from all available and interested parties

WRHA Policy: Informed Consent

- Spouse/Common-Law Partner
- Children
- Parents
- Siblings
- Grandparents
- Grandchildren
- Aunts/Uncles
- Nephew/Nieces
- Friends

WRHA Policy: Informed Consent

- Problematic because not legally binding
- In practice we look to spouse first
- Problematic because there can be disagreements amongst decision makers

What happens when there is no SDM?

WRHA Informed Consent:

- Section 3.3
 - Emergency
 - In a situation where:
 - a) a patient/resident/client does not have Decision-Making Capacity;
 - b) a Substitute Decision-Maker is not readily available;
 - c) the patient/ resident/client's life, limb, or vital organ is endangered;

What happens when there is no SDM?

- d) a reasonable patient/ resident/client would consent in his/her circumstances; and
- e) there is no written or verbal evidence that the patient/ resident/client objects,
- The Treatment(s), Procedure(s) or Investigation(s) may proceed without consent. The Responsible Party or Authorized Designate shall document the reason why Informed Consent was not obtained on the appropriate section of the consent form. As soon as possible, the patient/resident/client or Substitute Decision-Maker shall be informed of the situation.

Advanced Medical Directives



Health Care Directive

Please type or print legibly

This is the Health Care Directive of:

Name _____
Address _____ City _____
Province _____ Postal Code _____ Telephone () _____

Part 1 – Designation of a Health Care Proxy

You may name one or more persons who will have the power to make decisions about your medical treatment when you lack the ability to make those decisions yourself. If you do not wish to name a proxy, you may skip this part.

I hereby designate the following person(s) as my Health Care Proxy:

Proxy 1

Name _____
Address _____

City _____
Province _____ Postal Code _____
Telephone () _____

Proxy 2

Name _____
Address _____

City _____
Province _____ Postal Code _____
Telephone () _____

(Check one choice **only**.) For an explanation of "consecutively" and "jointly" please see the reverse side of this form).

If I have named more than one proxy,

I wish them to act:

consecutively OR jointly

My Health Care Proxy may make medical decisions on my behalf when I lack the capacity to do so for myself (check one choice **only**):

With **no restrictions**
 With **restrictions as follows:**

Part 2 – Treatment Instructions

In this part, you may set out your instructions concerning medical treatment that you do or do not wish to receive and the circumstances in which you do or do not wish to receive that treatment. REMEMBER – your instructions can only be carried out if they are set out clearly and precisely. If you do not wish to provide any treatment instructions, you may skip this part.

Part 3 – Signature and Date

You must **sign and date** this Health Care Directive. No witness is required.

Signature _____
Date _____

If you are unable to sign yourself, a substitute may sign on your behalf. The substitute must sign in your presence and in the presence of a witness. The proxy or the proxy's spouse cannot be the substitute or witness.

Name of substitute: _____
Address _____

Signature _____
Date _____

Name of witness: _____
Address _____

Signature _____
Date _____

- Proxy
- Treatment Preferences
- Other specific requests



Advanced Medical Directives

- Types of preferences noted:
 - Dialysis
 - Code status, intubation, resuscitation
 - Hydration and Nutrition
 - Antibiotics

Advanced Medical Directives

- **Benefits:**
 - Gives surrogate decision makers guidance regarding patient preferences
 - Gives medical practitioners guidance regarding patient preferences

Advanced Medical Directives

- **Disadvantages:**
 - Individuals need to update their directives on a regular basis
 - Care practitioners need to know where the document is located
 - Cannot account for every situation

Questions?

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