

# DECISION-MAKING CAPACITY

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**AGS**

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# COURT DECISIONS WEIGHING AUTONOMY VS. BENEFICENCE

- **Quinlan 1975:** 21-year-old who overdosed on drugs; New Jersey Supreme Court ruled that her right to privacy protected her parents' right to refuse care (ventilator)
- **Cruzan 1990:** 31-year-old who had auto accident; US Supreme Court upheld right to refuse treatment (artificial hydration and nutrition included)
- **Schiavo 1998:** 27-year-old who suffered cardiac arrest; state and federal courts upheld the husband's right to remove feeding tube

# SCENARIO 1

An elderly woman with severe Alzheimer's disease is admitted to your service and deemed mentally incapacitated. In order to make further management decisions, it is appropriate to obtain a power of attorney (POA).

1. True
2. False



**FALSE**

A POA can be assigned only by someone with the capacity to make decisions (that's why they call them *advance* directives)

# SCENARIO 1

A daughter of the same patient comes running down the hall waving a sheet of paper that says she has the patient's POA (signed by the patient 15 years ago when she was traveling alone outside of the country). The daughter's POA gives her the authority to help make decisions about her mother's care.

1. True
2. False



# FALSE

- **Standard POA** is null and void if the individual becomes incapacitated
- **Durable POA**, specifically for medical affairs, allows the named individual to make medical decisions when the grantor is incapacitated

## SCENARIO 3

The daughter is applying for guardianship over her mother in order to make medical decisions for her. She asks you to write a letter. You should state that her mother is incompetent to make medical decisions.

1. True
2. False



# FALSE

“Competence” vs. “capacity”:

- **Competence** is a legal term and can be determined only in a court of law
- You should describe your opinion about the patient’s **capacity** to make medical decisions



# GUARDIANSHIP

- Requires assessment of the person's functional status
- Psych evaluation and medical exam must clearly describe the history, nature, and degree of disability
- There must be “clear and convincing evidence” that the person is incapacitated

# COLORADO LAW

An incapacitated person is “an individual, other than a minor, who is unable to effectively receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance”

# LIMITED GUARDIANSHIP

- The guardian is responsible only for specific matters such as money management and/or medical decision-making
- The “ward” remains responsible for all other decisions
- Colorado law presumes that only limited guardianship is required

# GUARDIANSHIP ALLIANCE

- Not-for-profit organization in Colorado that provides a packet containing the necessary forms and instructions for obtaining guardianship
- Also makes referrals to attorneys with experience and expertise in guardianship issues
- [www.guardianshipallianceofcolorado.org](http://www.guardianshipallianceofcolorado.org)

## SCENARIO 4

The daughter does not have a durable POA. She has a brother in Cincinnati whom she hasn't seen in 2 years. There are no other family members or interested parties. You should invoke the proxy law and call the son to confirm that he agrees to let his sister guide medical decision-making.

1. True
2. False



# TRUE

- A **proxy decision-maker** is a person chosen by all “interested parties” to make decisions on behalf of an incapacitated patient
- Proxy law grew out of the AIDS movement

## SCENARIO 5

You are able to reach the son by phone. He is concerned about his mother but says that he and his sister never agree on anything and he doesn't want her making medical decisions. Since the daughter is at the bedside and the son is not coming to town, you should accept the daughter as proxy decision-maker.

1. True
2. False



**FALSE**

Without an agreement, someone will have to petition the court to appoint a guardian



## SCENARIO 6

A demented patient has gangrene involving 3 toes on her right foot. Revascularization is not possible. The surgeons recommend below-the-knee amputation. You and the surgeon explain the surgery to the patient and believe she understands the pros and cons. The daughter has a durable POA and objects. You should proceed with surgery.

1. True
2. False



# TRUE

- Determining capacity:
  - Capacity to make a given medical decision is an isolated measure
  - If a patient understands the benefits and risks of an intervention and is consistent in her response, then the person with durable POA has no authority to overrule the patient
- It is generally a good idea to have 2 or more physicians independently confirm that the patient understands her decision

# SCENARIO 7

Your demented patient has recovered from her acute medical problem and is now ready for discharge. She had been living with her daughter, the one who has durable POA, who now says she can no longer take care of her mother. The patient insists she is going home and refuses nursing home placement. The daughter can give consent to transfer her to the nursing home.

1. True
2. False



# FALSE

Limits of durable POA or proxy: If the patient objects to a treatment plan (despite dementia or incapacity), then the matter must be presented to the court, and a guardian will be assigned if the patient is determined to be incompetent

## SCENARIO 8

Your patient has a cardiac arrest on the day she is to be transferred to the nursing home. She is revived and intubated in the ICU. The daughter with the durable POA asks you to remove her mother from life support immediately. Her mother's written advance directive states that she wants life support for at least 3 days before terminating it. You should not extubate the patient.

1. True
2. False



# TRUE

Limits of durable POA: Written advance directives supersede instruction from the person holding a durable POA, whose role is to enforce the advance directive and help make decisions not clearly addressed in the directive

## SCENARIO 9

An 80-year-old has a conservator because she was mismanaging her bank accounts and the courts ruled her to be unable to manage her finances. A priori, the conservator also has the authority to help with medical decision-making.

1. True
2. False



# FALSE

- The appointment of a conservator is not a **determination of incapacity** of a protected person (the person under the conservatorship)
- Conservatorship is usually not necessary for someone with limited assets (eg, only enough income to meet daily needs)



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