NYC HEALTH+ HOSPITALS

CLINICAL ETHICS CONSULTATION [CEC] GUIDELINES CONCERNING MANAGEMENT OF PATIENTS WITH POSSIBLY COMPROMISED DECISIONAL CAPACITY

1. There is an ethical imperative to respect and enhance patients' decisional capacity to promote their autonomy and to ensure that they have a meaningful choice in their health care. Failing to detect impaired decisional capacity when it exists risks abandoning the patient and may leave the patient without the benefit of effective surrogate decision makers.

2. Many of our patients have impaired capacity to understand treatment options and interventions and to evaluate the risks and benefits of treatments. The first task for these patients is to determine their decision-specific decisional capacity. If the patient lacks capacity to make health care decisions, the attending physician with the support of other members of the health care team, must identify and work with surrogate decision makers when available. If there are no surrogates available and there are no known prior wishes of the patient, the care team must make decisions based upon notions of the best interest of the patient. The staff must continue to care for patients who may assent to or refuse care or vacillate between refusal and acceptance of treatment.

The determination of a patient's capacity is the responsibility of the patient's attending physician, the accuracy of whose judgment will be enhanced by consultation with members of the care team.

3. Determination of capacity involves the following considerations:
   - As an initial premise, every adult patient is presumed to have decision-making capacity.
   - Capacity is decision-specific. Complex decisions, consents to or refusals of standard of care, and consents to or refusals of critical or life-saving treatment and high-risk treatments, require a higher degree of capacity.
   - Decisional capacity may fluctuate with time of day, existence of pain, or change in setting.
   - Especially for elderly patients consistency of a patient's choice with previous choices and known values may serve as evidence supporting decisional capacity.
   - Limited language skills or verbal fluency, limited knowledge of human anatomy and physiology, language barriers which are difficult to overcome, or limited literacy skills are not necessarily, by themselves or in combination, evidence of a lack of decision-making capacity.

4. Decision making capacity to make a health care decision means the ability to understand and appreciate the nature and consequences of the proposed health care including the benefits and risks of and alternatives to the proposed health care to reach an informed decision. An attending physician may consider using the following procedure during his or her assessment of a patient's decisional capacity:

   1. Assess the patient's **understanding –** (e.g. "Please tell me in your own words what your doctor told you about: medical condition, treatment, benefits, risks, alternatives.)

2. Assess the patient's **appreciation**- (e.g. assess the patient's beliefs, perceptions and attitudes these must be assessed directly, e.g., "What do you believe is really wrong with you? What do you think this treatment will do to you or for you?")
3. Determine what the patient's **choice** is–(e.g. **"**Tell me what your decision is …")
4. Assess the patient's **reasoning** – (e.g. "Tell me how you reached the decision you have made." "What things did you consider in making that decision?")

5. Mental Illness. If the attending physician makes an initial determination that a patient lacks decision-making capacity because of mental illness, either such physician must be an appropriately trained and qualified psychiatrist or an appropriately trained and qualified psychiatrist must independently determine whether the patient lacks decision-making capacity.

6. The experience or anticipation of pain may adversely affect decisional capacity and effective pain management can mitigate that effect.

7. Beyond their role as potential surrogate decision makers, the participation of a supportive family, friend or clinician may improve the patient's ability to participate in decision-making and improve his or her decisional capacity.

8. Lack of capacity is neither a sufficient ethical reason to treat over the objection of a patient nor (absent an emergency or court order) legally permissible.

9. Clinical Ethics Consultations with patients who have compromised decisional capacity should focus on continuing efforts to improve the patient's decisional capacity and maintain and optimize the patient's role in decision-making. These efforts should be documented in the CEC Chart Note.

7.13.17