AMERICAN COLLEGE OF EMERGENCY PHYSICIANS
SCIENTIFIC ASSEMBLY
1999

Assessing Capacity of the Emergency Patient

Emergency physicians are often responsible for obtaining informed consent, respecting a refusal of care, and responding to the wishes of patients and families. This becomes difficult when the capacity of the person charged to make a health care decision is uncertain. This session will discuss ways to assess decision-making capacity, identify appropriate actions when capacity is in doubt, and promote appropriate actions on the part of the emergency physician.

- List the components of an informed consent and informed refusal.
- Discuss the “sliding scale” of decision-making capacity.
- Note essential items when documenting an informed consent or refusal.
- Identify appropriate actions when a patient refuses care.

WE-132
Wednesday, October 13, 1999
9:00 AM - 9:55 AM
Room # N223
Las Vegas Convention Center

FACULTY

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Assessing Capacity

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1999 ACEP Scientific Assembly
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Las Vegas, Nevada

The Dilemma:

A patient with adequate capacity has the right to make profound de&ions regarding medical care and life **decisions.**

Society (i.e. **"us")** protects tom harm those who lack decision making **capacity.**

Objectives:
1. Explore the components of informed consent/refusal

2. Discuss sliding scale of **capacity**

3. Note essential Items to document

4. Identify appropriate actions when a patient **refuses**

The U.S. Supreme Court has recognized that a "parson has a constitutionally protected liberty interest in refusing unwanted medical treatment" even if refusal could result in death.

The law offers a confusing array of standards for competence that are not clinically applicable.

Intricate ethical analyses offer little practical assistance with clinical decision making in the ED.

There are a growing number of cases in which patients decisional capacity is limited and/or the proxy determination is unclear.

- Aging, debilitated populations
- Less deference to physicians

True story 28 y/o man presented to the ED after MVC. He refused follow up care. "That's ok, I have a lawyer and they usually use chiropractors."

Decision-making requires:

A. Information
   - Simple consent
   - Informed consent
     - aware of risks/benefits

B. Voluntariness

C. Competence
   - Comprehend circumstances
   - Reason about options
   - Select a course of action

A 49 year old woman has a temperature of 102.3, a new heart murmur, and no other source of infection.

She refuses further care because she wishes to go home and try herbal therapies.

The burden of proving incompetence rests upon the one who would overturn the decision.

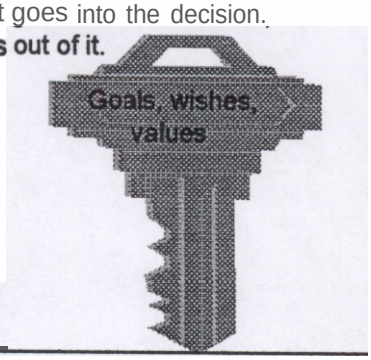
Ethical rules reflect a balance to respect and protect.

- Information
- Voluntariness
- Competence

Our Role:

1. Delivering Information
   Risks and **Benefits**
2. Assessing Competence
   - grounding in ethics and laws
   - clinical underpinnings

The key is what goes into the decision.
not what **comes out of it.**



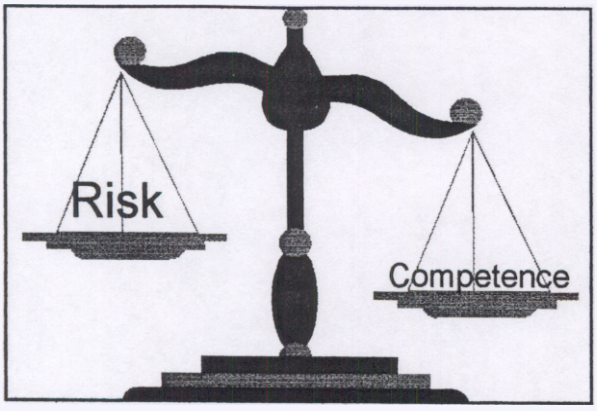
A bad choice
does not prove
incompetence

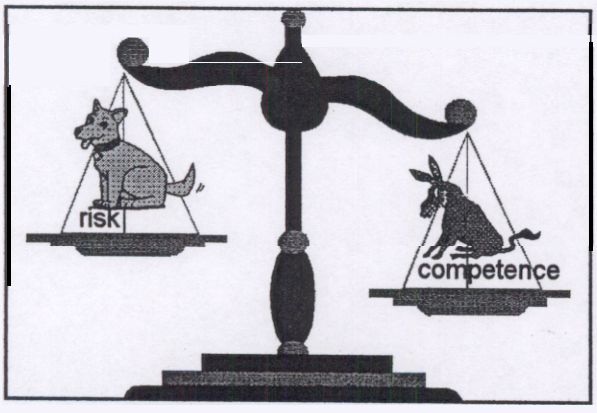
Assessing competence

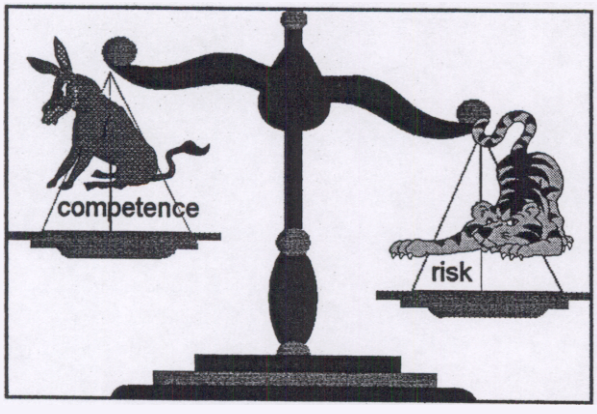
Does the person have the functional abilities required to consent? Can the person:

- **express** a choice
- understand information
- appreciate significance of the decision
- reason, logically weighing options

Various laws require *one,* ***all,*** *or combination.*


Risk
Competence


risk
competence


competence
risk

What do we do when a patient refuses?

MacArthur Clinical Assessment Tool (MacCat-T)

- understanding
- appreciating personal relevance
- reasoning- use information
- express choice

20 minutes

There is a strong societal presumption of competence.

There is a strong societal presumption the EM physician will provide adequate care.

Step 1

Optimize patient performance

- medical
- translators/ social/ family
- hearing/ teaching communication aids
- psychodynamics
  - alliance
  - psychotic defenses
  - distorted delusions, beliefs

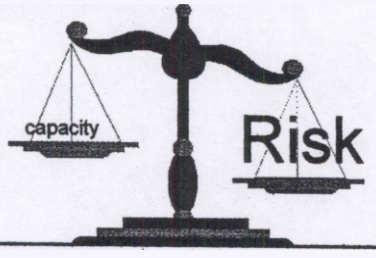
Step 1, continued:

Optimizing Patient Performance

- . pharmacology
  - pain
  - -anxiety
- situational, social. ethnic
- enhance trust/ caring
- limited treatment

. Buy Time!!

- An intoxicated, combative gentleman is brought to the ED after a fall down stairs. He refuses to remain in the cervical collar and is actively attempting to remove it



Step 2

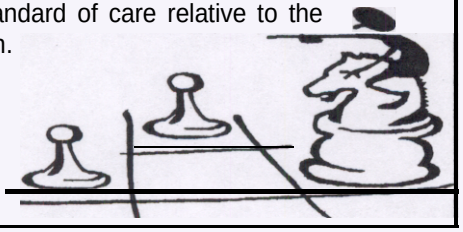
Gain maximal insight into circumstances surrounding refusal and ability to reason-

- medical influences
- other influences- social
- general mental status
- delirium
- dementia

Step 3:
Determine both the level of decisional capacity as well as imminent seriousness of the medical decision.

For example, a patient with mild Ahheimeh disease may have enough capacity to refuse elective surgery for an aortic aneurysm but not enough capacity to refuse emergency, life-saving surgery for another condition, even though his mental capacity is the same in both situations.

Since a treatment may be regarded as beneficial for one person but not for another with exactly the same condition, It is often necessary to make the standard of care relative to the person.



In circumstances where there is no clear “best” choice and/or a priori decisional rules cannot be fixed, it is common to set up a “fair” process which can reflect the view-s of multiple parties (patient, family members, institution, community, etc.) involved.

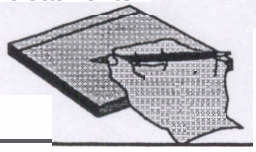
An abominal CT revealed a 5cm thoraco-abdominal aortic aneurysm. a contained hematoma above the celiac axis, and a small left pleural effusion.

The patient could not express a reasoned preference.

The family deliberated the choices.

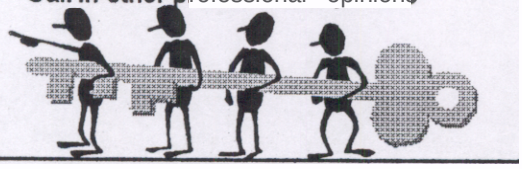
Step 4: Give information and document

I have provided information to the **patient regarding his/her condition---,** **the treatment required---,** and the **risks** and benefits of **treatment** as well as lack of **treatment---** and potential alternative treatments-.



Confirm that the patient ***understands*** the risks, benefits:

Have the patient wde
Have the patient repeat
Confirm with significant others
Call in other professional opinions

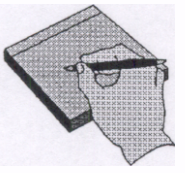


The patient has the **ability** to use the information to **come** to a reasoned decision.

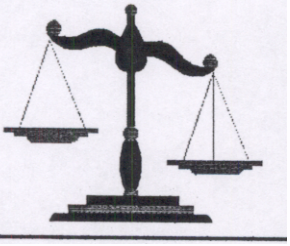
Is there evidence that this **decision conforms** to the patients longstanding **goals,** wishes, and values?

A decision to assume risk has to be reasoned, even if it is not reasonable.

"According to the information available to me, this patient's decision is in keeping with the patient's enduring goals, wishes, values, and willingness to assume similar **risks.**"



The patient's refusal **presents** a **minimal/substantial/extremely** high threat to their health.

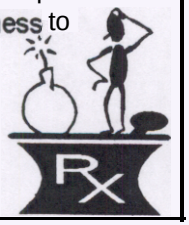


Step 5: Act

The patient demonstrates **sufficient** decisional capacity to assume the **risk.**

Step 5: Act

There is sufficient immediate risk, coupled with lack of decisional capacity, to warrant treatment despite the patient's inability/unwillingness to consent.



The Patient's Mental Capacity

This may require psychiatric or neurologic opinion but it is not always necessary especially in cases where there is no history of mental illness. The Massachusetts Health Care Proxy law, for instance. stipulates that the 'attending physician' decides when the patient's capacity is so limited that a proxy is needed for decision making.

The usual parameters to be determined are:

- Mental status- orientated tc person, time end place; memory testing; interpreting situations (finding a letter, etc.) or proverbs; simple math
- Ability to process information, make a decision end understand and accept the consequences of that decision.
- Background mental dysfunction, e.g. depression

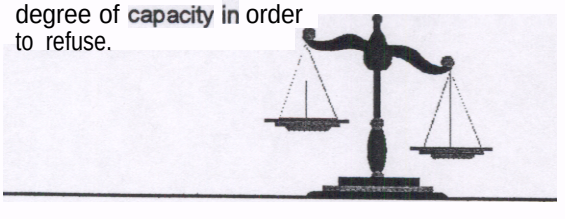
Decision Must Take Into Account:

1. Mental capacity of Patient
2. Medical situation
3. Patients history
4. Advance directive
5. Family

The Medical Situation

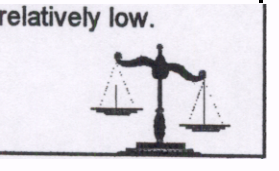
-the acuity of the situation
-the degree to which the condition is life threatening
-the Potential for medical benefit

A septic patient with en abdominal abscess or strangulated hernia would be an example of someone with an acute, lie-threatening illness that can be completely corrected by medical treatment This kind of situation has the highest level of seriousness. requiring the greatest degree of capacity in order to refuse.



A patient with several weeks of intermittent rectal bleeding who has an hematocrit of 33% and findings of diverticulosis on barium enema and colonoscopy is an example of moderate degree of severity requiring moderate decisional capacity in order to refuse further care.

A patient with a 2 month history of jaundice and the findings of pancreatic cancer with liver metastases has a life-threatening illness but with very little acuity and little potential for medical benefit. This patient's level of seriousness" would be relatively low.



Narrative Information

This includes a history of decisions around family, community. religious affiliation, other medical decisions, career circumstances, relationships that matter, projects which they are working on, etc., it is possible to get dues or evidence about a new decision from how the patient ranked options in the past.

Advance Directive

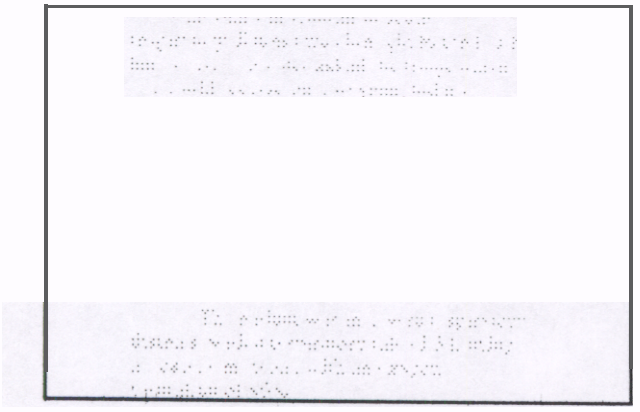
The presence of a valid, written directive in tie form of a proxy designation and/or specific request for certain treatments is another helpful tool. A written directive requesting a certain range of treatments may not cover the one in question but it is possible to infer from other choices what the patient might want

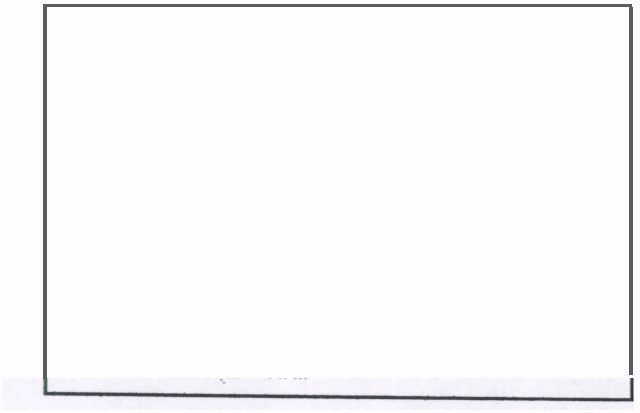
Family or Proxy

Individual family members vary in how close they are to the patient, their agreement on Issues and decisions and their knowledge of the patient's wishes in specific circumstances.

In the "best" case a spouse has been assigned as proxy, has discussed the existing situation (e.g. use of a ventilator) and knows what the patient wants in this kind of circumstance. Using a spouse like this as the proxy decision makes makes good sense.

In the treatment of minors, however, if a parent's refusal of treatment seriously jeopardies a child's well-being, physicians may consider taking temporary protective custody under the child abuse laws, again with variation from state to state.





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The clinical examiner's proper role is to gather relevant information and dedde whether an adjudication of incompetence is required.

•Reprinted from Appelbaum PS, Grisso T: the New England Journal of Medicine 319: 1635-1638 (December 22), 1988.

A model that allows the emergency physician to determine the capacity of a patient to refuse care is presented.

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