



How to Help Your Patients Get What They Want When it Counts

Utah Advance Health Care
Directive Act of 2007

Components Affecting Physicians

- Developing and documenting plans
- Capacity assessment
- Surrogate decisionmaking

Barriers to Effective Use of Advance Directives

- Legal constraints on patient's ability to express wishes
- Limited authority of surrogates
- Gaps between language in statutory directives and medical practice

AHCDA Objectives

- ❑ Eliminate barriers that inhibit completion of directives
- ❑ Allow choices among options
- ❑ Create a form that offers the options that individuals want
- ❑ Broad authority for agents and default surrogate decision makers
- ❑ Emphasis on patient rights

Advance Health Care Directive Form's Impact on Physicians

- Public education is emphasizing conversations with physician and family
- Provide information about prognosis and health status to patient
- Explain how choices in directive/POLST relate to the patient's health status
- Enter into medical record

Case Study

- Mrs. Jones is an 83-year old. She was diagnosed with congestive heart failure four years ago. She has been hospitalized for heart failure twice in the past six months. She comes to you asking for information so that she can complete her advance directive. She is upset that her daughter suggested that she complete a POLST containing a DNR/DNAR order. She thinks that a DNR order is equivalent to suicide.

Case Study

- Discuss the diagnosis/prognosis
- Discuss the interventions that may be needed to keep Mrs. Jones alive as her heart condition worsens
- Discuss Mrs. Jones's **goals of care**
- Discuss how possible treatments will or will not help her to meet her goals of care

Case Study (cont.)

- The physician explains that CPR is unlikely to benefit Mrs. Jones
- Mrs. Jones explains that she is frightened by the feeling of suffocating, but she does not want to be “kept alive on machines.”
- At the conclusion of this discussion, Mrs. Jones’s wishes can be documented in a POLST and an Advance Health Care Directive Form.

Advance Health Care Directive Act: Decision Making Capacity

- ❑ New law establishes factors to consider
- ❑ Requires finding of lack of capacity based on factors before a surrogate can act on behalf of the incapacitated patient
- ❑ Requires that physician notify patient of finding
- ❑ Establishes a procedure when patient contests a finding of incapacity

Case Study

- Mr. Smith's cognitive abilities are declining as a result of vascular dementia. It is becoming increasingly difficult to discuss health care decisions with him because he appears to lack an understanding of his medical conditions. In addition, his short term memory deficits make it difficult to carry on a meaningful discussion. You fear that, even if Mr. Smith consents to a recommended surgery, the consent is not valid. You therefore want his daughter (his appointed agent) in the decision making role.

Incapacitated Patient

- "*Health care decision making capacity*" means an individual's ability to make an informed decision about receiving or refusing health care, including:
 - Ability to understand the nature, extent, or probable consequences of the health care;
 - Ability to make a rational evaluation of the burdens, risks, benefits, and alternatives to the proposed health care; and
 - Ability to communicate a decision.

Overcoming Presumption of Capacity

- Decision making capacity is presumed
- To *overcome the presumption*, a physician who has personally examined the individual and assessed the individual's health care decision making capacity must:
 - Find that the individual lacks health care decision making capacity;
 - Record the finding in the individual's medical chart including an indication of whether the individual is likely to regain health care decision making capacity; and

Overcoming Presumption of Capacity

- After a finding of incapacity, make a *reasonable effort* to communicate the determination to:
 - The individual;
 - Other health care providers or health care facilities that the physician would routinely inform of such a finding; and
 - If the individual has a surrogate, any known surrogate.
- Follow statutory procedure if individual contests the finding

Surrogate Decision Making: Substituted Judgment Standard

- Specific preferences preferences; and
- What the individual would have wanted under the circumstances
- Remember that a patient who lacks decision making capacity can still contribute to health care decision making.
- Physician role: Remind surrogates of this standard and help them to link patient preferences to health care decisions

Physician Powers if Surrogate Decisions Are Apparently Inappropriate

- Can decline to follow instructions that are inconsistent with patient wishes
- Can require surrogate to provide documentation

Patient's Rights

- May revoke a directive or disqualify a default surrogate or appointed agent, even if patient has been deemed to lack decision making authority
- Can make health care decisions until that right is taken away by a court

Generally Accepted Health Care Standards

- The term means *the standard of care that justifies a provider in declining to provide life sustaining or life supporting care* because the proposed life sustaining care:
 - Will not prevent or reduce the deterioration in the health or functional status of an individual
 - Will not prevent the impending death of an individual
 - Will impose more burden on the individual than any expected benefit to the individual

