

THE CODE SAYS

The AMA Code of Medical Ethics' Opinions on Patient Decision-Making Capacity and Competence and Surrogate Decision Making

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Editor's Note: The American Medical Association (AMA) Code of Medical Ethics does not directly address dementia, but our [June 2016 issue](#) includes Code guidance on mental health and decision making. Since then, the AMA House of Delegates has adopted a modernized edition of the Code of Medical Ethics; titles, quotations, and links herein are updated.

Although the *Code of Medical Ethics* does not have much to say about mental health per se, the *Code* does consider patient decision-making capacity, mental competence, and surrogate decision making for those who are unable—over the short term or the long term—to make their own health care decisions. These concepts are discussed in opinions 5.3, “Withholding or Withdrawing Life-Sustaining Medical Treatment” [1], 2.1.1, “Informed Consent” [2], and 2.1.2, “Decisions for Adult Patients Who Lack Capacity” [3].

Decision-Making Capacity and Competence

Generally, patients are free to exercise their autonomy in making decisions about their own health care. However, patients can only do so if they are given information about and understand the risks and benefits of a specific treatment and can apply this information to their health. We know that not all patients have capacity (a clinical standard applying to a particular decision at a particular point in time) or competence (a legal standard applying to all decisions at all times) to make these informed choices about their health care [4]. For patients with mental illnesses that can interfere with their insight into their health or with their decision making, physicians have obligations to assess their capacity in order to evaluate their ability to make a particular health care decision at a particular point in time.

Because patients with mental illnesses can be vulnerable—particularly when they are severely chronically disabled by an illness or experiencing an acute exacerbation of an illness—they might not fully understand or be able to integrate information about risks and benefits of possible interventions. Opinion 2.1.2, “Decisions for Adult Patients Who Lack Capacity,” explains that “Even when a medical condition or disorder impairs a patient’s decision-making capacity, the patient may still be able to participate in some aspects of decision making. Physicians should engage patients whose capacity is impaired in decisions involving their own care to the greatest extent possible” [5]. The higher the risk of a particular decision, the more important it is that the patient has

appropriate decision-making capacity. That is, a patient suffering an acute exacerbation of a mental illness at a particular point in time might have capacity to decide what she will eat for breakfast, but she might not have capacity to decide whether to begin a course of psychotropic medications.

More about Surrogate Decision Making

When a patient does not have the capacity to make her own decisions at a particular point in time (or when her decisions are not covered by an advance directive, as noted in Opinion 5.1, "Advance Care Planning" [6]), someone else must do so for her. This person, known as the *surrogate decision maker*, or *proxy*, has either been named by the patient at a time when she had capacity or is a family member or close acquaintance designated by law or statute.

Opinion 2.1.2, "Decisions for Adult Patients Who Lack Capacity," also applies to patients who are competent but can, at a point in time, lack capacity. This opinion notes that "When a patient lacks decision-making capacity, the physician has an ethical responsibility to ... identify an appropriate surrogate to make decisions on the patient's behalf" [5]. This person has either been designated by the patient "as surrogate through a durable power of attorney for health care or other mechanism" or is "a family member or other intimate associate, in keeping with applicable law and policy if the patient has not previously designated a surrogate" [5]. Surrogate decision makers should base their decisions on the *substituted judgment* standard; in other words, they should use their knowledge of the patient's preferences and values to determine as best as possible what the patient would have decided herself. If there is not adequate evidence of the incapacitated or incompetent patient's preferences and values, the decision should be based on the best interests of the patient (what outcome would most likely promote the patient's well-being). Opinion 2.1.2 explains, "Best interest decisions should be based on ...the pain and suffering associated with the intervention," "the degree of and potential for benefit," and "impairments that may result from the intervention" [7].

References

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7. American Medical Association, Opinion 2.1.2, 2-3.

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