

Conference Abstract

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Title: Overcoming the limitations of decision making capacity of proxy decision makers – implications for care for the elderly.

Abstract text: Demographics and epidemiology are unforgiving. Worldwide population of the elderly is on the steep rise and the incidence of dementia is expected (absent sudden breakthrough in neuroscience) to be growing at a matching pace. Health-care systems have to cope with multitude of ethical issues in the care for the senile. One type of such ethical issues is the decision making process regarding both treatment and end-of-life decisions in incapacitated dementia patients.

In such cases the decision-making process is handed over to proxy decision makers. Their choice is very much dependent on particular jurisdiction, which will also provide the legal limitations of their authority, but they will be very often members of family. Such persons will be asked to apply the *substitute judgement* standard. There exist many criticisms on both theoretical and empirical level pointing to sheer impossibility of such judgement. Yet it is still practiced and expected to be applied. While this is the case, the least that can be done is to reduce the most pressing problems. One of those is the proxies themselves with their cognitive, normative, social and other limitations. Close personal relationships with their wards are supposed to provide them with more familiarity with patients' values and preferences both current in their diminished state and those in previous life of full agency. Yet, this familiarity will also cause emotional distress, projection of one's own values and cognitive bias. Best intentions can be easily subverted by false beliefs and emotional pressures.

The purpose of my presentation is to explore the limiting factors of proxy decision makers' agency in the proxy consent procedures undertaken on behalf of elderly patients. I will employ the framework I am developing for assessing competence of both patients' and their various proxies' competence which I call bundle-theory of competence. This framework makes clearer conceptualisation of competence requirements possible. It also provides for minimal requirements for a particular decision, as well as participation of some patients retaining some of their mental functions in the decision making processes. The result is to show how protection of both residual autonomy and interests of the demented requires awareness of the limitations that exist for the proxies, careful selection process and employment of the residual faculties of patients to access their values that might still be retained. Even if the decision making process for demented patients is fundamentally flawed, perhaps it can be slightly improved on that account.

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