Advance Directives (AD) and Surrogate Decision-Making Algorithm

Does the patient have the capacity and willingness to make decisions for him/herself?

Yes

AD documents are not applicable.

Unsure

Formally assess capacity.

No

Has the patient documented his/her wishes in an advance directive?

Yes

Include AD information in the process of surrogate decision-making.

No

Use best available information for the process of surrogate decision-making.

Does the pt meet either of the following:
• end stage condition or
• permanently unconscious?

Yes

Proceed with surrogate decision-making AND
so long as treatment decisions are (in good faith) based on the patient’s valid AD, then physicians who withhold or withdraw life sustaining medical treatment have protection/legal immunity from legal liability.

No

AD’s often provide valuable information about the patient’s wishes—use it as one tool among many to help make treatment decisions. Providers have the same level of legal protection as for other surrogate decisions.

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A surrogate decision-maker is the individual legally authorized to make decisions on behalf of the patient. The goal of surrogate decision-making is to reflect what the individual would have decided, if able to speak for him/herself. This substitute judgment is used when the patient has previously expressed preferences, or when the surrogate can reasonably infer what the patient would want. When the patient’s preferences are unknown or unclear, then the surrogate decision-maker should make decisions based on their determination of the patient’s best interests.

When the patient has not formally authorized a surrogate decision-maker, Pennsylvania Act 169 outlines the following priority list for who should serve as the patient’s surrogate:

- Spouse (unless divorce proceedings are underway)
- Adult child
- Parent
- Adult sibling
- Adult grandchild
- Close friend (i.e., individual who is knowledgeable of the pt’s preferences)

Studies indicate that patients vary in how much flexibility they would give surrogates to override their advance directive: 33% of patients want their AD followed exactly, 33% of patients want their surrogate to have complete authority to override their AD, and the final 33% fall somewhere in-between.¹

Want more information?
Check HMC Policy: Guide to Advance Directives, PC-13 HAM.
Search “Surrogate Decision-Making” @ www.ama-assn.org/ to see Code of Medical Ethics of the American Medical Association policy E-8.081

Questions?
Call the operator (ext. 8521) and ask for the ethicist on-call.