Ethical Issues in Informed Consent

Melissa Piasecki, M.D.

5.21.11
Overview

1. What is the basis for informed consent?
2. What are the elements of informed consent/refusal? How can I quickly assess them?
3. What do you do when the patient has a guardian/POA?
The Ethical Basis for Informed Consent is

A. Non-malfeasance
B. Autonomy
C. Honesty
D. Risk Management
Informed Consent

• Self-determination and individuality
• Competent patients
  – Must give informed consent for assessments treatment
  – Have the right to decline treatment- even if it is highly beneficial/lifesaving/ has few side effects
  – Large body of case law
  – State law
4 Elements of Informed Consent

1. Eligibility
2. Information
3. Competency/Capacity
4. Non-coercion
1. Eligibility for Informed Consent

• Adult

• No guardian
  – Consider: Add guardian sticker/ line to chart similar to allergies
  – Include guardian/ close relative information on intake sheets
2. Information

- How much is enough?
- How can I show that I informed patient?
- Consider:
  - Information sheet with patient initials
  - Include patient specific documentation with routine R/B/A note
3. Who is Competent?

- Technically: All adults who have not been adjudicated incompetent
- Practically: All adults who can demonstrate capacity by answering key ACE questions
- Presumption of competency
How Do We Assess Competence/Capacity?

• Recommended Resource:
  • Aid to Capacity Evaluation (ACE)
    – Joint Centre for Bioethics, U Toronto
    – www.utoronto.ca/jcb/disclaimers/ace.htm
Assessing Capacity When in Doubt

• First ensure that the patient has received information about the treatment, alternatives, risks, consequences of no treatment.
Assessing Capacity: Understanding Medical Condition

- What problems are you having right now?
- Why are you in the hospital?
- What are you medicines for?
- Do you have (XYZ)?
Assessing Capacity: Proposed Treatment and Alternatives

• What is the treatment for (XYZ)?
• What else can help you?
• What are the other options your doctors told you about?
Assessing Capacity: Consequences of Accepting Treatment

- What could happen if you accept treatment?
- Can the treatment give you problems or side effects?
- Can the treatment help you live longer?
Assessing Capacity: Option/Consequences of Refusing Treatment

• Can you refuse treatment?
• What could happen if you don’t have treatment?
• Could you get sicker or die if you don’t have the proposed treatment?
Assessing Capacity: Possible Depression

- Can you help me understand why you’ve decided to accept/ refuse treatment?
- Do you have any hope for the future?
- Do you feel you are being punished?
Assessing Capacity: Possible Psychosis

• Can you help me understand why you’ve decided to accept/ refuse treatment?
• Do you think anyone is trying to hurt or harm you?
• Do you trust your doctor?
4. Non-Coercion

- Treatment is not coercive if it is not tied to any other incentive/disincentive
- Most worrisome for psych patients ("Take your meds and I’ll let you have lunch.")
Case Application: Mr. C

- 70 year old man, widowed 2 years ago
- Daughter and 3 sons- family conflict
- Three year history of IDDM, foot injury
- 6 months ago- partial foot amputation and fem-pop bypass
- 5 months rehab/ Abx
- Now: Hospitalized with gangrene R foot
- Training case: Joint Centre for Bioethics, U Toronto
Mr. C

• Proposed treatment: BKA
• On the morning of surgery, he withdrew his consent and left hospital with his daughter
• Three days later his daughter brings him back to hospital
• He and his doctor are talking about consent for surgery
Assess Mr. C’s Capacity to Understand his Medical Problem

• What problem are you having right now?
Assess Mr. C’s Capacity to Understand Treatment

• What is the treatment for your foot?
Assess Mr. C’s Capacity to Understand Alternatives

• Are there any other treatments that can help with your foot?
Assess Mr. C’s Capacity to Appreciate Consequences of Treatment

• What could happen if you have surgery?
Assess Mr. C’s Capacity to Appreciate Consequences of Refusing Treatment

- What could happen if you don’t have surgery?
Assess Mr. C’s Capacity to Refuse Treatment

• Why don’t you want surgery?
What if Mr. C

• Can’t remember the doctor’s name?
• Says it is April when it is May?
• Thinks he is at a different hospital?
• Has different answers at 8, 10 and 2 on the same day?
• Has a stroke and becomes aphasic?
Patients who lack capacity cannot consent to treatment or refuse treatment

- Require alternative decision makers
- Easy: Power of Attorney in place, advanced directives, spouse/children/siblings at the bedtime
- Hard: No one
  - Check with hospital for institutional policy OR consult hospital lawyer
Resources

• Ethics committee
• Second opinion
• Psychiatry consult