KHC Webinar

January 27, 2021

Advance Care Planning 201

In Partnership with

HQIN Health Quality Innovation Network

Center for Practical Bioethics — Guidance at the Crossroads of Decision

kfmc Health Improvement Partners

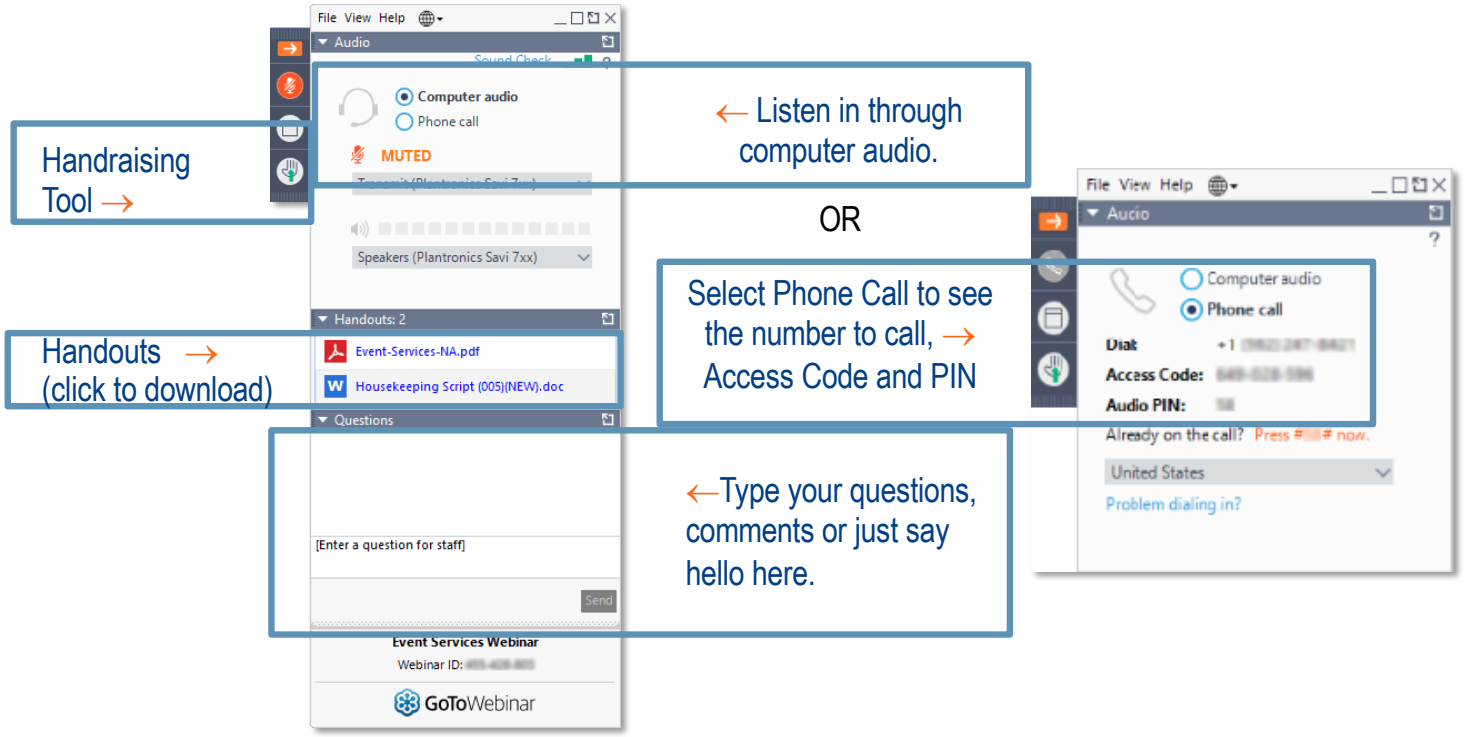
Kansas Medical Society Established 1859

Kansas Healthcare Collaborative

Kansas Hospital Association

GoToWebinar

Attendee Control Panel



Thank you to our Kansas-Missouri HQIN contacts for their role in planning today's event.

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HQIN
Health Quality Innovation Network

Opportunity to receive Nursing CE for attending today's live event

Greater Kansas City Chapter of the American Society for Pain Management Nursing is approved as a provider of continuing nursing education by the Kansas State Board of Nursing. This course offering is approved for 1.3 contact hours applicable for RN, LPN, or LMHT relicensure. Kansas State Board of Nursing Provider Number: LT LT0279-0412.

Complete the online evaluation at the conclusion of today's event to receive certificate of CE. Continuing education is available only to those participating in the live event on Jan. 27, 2021, and who complete the online evaluation no later than February 2, 2021.

CENTER FOR PRACTICAL BIOETHICS
GUIDANCE AT THE CROSSROADS OF DECISION

Session 2 of 3

Advance Care Planning - Process and Product: Our duties to know, honor and protect

JANUARY 27, 2021

JOHN G. CARNEY, MED, PRESIDENT & CEO,

MARIA FOX, DNP, CPB CLINICAL ETHICS AFFILIATE

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Participants may be asked to consider donations.

ACP Webinar Series – Three sessions

ACP - 101	ACP -201	ACP and Medical Orders
Purpose and process of ACP. Emphasis on normalizing & encouraging attendees to complete own. 2 types: DPOAHC and HC Directive and duties of declarant and agent. Relevant state laws governing execution	Principles guiding clinicians in carrying out advance care plans. Details difference between capacity and competency, shared decision-making, substituted judgement, and best interest principles.	Role of standardized medical order sets in relation to ACP. Addresses advanced illness medical order sets (POLST) and “accelerated” ACP for use in health crisis or pandemics.

Objectives - Session 2

Apply	Compare	Clarify
… principles of shared decision-making and substituted judgement	… and contrast capacity and competency	… the role of the clinician as capacity diminishes

Ethical Principles in Shared Decision-making for incapacitated or fragile patients

Beneficence, Justice, Fairness

Autonomy, self-determining, self-ordering

Clinician and Surrogate must acknowledge:

- Responsibility to patient (respect for patient autonomy/personhood)
- Responsibility to be true to own clinical judgment about the best interests of the patient (beneficence),
- Accountability to society (distributive justice), and
- Uncertainty of evidence.

https://journalofethics.ama-assn.org/sites/journalofethics.ama-assn.org/files/2018-05/ecas1-1301.pdf

The Concept of Decisional Capacity

The role of Informed Consent and Presumption of capacity

Concepts related to consent or refusal of medical interventions (Right to refuse)

The patient must be able to:

- Understand the relevant information
- Appreciate the medical situation and possible consequences
- Communicate a choice/decision
- Rationally give reason for choice based on their own values and the understanding of recommendations
- Patients have the right to make their own decisions based on their preferences

Obligation to involve and inform at appropriate levels for those with waning or episodic capacity

#1 - Patient Instruction or Stated Preference

- Preference is documented in the health care directive or living will
- Patient with capacity states orally their preference or instruction
- Appointed proxy or surrogate for capacitated patient
- A clearly expressed prior preference should have moral priority

#2 - Substituted Judgement

Fiduciary Duty of Appointed Agent

- To act in accordance with Patient's wishes or known preference

Surrogate relies on expressions of the patient

- The patient previously expressed/stated their preferences
- The surrogate can reasonably infer the patient's preferences from past statements or actions

Surrogate should share this information with others who have "moral agency"

What to do when Surrogate acts inappropriately….or

Surrogate's decision runs directly counter to patient's previously expressed wishes or patient's advanced directive

#3 - Best Interest Principle

Patient's own preferences are unknown or are unclear

Reflect on the interests that all humans seem to share:

- Being alive
- Being capable of understanding and communicating their thoughts and feelings
- Being able to control and direct their lives
- Being free from pain and suffering
- Being able to attain desired satisfaction

More troublesome – assumptions must be adapted to person

Surrogate must promote the individual's welfare:

- relief of suffering
- preservation or restoration of function
- Quality of life that reasonable persons in similar circumstances would likely choose

Decision making should be conducted in collaboration with health care team.

Shared Decision-Making

Patient-centered care

Physicians, working with surrogates, and others on the team to:

- Provide information that is high quality and meaningful/important to the patient
- Support deliberation. Explore reactions to the options. Offer a role in decision.
- Support considerations about what aligns best with preferences in deciding “what is best”

Fancy way to say “have a conversation”

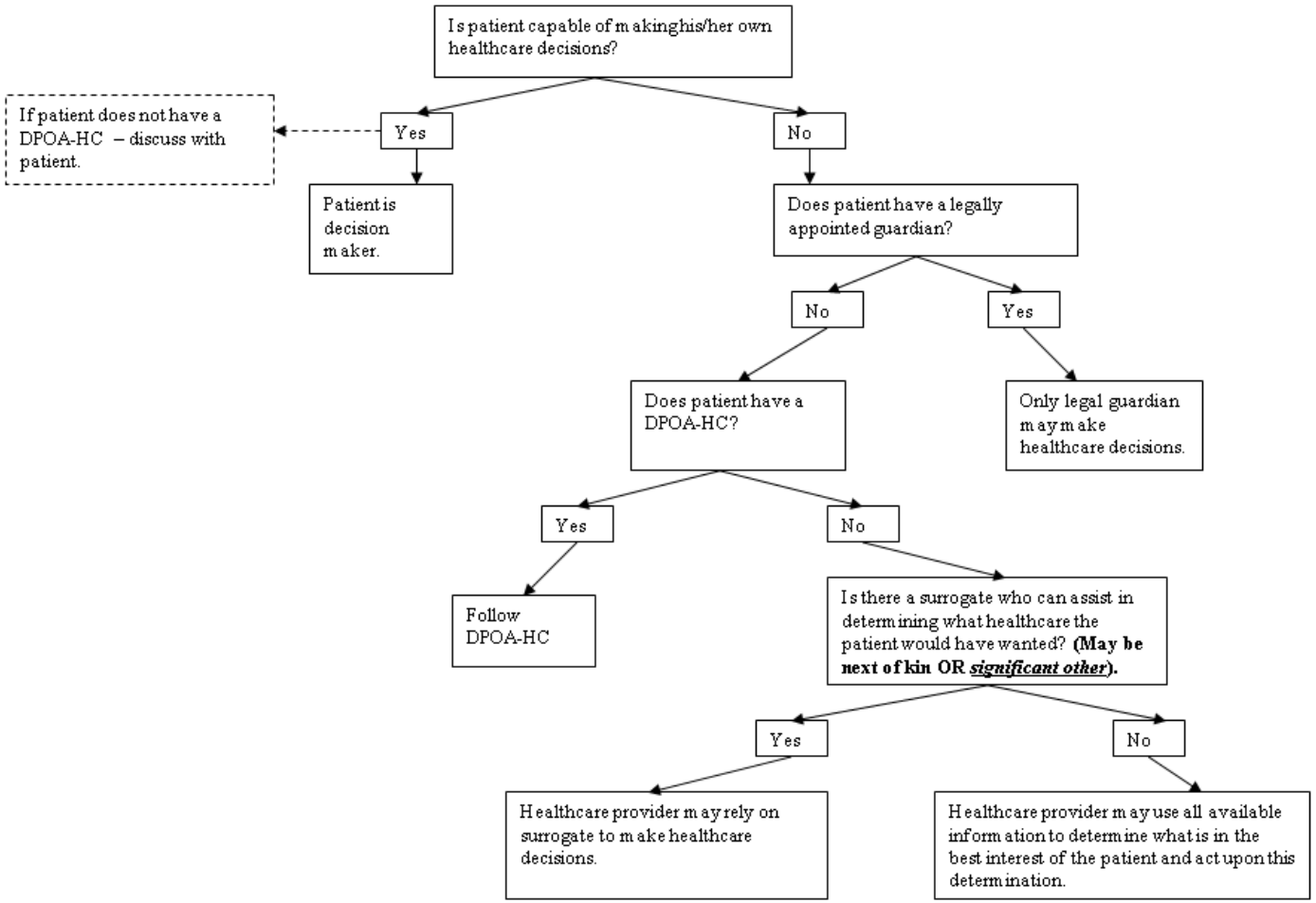
In Ethics – commonly used to include other clinicians with patients and surrogates to do the same thing

Important to arrive at consensus

Who is the appropriate surrogate

- Statutes authorize persons to appoint their own surrogates
- The patient appointed surrogate supersedes anyone else– including immediate family
- States that legislate (pecking) order for surrogates is common.
- Legislation give specific authority, priority ranking
- All states have provisions for the judicial appointment of guardians or conservators for those declared incompetent by a judge
- What is your facility's policy?

INFORMED DECISION MAKING ALGORITHM



"DPOA-HC" means Durable Power of Attorney for Healthcare decisions.

Myths about Capacity

- Decision-making capacity = competency
- Against Medical Advice (AMA) = lack of decision-making capacity
- There's no need to assess decision-making capacity unless a patient goes against medical advice
- Cognitive impairment = no decision-making capacity
- Lack of decision-making capacity is permanent
- Patients with certain psychiatric disorders lack decision-making capacity

Determining Decisional Capacity

First – engage in ordinary conversations with patient

Observe the patient (respect for person – patient centered care)

Talk with third parties – other staff caring for patient, family, or friends

Some patients appear normal until certain questions or topics trigger a delusional belief system

Do not depend on descriptions/Dx. Persons w/ dement./depression/SCZ) pathologies retain ability to reason/decide/make choices .

When in doubt about decisional capacity

- Acute (reversible, short time) or longer lasting
- Formal or informal tests
- Consult experts – Psychologist, psychiatrists, neurologists
- Include other resources: ethics, risk managers, legal, other consultants

Determining Decisional Capacity… the What ifs?

Case 1: “leave me alone” “I don’t want to go to the hospital”

Case 2: refusing leg amputation

- authenticity” of the choice – consistent over time? Aligns with other choices toward medical care?

Case 3: accepts a “low risk/high benefit” intervention but declines a “high risk/low benefit” intervention. Or vice versa

Case 4: Waxing and waning capacity

Case 5: Unfamiliar beliefs or cultural diversity

Case 6: The patient who doesn’t make the decision that we want them to make!

General Component of Capacity Assessment

Component	Patient's role	Physician's approach	Sample questions	Impaired in
Communication	Express a treatment choice	Ask patient which treatment option they prefer	Have you decided whether to get X or Y treatment?	Psychiatric disorders; extreme (pathologic) indecision
Understanding	Recall information, link causal relationships, process general probabilities	Ask the patient to paraphrase their view of the situation	Can you tell me how you view the current situation? How likely do you think that X will happen to you?	Problems with memory, attention span, intelligence
Appreciation	Identify illness, treatment options, and probable outcomes as it relates to them	Ask patient to describe disease, treatment, outcomes, and probabilities as they apply to them	What do you think is wrong with your health? What treatments do you think would help? What do you think is your alternative?	Denial; delusional disorder
Rationalization	Weigh risks and benefits to come to a conclusion in keeping with patient's goals	Ask the patient to compare risks vs. benefits of the proposed treatment and alternatives	What made you choose option X? Why do you think option X is better than option Y?	Depression, psychotic thought disorder, depression, anxiety, phobia, delirium, dementia

Dastidar & Odden, 2011, The Hospitalist

General Component of Capacity Assessment

The Four C's of CAPACITY

There are other ways to understand capacity. One of these is The Four C`s of Capacity:

Context	Does the person understand the situation they are facing?
Choices	Does the person understand the options?
Consequences	Does the person understand the possible ramifications of choosing various options?
Consistency	Do they fluctuate in their understanding of choices?

Extensive Resource for Primary Care - United Kingdom - Tool Kit (Includes AAFP Aid to Capacity Evaluation)
http://unmfm.pbworks.com/f/1%20Capacity%20Assessment%20Toolkit%20Overview.pdf

Clinical Tools to assess capacity

The Mini-Mental Status Examination

MacArthur Competence Assessment Tools for Treatment (MacCAT-T)

- Assess choice, understanding, appreciation and reasoning

Aid to Capacity Evaluation (AAFP)

Social Care Institute for Excellence (United Kingdom) Resources

Capacity v. Competency: Clinical Assess't & Judicial Decisions

Competency: Reforming Our Legal Fictions

Charles P. Sabatino, JD[1]
Suzanna L. Basinger[2]
Commission on Legal Problems of the Elderly
American Bar Association
Washington, DC

Why do we need the legal fiction of incompetency? The answer may be fairly straightforward:
because we need a trigger to tell us when a state legitimately may take action to limit an individual's rights to make decision about his or her own person or property.

Journal of Mental Health and Aging 2000

https://www.americanbar.org/groups/law_aging/resources/capacity_assessment/

What's most important?

Procedural Protections

Procedure is most important to protect autonomy

Following Defined Standards -Three elements

- Cognitive Test
- Behavioral Test (Consequence) based on essential needs
- Court test weighing individual's personal, environmental and social context.

Procedural RIGHTS must be recognized/enforced to protect

Decisions for patients who lack surrogates

Unrepresented (formerly unbefriended)

A legal proceeding to appoint a guardian can be initiated

- Takes time to go through the process
- Treatments or interventions need decisions to implement

Consensus model/approach by physician or care team to make important decisions for the patient

- Based on substituted judgement (if known)standard
- Best interest standard

HCPOA and Surrogacy Statutes

HCPOA statutes:
https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-sept-state-health-care-power-of-attorney-statutes.pdf

Default surrogacy statutes:
https://www.americanbar.org/content/dam/aba/administrative/law_aging/2019-sept-default-surrogate-consent-statutes.pdf

These are both found by scrolling down on our Health Care Decisions Resource page:
https://www.americanbar.org/groups/law_aging/resources/health_care_decision_making/

Also:
https://www.nejm.org/doi/full/10.1056/NEJMms1611497
https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-adult-guardianship-legislative-summary.pdf (Extensive reference to Missouri in this document)
Guardianship law change in MO (2018) https://www.thebarplan.com/probate-legislation/ These should be summarized in the 2019 link above.

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Upcoming Events

Advance Care Planning Series *(Continued)*	
March 24 10:00 to 11:00 a.m.	**ACP Medical Orders** Role of standardized medical order sets in ACPs.

Save the date!
Register at www.khconline.org/march-webinar.

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kfmc Health Improvement Partners

Advance Care Planning 101
Conducted 9/23/2020
Recording and handout available in KHC Education Archive:
www.khconline.org/archive

Wrap Up

Thank you for joining us.

To receive a certificate of nursing continuing education (CE) for attending this live event, complete the evaluation form at the link below no later than Feb. 2.

www.KHConline.org/ACP2-evaluation