

UH JABSOM Dept. of Geriatric Medicine welcomes you:

Geriatric ECHO

“Essentials of Law and Ethics in Eldercare”

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Interdisciplinary Team:

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The case discussants and planners (Susan Christensen, MD; Ritabelle Fernandes MD; Mary Gadam, RN; Chad Kawakami, PharmD; Lucas Morgan, PhD; Sara Tompkinson, LCSW; Miquela Ibrao, MSW, MPH) have no relevant financial relationships with ineligible companies. Aida Wen, MD (planner, speaker/case discussant) has the following financial relationships: stock holder-Pfizer. All relevant financial relationships have been mitigated.



**THE QUEEN'S
MEDICAL CENTER**

Objectives

1. Define the ethical principles at stake in common geriatric dilemmas.
2. Reflect on how one's own values can influence how we prioritize the ethical principles at stake in a healthcare dilemma
3. State the legal definition of capacity.
4. Describe common situations in which capacity determination may be needed.
5. Distinguish between a referral to APS and a social work referral.
6. Explain the purpose of having a designated healthcare agent.
7. Discuss the conflicting ethical principles involved when addressing at-risk driving in the older population.
8. Explain the difference between an "adult orphan" and an "unbefriended elder."





	Canoe Team	Patient Care Team
Seat 1	Stroker	Patient
Seat 2	Pacer	Family, Caregiver
Seat 3	Power	Nursing, Dieticians, PT/OT/ST
Seat 4	Power, Watches Ama	Social Worker
Seat 5	Power	Pharmacist
Seat 6	Steersman	Clinicians
Coach	Coach	Legal Advisors, Spiritual Advisors
Canoe Club	Canoe Club	Health Care System

Healthcare Ethics



**Start with knowing who YOU are and what -
YOU value. -**

“Values are the fundamental beliefs that govern our lives. They are our inspiration to act, and they guide our decisions about everything..They embody the person we want to be, influencing how we treat others and how we interact with the world. Values are the core of who we are.”

What are values? (n.d.). Tonyrobbins.com. Retrieved July 14, 2022, from <https://www.tonyrobbins.com/mind-meaning/our-set-of-rules/>

Values

Alleviate Suffering

Self-reliance

Respect -

Altruism

Modesty

Dependability -

Well-being

Personal Growth

Trust

Appreciation

Peace

Compassion

Integrity

Generosity

Sustainability -

Courage

Empower Others

Humility

Loyalty

Equanimity

Responsibility

Gratitude

Strength -



Ethical dilemmas arise out of conflicts in values between stakeholders or from uncertainty about the right thing to do.

ABC's of Medical Ethics -

Autonomy ---->	<--- Paternalism
Beneficence ---->	<--- Negligence
Confidentiality ---->	<--- Disclosure
Do Not Harm/Non-maleficence ---->	<--- Harm
Equity/Justice ---->	<--- Prejudice

In American culture -



is the preeminent guiding ethical principle. -

Decisional Capacity—Capacity for What?

Each specific activity that involves a decision, such as the provision of informed consent for medical treatment or the execution of a will, trust, advance directive, or power of attorney, may have a different required level of decisional capacity to be considered “valid.”

There is no single conclusive test to determine capacity in court.

Medical diagnosis and prognosis are utilized in conjunction with legal standards. Most experts no longer consider “competency” to be like a light bulb—either on or off.

Capacity -

4 Essential Elements -

1. Receive and understand information and choices
2. Memory and reasoning to weigh and balance the benefits, risks and consequences of different choices
3. Communicate the decision
4. Decision is stable over time without evidence of undue influence or coercion

****Capacity is situation-specific****



COMPETENCY VS CAPACITY

While the terms “competency” and “capacity” are often used interchangeably, distinctions can be made between them.

The term competency is generally utilized in a legal (and a global) context as a legal determination made by a court whereas capacity frequently appears in a medical/health care or social context (as well as in a legal context) as a determination about specific decisions. The term capacity is becoming more frequently utilized in the legal realm, including statutes.



Consent - 3 Essential Elements -

1. Given adequate information
2. Have decisional capacity for the situation at hand
3. Decision must be voluntary

****One must have capacity in order to consent****



Consent -

3 Essential Elements -

1. Adequate information

- a. information presented in understandable language/words
- b. reason for proposed action
- c. explanation of action
- d. involved parties
- e. expected benefits
- f. possible risks and complications
- g. alternatives
- h. likely outcomes



Consent - 3 Essential Elements -

2. Decisional capacity.

- a. Communication of a stable choice
- b. Relevant information is understood
- c. Appreciation of the situation (personal consequences)
- d. Manipulation of information in a rational manner



Consent -

3 Essential Elements -

3. Voluntary.

a. OK to attempt to persuade

b. not OK to manipulate (overstate the benefits or understate the risks or burdens)

c. not OK to deceive (i.e. to lie)

d. not OK to coerce (e.g. to threaten)

e. not OK to abandon or threaten abandonment

Sample legal script for incapacity: -

"It is my medical opinion that ___ is cognitively impaired to the degree that s/he cannot make financial, personal, or healthcare-related decisions in his/her own best self-interest. ___ is unable to receive and evaluate information or make and communicate decisions to such an extent that s/he lacks the ability to meet the essential requirements for physical health, safety, or self-care, even with appropriate and reasonable available technological assistance. Therefore, ___ is in need of unlimited guardianship. His/her condition is permanent and further decline is expected."

Pitfalls of Capacity Assessment

- If declaring a permanent loss of capacity, how certain are you that the loss is not temporary or reversible?
- If you are not familiar with the patient/family, how certain are you that there is not malintent?

Vulnerable Adults and Mandatory Reporting -

