

Medical Jurisprudence

Behavioral Sciences Term
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Segment

3 of 8

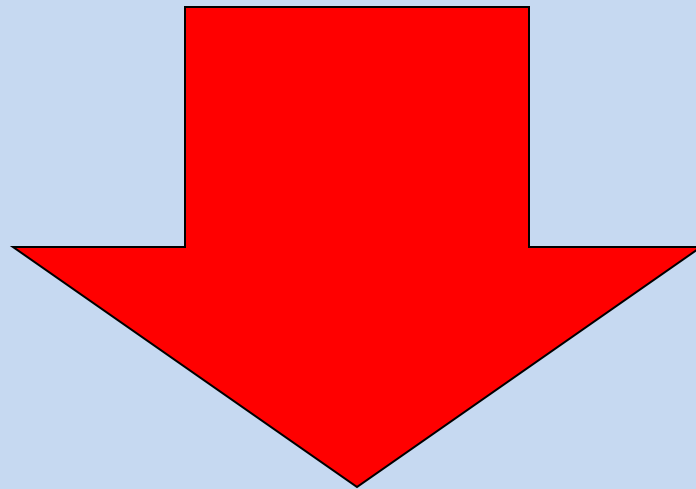
**Substitute
Consent**

Objectives

3. When is a minor **emancipated** (and treated like an adult)
4. When can an **un-emancipated** minor consent to treatment

7. What are the consequences of civil commitment
8. What is the difference between capacity, competence, commitment, and insanity

Patient is competent +
patient has capacity to
make the decision at hand



Patient decides **herself**

BUT patients often lack capacity

Not yet acquired (minors)

Had but lost (dementia...)

Never had capacity (mental disability)

Capacity

Ability to **understand** the significant benefits, risks and alternatives to proposed health care

Ability to **make and communicate** a decision.

Decision specific

Fluctuates over time

Patient might have
capacity to make
some decisions but
not others

Patient might have
capacity to make
decisions in **morning**
but not afternoon

Capacity is a
clinical decision

With legal
consequences

Contrast

competence

Competence is a
legal decision

Global all-or-nothing
determination

Lane v. Candura

(Mass. 1978)

77yo Rosaria
Candura

Gangrenous right
foot and leg

Refuse consent
for amputation



DHS v. Northern

(Tenn. 1978)

Mary Northern 72yo

Gangrene both feet

Amputation required to
save life

“Believe that her feet
are black because of
soot or dirt.”



In re Maynes-Turner (Fla. App. 1999)

Doc: “Cognitively she does reasonably well. She would seem to possess the necessary knowledge that would be required for restoration.”

Doc: “She might pose significant risks for herself on the basis of those decisions that she would make.” So no discharge home.

If patient decision not impaired by cognitive or volitional defect, physician must respect decision

Otherwise, not honoring choice = paternalism, violation of patient autonomy

All patients are
presumed to have
capacity

Until the presumption
is rebutted



**Margot
Bentley
stage 7
Alzheimer's
has capacity
to consent
to hand
feeding**

**Substitute
decision
makers for
adults who
lost capacity**

Who is the
SDM?

3 main types

1st choice –
patient picks
herself

Patient knows who

(1) They trust

(2) Knows their preferences

(3) Cares about her

2nd choice –

if no agent,

turn to default

priority list

Agent

Spouse

Adult child

Adult sibling

Parent

3rd choice –

rarely ask court

to appoint

guardian

Who appoints	Type of surrogate
Patient	Agent DPAHC
Physician (per statute)	Surrogate Proxy
Court	Guardian Conservator

How does the
SDM decide?

Any type of SDM
can usually make
any decision
patient could
have made

Hierarchy

1. Subjective
2. Substituted judgment
3. Best interests

SDM steps into shoes of patient



Subjective

If patient left
instructions
addressing
situation, follow
those instructions

Substituted Judgment

Do what patient
would have decide
(if she could) using
known values,
preferences

**Nancy
Cruzan**



Best interests

If cannot do
substituted
judgment

Balance

Burdens v.

benefits

These are rules
for patients
who had, but
lost, capacity

What about
patients who
never had
capacity?

Minors

Minors (<18)

presumed

incompetent

SDM for
children are
parents

Consent of just
one parent is
sufficient

Parent must
act in child's
best interest

Cannot refuse
life-saving
treatment

Unless low
chances of
effectiveness
and heavy
burdens

Minors

exceptions

(1) Sometimes
minors are
competent
to consent

“Emancipated”
minors treated
like adults

Married

Economic self-
sufficiency (live
alone)

Military service

Court order

(2) Un-
emancipated
minors can
consent to some
types treatment

Contraception

STD

Pregnancy

Alcohol & substance abuse

(3) “Mature”

minors can

consent in

some states

<18 but can give
consent to **if** they
can show mature
enough to make
a decision on
their own

Civil

commitment

Danger to self
or others

(1) Infectious
disease (Ebola,
TB, measles)

(2) Mental health

Still retain right
to consent /
refuse – only
lose right to
leave

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