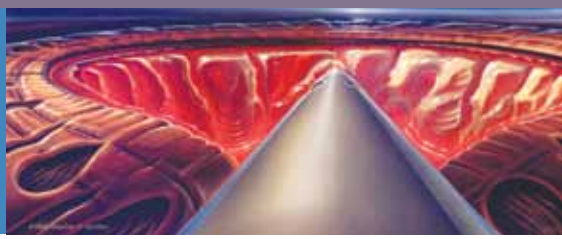
Risk Management Hotline



Advance Directives and Surrogate Decision Makers

By Anne M. Menke, RN, PhD
OMIC Risk Manager

A policyholder called for advice about a mentally handicapped patient who resided in a state-run home. As the patient had never had decision-making capacity, power of attorney (POA) for medical decisions had been granted to a relative. The relative was now 90 years old, lived in another state, and was no longer able to travel. Meanwhile, the patient had developed visually significant cataracts that, given his disability, were having a profound impact on his ability to take care of himself and participate in activities of daily living.

Q A state representative accompanied the patient and said the state is applying for guardianship. What is involved? Do I have to wait until this process is complete?

A This patient has been determined by a judge to be incompetent to make medical decisions. While it is likely that a judge will approve the state's application to assume POA duties, the state does not currently have the authority to make medical decisions on the patient's behalf. However, this patient would benefit from prompt surgery, so waiting is not advisable either. Arrange a conference call with the patient, the relative with the authority to make medical decisions, the state's representative, and someone from the ambulatory surgery center where the procedure will be performed. If the relative and state's representative agree that the surgery is appropriate, and the ASC is comfortable with the consent process, obtain the signature of the relative and proof of POA status, document the conference call, and proceed with surgery.

Q I'm on call and have a patient who is unconscious but needs repair of a ruptured open globe. May I proceed without consent?

A Possibly. Quickly check to see if the patient has an advance directive in his or her belongings or in the medical record. Advance directives address the kinds of decisions a patient would like someone to make if he or she is unable to participate in a consent discussion. If there is no available advance directive or person with POA, and you feel the patient requires emergent treatment, ask the ER physician and/or OR nurse to determine the facility's process for emergency exceptions to informed consent. Some hospitals require a second physician to agree that the care needs to be provided without delay. Both you and the second physician should document the need for emergent treatment and attempts to reach the patient's family. Direct a hospital staff member to continue attempts to contact a family member or friend, as consent for additional non-emergent treatment will need to be obtained from a surrogate.

Q How should I proceed if there is time to try to find a surrogate decision maker?

A The ideal surrogate is one who understands the patient's health care values and goals and will respect them during the decision-making process. Each state has a system for determining who may act as the surrogate decision maker and ranks them in decreasing order of authority. The top two are usually the individual who has been granted POA in an advance directive or a legal guardian with POA for medical decisions. Next come spouses, adult children, parents, and adult siblings. Adult children and siblings who do not have POA are able to act as surrogates only if they are in agreement. Many hospitals ask members of an Ethics Committee for guidance when these family members have different opinions on whether to proceed with treatment.

Q Our ASC suspends "do not resuscitate" and advance directives during surgery. My patient is quite upset and insists that her wishes be honored. How should we proceed?

A Your patient brings up a difficult issue that most ASCs and ORs have not addressed, even though all ask patients if they have advance directives. While you could simply try to find an ASC that will honor the patient's wishes, it would be worthwhile to discuss this problem with the facility's leadership team. The American Society of Anesthesiologists (ASA) has stated that "automatic suspension of DNR orders… may not address a patient's right to self-determination in a responsible and ethical manner."[1] Instead, the ASA suggests asking an anesthesiologist to review possible options with the patient. First, the patient may choose full resuscitation, thereby suspending DNR orders and other directives during anesthesia and the immediate postoperative period. Second, the patient could choose a limited attempt at resuscitation defined with regard to specific procedures. The anesthesiologist and surgeon would inform the patient of procedures that are essential to the success of the planned anesthesia and procedure. The patient consents to these but refuses any procedures that are not essential. Finally, the patient may opt for a limited resuscitation defined with regard to the patient's goals and values. The patient and family, after a discussion with anesthesia, agree to allow the anesthesiologist to use professional judgment. Full resuscitation procedures will be used to manage adverse clinical events that are quickly and easily reversible. The patient will not be treated for conditions that are likely to result in permanent neurological impairment or unwanted dependence on life-sustaining technology.

1. American Society of Anesthesiologists, "Ethical Guidelines for the Anesthesia Care of Patients with DNR Orders or Other Directives that Limit Treatment," http://www.asahq.org/For-Healthcare-Professionals/Standards-Guidelines-and-Statements.aspx. Accessed 12/3/10.