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National Healthcare Decisions Day 2009: Why Sign an Advance Directive?

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www.nationalhealthcaredecisionsday.org



Nancy Cruzan, two days before her accident January 1983



Nancy Cruzan, two years after her accident



Cruzan Grave Marker



Born July 20, 1957

Departed January 11, 1983

At Peace December 26, 1990

(Following U.S. Supreme Court loss and subsequent decision to allow withdrawal of feeding tube of persistent vegetative state patient)

Facilitating Advance Care Planning & Advance Directives



If you became seriously ill or injured and could not speak for yourself, do you know what healthcare treatments you would or would not want?

Facilitating Advance Care Planning & Advance Directives



Do other people know what your wishes are?

How Does Advance Care Planning (ACP) Help You?

- Determines and documents a person's goals and wishes.
- Ensures that clinical care is provided according to an individual's choices.
- Decreases crisis decision making by anticipating emergencies.
- Promotes understanding, reflection, and communication about values and preferences.

Advance Directives are

- A communication tool
For assisting people in clarifying their values and preferences re: healthcare in serious, potentially life-limiting conditions
- An advocacy tool
For helping patients explain their wishes to health care providers
- A counseling tool
For supporting and guiding family members in making decisions in stressful situations

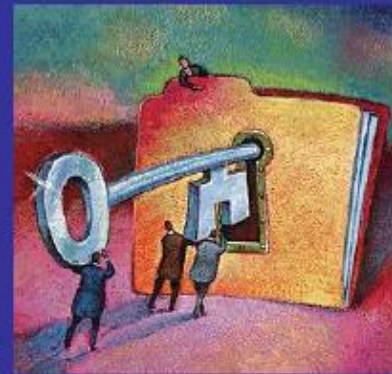
First Step: Can Individual Make Decisions?



- Poor judgment does not qualify
- Communication disorders do not qualify if individual can communicate some other way
- An adult is seen as incompetent when he or she cannot make a decision due to mental illness, mental retardation, or any other mental or physical disorder that impairs judgment

If Unable to Consent, What are Consent Options?

- Advance directives, aka
 - Living wills
 - Durable health care power of attorney
- Substituted consent by statute
- Judicial authorization of treatment
- Temporary Detention Order
- Involuntary commitment



Virginia Advance Directive

- Made by competent adult
- Effective when incapable of making informed decision
- May refer to specific treatment
- May appoint person to make decisions
- Person has priority over guardian



Virginia Documentation



■ Advance directive

- written, signed by patient, and attested to by two witnesses
- oral, in presence of attending physician and two witnesses (only when physician diagnosed a terminal condition)
- effective when patient (or substitute decisionmaker) notifies health care provider
- health care provider incorporates in chart
- reciprocity
- can be revoked

Durable Do Not Resuscitate Order

- **Written Order issued by physician for bona fide patient with consent**
- **Licensed health care practitioners in a health care facility and EMS personnel may follow durable DNRs available to them**
- **Withhold CPR from patient only**
- **May be verbally revoked**

Absence of Advance Directive/ Use Substitute Decisionmaker



- Incapable of making informed decision
- Attending physician, together with second physician or licensed clinical psychologist, must diagnose and certify in writing

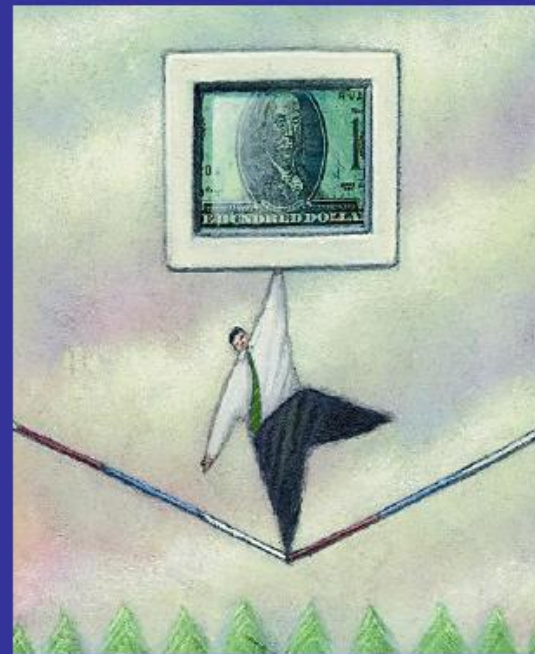
Substitute Decision Maker

- No advance directive
- Follow statutory hierarchy (guardian, spouse, adult child, parent, adult sibling, blood relative)
- Majority wins disagreements
- No need to have guardian appointed
- Substitute decision maker should consider risks, benefits, religious beliefs, and values of patient

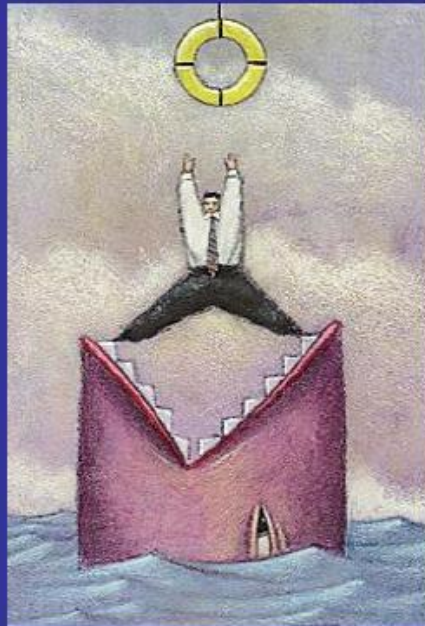


No Advance Directive - What if Conflicting Views Within Family?

- Determine which family member has priority under statute
- Where divorce action filed, patient's spouse cannot give consent
- Seek Hospital Ethics Committee consult and support
- Work toward best interest of patient



No Advance Directive – Where Treatment Not Applicable



- Non-therapeutic sterilization
- Abortion
- Psychosurgery
- Admission to mental retardation facility
- Admission to psychiatric hospital
- If provider knows action is protested by patient

Can You Stop Substitute Decision Maker?



- Petition Court - action not lawfully authorized
- By having a guardian appointed where the Court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision-making outside the purview of the advance directive
- Guardian can seek Court authorization to modify the designation of the agent under an advance directive

No Advance Directive No Substitute Decision Maker

- **Petition Court for authorization of specific treatment**
- **Temporary 24 Hour Order - if attending physician determines patient needs treatment within 24 hours**
- **Petition Court for appointment of guardian**
- **Virginia Public Guardian and Conservator Program**
- **Parens Patriae (the governor or your local legislator steps in)**

Could Cruzan Happen in Virginia? Guardian's Authority

- Guardian does have right to make decision in absence of person appointed in advance directive (*In Re: Hugh Finn Prince William Circuit Court, Chancery No. 39711*)
- Testimony of guardian regarding patient's wishes communicated to her is clear and convincing evidence of intent (*In re: Hugh Finn Prince William Circuit Court, Chancery No. 39711*)

Could Cruzan Happen in Virginia? Nutrition and Hydration

- Nutrition and hydration may properly be withheld or withdrawn from PVS patient -- this is not euthanasia because it merely permits the natural process of dying *Gilmore, et. al. v. Annaburg Manor Nursing Home, et. al.*, Prince William Circuit Court, Chancery No. 44386, Appeal of October 1, 1998 order decided by Virginia Supreme Court October 2, 1998.

Could Schiavo Happen in Virginia?

- A state legislator does not have standing to challenge guardian's decision or the care provided by nursing facility [or hospital] in accordance with guardian's wishes; withdrawal of artificial nutrition and hydration did not violate Medicaid "standard of care" or create a legal basis for court review (*Robert Marshall (pro se), Friend of Hugh Finn, Delegate 13th District Prince William County v. Annaburg Manor*, U.S. District Court, Eastern District-Virginia, Case No. 98-97-MC).



**An Everyday Advance Directive Script
To Advocate, Educate, and Ask About Advance Directives**

I **encourage** each of my patients/clients to help me and others **protect** their wishes for future medical care. It does not take long and it is free. This is something I have done for myself and hope you will, too.

An advance directive is a legal document that tells us who you wish to make medical decisions for you, if you are ever not able to tell us what you want for yourself. It can also tell us what treatments you would want or not want at that time. I like to **protect** my patients'/clients' wishes in that way, so I **encourage** them to complete an advance directive while they are here in the hospital/before a health crisis.

Is that something you would be **willing** to consider doing?

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