Decisional Capacity / Incapacity

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• Guidelines for the Determination of Decisional Incapacity, 1996
• Rethinking Informed Consent in Bioethics, 2007
• Transparency: Informed Consent in Primary Care, 1989
• PowerPoint Slides
“The ideal of shared decision making in healthcare requires a decisionally capable provider with personal beliefs and preferences to negotiate an agreement with a decisionally capable patient holding personal beliefs and preferences.” guidelines handout
Three Aspects of Capacity

• Understanding – knowing what’s going on and the proposed response
• Deliberating – accepting or rejecting the proposed response
• Communicating acceptance or rejection
Decision-making Capacity: Guidelines for

- Adults
- Minors
- Adults with Developmental Disability
Decision-making Capacity: A Spectrum

- Emerging
- Incomplete
- Complete
- Fluctuating
- Diminishing
- Incapacity
Determining Incapacity: A Critical Open Process

- Assuming & enhancing capacity
- Searching for clues
- Soliciting assent
- Providing information
Who Determines Incapacity:

“(T)he healthcare provider who has an ongoing relationship with and historical knowledge of the patient should be the determiner of decisional incapacity.” – guidelines handout
Imperatives for Consent

- Clinical
- Compliance
- Ethics
Models of Consent

- Conduit & Container – disclosure based
- Agency – transaction based
Justifications of Consent

- Autonomy (conduit & container)
- Waiver of prohibition (truth claims & commitments)
The Standards of Consent

- Uniform (conduit & container)
- Varying (truth claims & commitments)
The Commitments of Consent

- Uniform (conduit & container)
- Varying (truth claims & commitments)
<table>
<thead>
<tr>
<th>Healthcare Providers</th>
<th>Patients</th>
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<tbody>
<tr>
<td>1. Propose healthcare</td>
<td>1. Understand proposals</td>
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<td>2. Request conditional commitments</td>
<td>2. Make or refuse to make conditional commitments</td>
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<td>3. Make conditional commitments</td>
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Consent: What’s Going on Here
Questions?