

Knowledge of Order of Authority for Substitute Decision-Making: Are our hospitals, residential-aged care facilities and medical practitioners at legal risk.

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Legislation

- When an adult loses decision-making capacity, the law in most Australian states/territories specifies an “order of authority” of substitute decision-makers.
- In NSW, the Guardianship Act (1987) established a hierarchy of substitute decision-makers, called Person Responsible. In order these are:
 - The person’s guardian
 - Appointed by Tribunal; or
 - Appointed by the adult as an Enduring Guardian
 - Spouse (including same-sex or de facto spouse)
 - Non-professional carer
 - Close friend or relative of the person

Issues in many NSW Hospitals/RACFs

- No provision on admission forms to ask for/ record existence of Enduring Guardian or ascertain who is Person Responsible; forms do not comply with the legislation – still ask for Next-of-Kin
- Next-of-Kin has no legal status in relation to making medical decisions
- Also no provision to ask if person has an Advance Directive
- Current situation puts treating medical practitioner at risk – has responsibility under the law for determining PR

Response to Problem

- In 2008, NSW Health funded a 0.6 Project Officer in each Area Health Service to promote use of Advance Care Planning (ACP)
- Research team recognised the need for base-line data on current knowledge about/attitudes to ACP
- Postal questionnaire sent to random sample of NSW medical practitioners; after removal of duplications, deceased, not-at-this address; no longer in practice
N = 957: 629 GPs, 328 specialists
- Overall response rate 27% (N=260); 150 from GPs (24%) and 110 from specialists (34%)

Research - Results

- Sample characteristics
 - Gender: 37% female; 63% male
 - Age: 16% aged <40; 32% - 40-49; 34% - 50-59; 18% - 60+
 - Years as Medical Practitioner: 62% >20 years ;
 - Religious Affiliation:
 - 35% no religious affiliation (n=88)
 - 23% Catholic (n=58)
 - 17% Anglican (n=43)
 - 13% Other Christian (n=32, incl. 9 Uniting Church)
 - 12% from a range of other religious groups

Heard of ACP Options

	TOTAL			GP			SPECIALISTS		
	N	Yes % (n)	No % (n)	N	Yes % (n)	No % (n)	N	Yes % (n)	No % (n)
Advance Directives	256	80 (204)	20 (52)	147	79 (116)	21 (31)	109	81 (88)	19 (21)
Enduring Power of Attorney	256	93 (238)	7 (18)	148	93 (138)	7 (10)	108	93 (100)	7 (8)
Enduring Guardian	255	79 (202)	21 (52)	148	82 (122)	18 (26)	107	75 (80)	25 (27)
*Person Responsible	253	72 (182)	28 (71)	144	68 (98)	32 (46)	109	77 (84)	23 (25)

Experience with ACP Options

	TOTAL			GP			SPECIALISTS		
		Yes	No		Yes	No		Yes	No
	N	% (n)	% (n)	N	% (n)	% (n)	N	% (n)	% (n)
Advance Directives	234	50 (117)	50 (117)	131	47 (62)	53 (69)	103	53 (55)	47 (48)
Enduring Power of Attorney	237	62 (146)	38 (91)	133	60 (80)	40 (53)	104	64 (66)	36 (38)
Enduring Guardian	233	52 (121)	48 (112)	133	51 (68)	49 (65)	100	53 (53)	47 (47)
*Person Responsible	229	49 (113)	51 (116)	126	39 (49)	61 (77)	103	62 (64)	38 (39)

Attitudes to Advance Directives

- Only 34% of GPs, 8% of specialists had ever been asked by a patient to assist in the writing of an AD (77% overall had not)
- 89% of GPs, 61% of specialists said that they would be willing to assist a patient to make an AD if asked
- 87% of GPs, 93% of specialists agreed/strongly agreed that an AD would assist them in making health care decisions for a patient who had lost capacity
- 70% of GPs, 76% of specialists support the use of ADs
- Only 5% of GPs, 8% of specialists had completed their own AD but 58% of GPs, 57% of specialists said that they intend to do so in the future.

Barriers to Patients/Community Members Completion of Advance Directives (% strongly agree/agree)

Barrier	GPs	Spec's	2005 Study	
	%	%	C/ty	HPs
Don't know enough about them	88	83	60	91
They don't like to think about end-of-life issues	62	67	33	75
Prefer to leave it until situation arises	68	77	n.a	n.a
Prefer to leave decision to doctor	37	41	37	63
Prefer to leave decision to family	40	40	29	69

Substitute Decision-Makers

- 10% of GPs, 12% of specialists always/ usually ask patients if they have given anyone Enduring Power of Attorney (EPoA) for financial matters.
- In NSW, EPoA applies only to property/money & does not give the appointee authority to make health care decisions
 - Only 45% of GPs, 48% of specialists knew that
 - 28% of GPs, 18% of specialists thought that it did
 - 27% GPs, 34% specialists were unsure.

Enduring Guardian (EG)

- 49% of GPs, 37% of specialists said patients had told them that they had appointed an EG
- 50% of GPs, 23% of specialists had recommended to patients that they appoint an EG
- 93% of GPs, 96% of specialists agreed that it would be very helpful/ helpful to know who has legal authority to make health care decisions/ give substitute consent for treatment if a patient has lost decision-making capacity.

Scenario

- Georgina, 87, recently moved to residential care from rural town; no local GP. Visiting GP, Dr Adams, agreed to take over her care. On examination he finds that Georgina does not have capacity and has end stage COPD.
- In order to develop an Advance Care Plan, Dr Adams and the senior nurse meet with Georgina and her two children, Theo, the eldest, and Maria, who has been caring for Georgina at home. Children say their mother did not complete an Advance Directive or tell them what treatment she would/would not want if she were terminally ill. There is some disagreement between Theo & Maria about how Georgina should be cared for.
- Theo says that as eldest and next-of-kin he should have the right to make such decisions. Maria says that she has been managing all her mother's affairs, paying bills and doing her banking and that because her mother gave her Enduring Power of Attorney to do that, she should have the right to make the decisions.

Respondents were asked: Who has legal right to make health care decisions for Georgina?

- 54% (n=138) said Maria (51% GPs: 58% specialists)
 - 3% (n=8) said Theo
 - 3% (n=8) said Dr Adams
 - 11% said neither
- Why?
 - Of the 138 who said Maria
 - 50% said “Because she has Enduring Power of Attorney”
 - 35% said “Because she has been the carer”
 - 2% said “because she is the Person Responsible”
 - Those who said Theo – (all) “Because he is next-of-kin”

Recommendations

- Hospitals & RACF

- Change admission forms
- Change computer programs to reflect changes
- Ensure AD & EG forms go into patients' medical records and alert is put on record and in computer
- Educate staff : medical and nursing; allied health; pastoral care: admissions; medical records

- In the Community

- Educate community members; empower them to ensure that their forms are recorded and wishes respected
- Make completion of AD/EG forms a routine part of General Practice; admission to RACF; also, educate solicitors to tell clients about AD/EG when they make a will or EPoA