Objectives

- Discuss reasons that may prompt surrogates to refuse pain medication administration.
- Apply commonly acknowledged general ethics standards related to the administration and refusal of pain medications.
- Identify potential strategies that may help to resolve differences related to the refusal of pain medications.

Case Study

- Patient cannot verbally communicate pain
- Lacks capacity for decision-making
- Assessed to be exhibiting signs of pain
- Pain is likely to be relieved by medication
- Surrogate does not want pain medication to be administered

Pain Relief as a “Right”

- Right to health and well-being.
- Implicitly includes pain control
- Inadequate pain management has physical, psychosocial, economic and social consequences for well being

Pain Management

- Pain as “5th Vital Sign”
- Concerns about HCP failure to adequately manage pain began to appear in the literature in the 1970’s
- 1990’s unrelieved pain comes to the forefront

Legal

- Washington v Glucksburg and Vacco v Quill
  - Supreme Court 1175 1997, Ct 2258 and 2293
  - Rejected physician assisted suicide but supported right to adequate palliative care and pain management

- Henry James v Hillhaven Corporation
  - North Carolina Superior Court No 89, 1991 CVS 64
  - Nurse refused to give opioids due to fear of addiction
  - Legal duty to relieve suffering
  - Care not consistent with standards
  - 7.5M compensatory damages and 7.5 M punitive damages against Hillhaven
    - Rich BA, 2004
Legal

- Bergman v Chin
  - 85 yo metastatic lung CA  Pain 7–10/10
  - Prescribed 25–50 mg Demerol every 4 hours prn
  - CA malpractice unable to recover damages after death
  - Failure to treat pain fell within statutory definition of elder abuse
  - 1.5M compensatory damages

- Tomlinson v Bayberry Care Center
  - 85 YO mesothelioma and pain
  - Advance directive specifies pain control
  - Pain management history
    - Scheduled vicoden with relief
    - Transfer to Bayberry with no medications x 3d
    - Then Vicoden 1 tab q4h prn
    - Duragesic added 25mcg increased to 50 mcg 2nd day
    - MS contin oral solution 10mg q4h prn
  - Negligence and physician incompetence
    - 80K and 16 hours CE for staff
    - Physician education and supervised clinical practice

Professional Obligation

- Pain management is required within highest professional standards.
  - "The relief of suffering is universally acknowledged as a cardinal goal of the ethical and compassionate practice of medicine" - AMA Council on Scientific Affairs, 2000

- Obligation is underscored in:
  - Codes of Ethics
  - Position Statements
  - Accreditation standards
  - Hospital Consumer Assessment of Healthcare Providers and Systems Survey (HCAHPS)

Right to Choose and Refuse

- Ethical principle of autonomy

- Decisions must be based upon the elements of informed consent

Who May Refuse?

- Patient
- Designated patient advocates
- Assigned guardians
- “Designated Patient Representative”
  - Competent adult designed by patient to receive info/make decisions
  (CMS Pub. 100-07, Dec 2011)
- Next-of-Kin No "order of authority" law

Why might pain meds be refused?

- Patient
- Designated patient advocates
- Assigned guardians
- “Designated Patient Representative”
  - Competent adult designed by patient to receive info/make decisions
  (CMS Pub. 100-07, Dec 2011)
- Next-of-Kin No "order of authority" law
### Capacity
- Clinical evaluation of patient’s ability to:
  - Receive information (e.g. awake, but not necessarily oriented x 3),
  - Evaluate, deliberate, and mentally manipulate information
  - Communicate a treatment preference (e.g. the comatose patient by definition is not decisional).
- Does patient demonstrates understanding, logic and consistency?
- May vary depending upon complexity of the decision and timing
  

### Competency
- An assessment made by a mental health professional that may lead to a legal declaration about the ability to make decisions.
  - **Never competent**
    - Individuals who were never able to exercise decision-making capacity
  - **Formerly competent**
    - Adults and minors of sufficient age and maturity who were able to make decisions previously
  
  Personal Communication, JK, Felt JD, Dykema Gossett PLLC

### Standards for Decision-Making
- **Substituted Judgment**
  - Knowledge of the incapacitated person’s values, beliefs and past choices
  - Choice reflects what decision-maker believes patient would choose.
- **Best Interest**
  - No/ very little knowledge of the patient
  - Also used for people who were never competent
  - Greatest “benefit” and least consequences
    - Chance for recovery
    - Pain/ suffering
    - Loss of dignity

### Obligation of Decision-Maker
- “Best Interest” as minimum standard
- Net burdens outweigh benefits
- Reasonable person determination
  - If treatment would decrease burden (i.e. pain, suffering) would a reasonable person want the treatment?
  - Massachusetts health Care Proxy Law
    - No proxy can “preclude any medical procedure deemed necessary by the attending physician to provide comfort care or pain alleviation”.

### Beneficence and Nonmaleficence
- Doing good (benefit) and avoidance of harm(burden)
- Obligation of clinicians to determine what is medically indicated (beneficial)
  - “physicians should not accede to demands for treatment that are inconsistent with sound medical practice.” AMA Council on Scientific Affairs, 2000

### Strategies
- Appreciate
- Accommodate
- Negotiate
- Explicate
- Anticipate
Understand views

Defer to the decisions/preferences

Agree to a compromise “win-win”

“Absolve” the decision-maker and implement the medically appropriate intervention

Prepare for potential situations

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References and Resources

- Blinderman CD (2012). Do surrogates have a right to refuse pain medications for incompetent patients?