

THE OCEAN STATE ETHICS NETWORK (OSEN)

LIMITATIONS OF SURROGATE DECISION-MAKING A MODERN DAY DAX?



A fifty-year old male is badly injured in a fire. He has burns over 60% of his body and requires intensive care, including ventilatory support, at least in part secondary to opiates and other sedatives necessary to keep him comfortable. After stabilization, the patient requires a number of surgical procedures to address damage caused by his extensive burns, including extensive skin grafting. It is the opinion of his treating physicians that his prognosis for a very good functional recovery is very promising, but that he will require further procedures in the immediate future as well as extensive physical and occupational therapy.

The patient works as a laborer in construction. He also has a history of alcohol abuse, and has been involved in a minor motor vehicle accident in the past in which alcohol was felt to be a factor. He has not received any formal medical care for several years.

He is estranged from his brother and sister and has not spoken to any family members in several years. The hospital has contacted the siblings seeking advice on directives for care. His siblings do not feel that they know their brother well enough to speak for him. They seek out his friends and associates, as well as colleagues from work and his biking friends for assistance in determining whether their brother would want to continue to pursue intensive medical care for a relatively good outcome that at best would be some months away. The consensus was that he would not wish to continue that fight.

Based on their research, the siblings return and tell the surgeon that they don't think their brother would wish to continue to be treated. He should be made comfortable and not have further life-supporting care or any further corrective surgery.

The attending surgeon recognizes a patient's right to refuse care, and feels his siblings are acting in good faith as surrogates, and requests guidance from the ethics committee.

→ Ethical questions being debated today by members of the OSEN board are listed on page two.

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Questions for Consideration

1. For families seeking to use “substituted judgment”, what counts as due diligence in information gathering? How does a health care provider assess this process?
2. To what extent does a patient’s history (of substance abuse) put him at risk for negative bias? What if he were a violent criminal?
3. How do the surrogate(s) and the clinicians apply a patient’s previously expressed wishes to an actual situation? What kind of general statement should have valid force? How closely must a specific statement be to the actual situation to apply?
4. Is it ever appropriate to not ask about advance directives and just treat along the standard of care? What are we offering when we suggest the possibility of withdrawing or withholding care from a patient who does not have a terminal illness?
5. What is the interaction between the patient’s prognosis and the health care team’s acceptance (or questioning) of the surrogate decision maker’s directives from substituted judgment?
6. Under what circumstances can a surrogate decision, made in good faith, be overridden?