



ECHO<sup>®</sup> MOLST:

Honoring Preferences at End-of-life

Conflict Resolution: What a Health Care Agent/Surrogate Can and Cannot Do



# Presenter

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# Learning Objectives

- Describe how to handle a difficult conversation with skill and empathy
- Apply the approach to a crucial conversation to resolve conflict
- Define what a health care agent and surrogate can and cannot do in accordance with NYSPHL

# General Principles

- Conflict is inescapable
- It's how you handle it that matters
- Debate shouldn't be the model
- Avoidance is a short term fix
- Choose the right time and place to meet
- Be prepared before you meet
- Develop your conflict resolution skills
- Train other physicians/NPs and members of your team on how to handle and resolve conflict

# Be Clear About the Issue

- What exactly is the issue or behavior that is causing the problem?
- What is the impact that the issue or behavior is having on the patient, the medical decision maker, the family, the physician, nurse practitioner and the rest of the team?
- Is the issue with the patient, the medical decision maker, within the family, or between the family and the physician/MD or individual members of the team or the entire team

# Know Your Objective

- What do you want to accomplish with the discussion?
- What is the desired outcome?
- What are the non-negotiables?
  - The outcome must be consistent with patient values, beliefs, goals for care and NYSPHL
- End with clearly expressed action items
  - What is the patient or decision maker agreeing to do?
  - Does the decision support patient values, beliefs & goals?
  - What support can the physician/NP and team provide?
  - Are there any obstacles?
  - What can the team do to overcome obstacles?

# Adopt a Mindset of Inquiry

- Before you meet, reflect on your attitude toward the situation & the person(s) involved
- Use active listening skills
- Know how to begin the conversation
  - Use language that is descriptive and non-judgmental
  - Don't provoke defensiveness
  - “Could we talk about this?”
- Invite the other perspective(s) before you give yours
  - “Tell me your thoughts first, then I'll describe mine.”
  - Let the patient, decision maker, family member or loved one tell their story
  - Don't interrupt
  - Take time to recognize their perspective

# Manage the Emotions

- Responsibility of the physician/NP to understand and manage emotions
- Wheel of Emotions\* - Emotions follow a path
  - What starts as an annoyance can move to anger and, in extreme cases, escalate to rage
  - Avoid this by being mindful of preserving the person's dignity—and treating them with respect—even if we totally disagree with them
- Use neutral language to reframe emotionally charged issues and defuse conflict
  - “It seems like we are interpreting the data differently.”

\*Dr. Robert Plutchik, Professor Emeritus, Albert Einstein College of Medicine



# Manage the Emotions

- Express empathy towards the situation – not the person
  - “This is a tough situation for everyone involved.”
  - You don’t solve conflicts by focusing on who’s right
  - Try to shift to what’s best for the situation
- Try to create new options that respond to the patient’s and family’s as well as the physician’s/NP’s and team’s concerns
  - Focus on the patient values, beliefs and goals for care

# Be Comfortable with Silence

- There will be moments in the conversation where silence occurs
- Don't rush to fill it with words
- Periodic silence allows us to hear what was said and lets the message sink in
- A pause also has a calming effect and can help us connect better
- Periods of silence can lead to a better outcome

# Preserve the Relationship

- A physician/NP and clinician who has high emotional intelligence is always mindful to limit any collateral damage to the relationship
- It takes time to build a relationship with a patient and only minutes to blow it up
- Think about how the conversation can fix the situation, without building an irreparable wall between you and the patient and their family

# Be Consistent

- Ensure that your objective is fair
- Use a consistent approach
- The team trusts a physician/NP who is consistent

# Health Care Proxy Law

- Health care agents are required to make decisions according to the **patient's wishes**, including the patient's religious and moral beliefs. If the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, the health care agent may make decisions according to the patient's **best interests**, except a decision to withhold or withdraw artificial nutrition or hydration.
- Health care agents are authorized to make a decision to withhold or withdraw artificial nutrition or hydration **only** if they know the **patient's wishes** regarding the administration of artificial nutrition and hydration.

# Family Health Care Decisions Act

- Surrogate's decision is **patient-centered**, in accordance with the **patient's wishes**, including the patient's religious and moral beliefs; or if the patient's wishes are not reasonably known and cannot with reasonable diligence be ascertained, in accordance with the **patient's best interests**.
- The surrogate's assessment is based on the patient's wishes and best interests, not the surrogate's, and includes consideration of:
  - the dignity and uniqueness of every person;
  - the possibility and extent of preserving the patient's life;
  - the preservation, improvement or restoration of the patient's health or functioning;
  - the relief of the patient's suffering; and
  - any medical condition and such other concerns and values as a reasonable person in the patient's circumstances would wish to consider

# What a Health Care Agent and Surrogate Can Do

- If the patient loses the ability to make MOLST decisions, a decision maker can modify decisions the patient made on the MOLST to receive full treatment, if due to significant changes in the patient's health status and prognosis, the choices on the MOLST would no longer reflect the patient's values, beliefs and goals for care.
- For example, a decision to forego resuscitation, intubation & mechanical ventilation, future hospitalization, a feeding tube or other life-sustaining treatment can be made if it is consistent with known wishes or in the best interest of the patient, based on a major change in health status or prognosis.
- Full treatment represents the standard of care.

# What a Health Care Agent and Surrogate Cannot Do

- If the patient loses capacity, the decision-maker **cannot** override decisions the patient has made regarding withholding life-sustaining treatment.
- In other words, if the patient loses the ability to make MOLST decisions and the patient has already made decisions to withhold certain life-sustaining treatment, e.g. Do Not Resuscitate (DNR) and Do Not Intubate (DNI), the health care agent or surrogate **cannot** undo the patient's decision.



# Key Points

- Resolving conflict is a critical skill for physicians, nurse practitioners & all clinicians
- Develop your and your team's conflict resolution skills
- Remember MOLST decisions are patient-centered – not Health Care Agent or Surrogate centered – and must reflect the patient's values, beliefs and goals for care based on current health status and prognosis, in accordance with NYSPHL

# References

- [MOLST.org](http://MOLST.org)
- [Authority of a Health Care Agent and Surrogate](#)
- [NYSDOH MOLST Checklists](#)
- [VitalTalk.org](http://VitalTalk.org)
- Crucial Conversations: Tools for Talking When Stakes Are High by Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler, Stephen R. Covey (Foreword)