



ECHO[®] MOLST:

Honoring Preferences at End-of-life

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

COVID-19: Why it Matters



Presenter

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The speaker has no significant financial conflicts of interest to disclose.

Learning Objectives

- Describe how to handle a difficult COVID-19 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
- Recognize emotion runs high with COVID-19
- ***It's how you handle it that matters***
- Choose the time, place and how (audio or video)
- Be prepared before you meet
- Develop your conflict resolution skills
- Don't debate or avoid
- Train other physicians/NPs/PAs 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/PA 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 a situation – not a 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/PAs and team’s concerns
 - Focus on patient values, beliefs and goals for care

Be Comfortable with Silence

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

Preserve the Relationship

- A physician/NP/PA 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/family; 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/PA 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 decisions and the health care agent or FHCDA surrogate requests a change, the change must be consistent with patient's current health status, prognosis, values, beliefs and goals for care.
- A decision-maker can make additional decisions to withhold and/or withdraw life-sustaining treatment.
- Decisions must be consistent with known wishes or in the best interest of the patient.
- For example, if a patient requested full treatment, the decision-maker can make a decision to forego resuscitation, intubation & mechanical ventilation, future hospitalization, a feeding tube or other life-sustaining treatment can be made.
- Full treatment represents the standard of care

What a Health Care Agent and Surrogate Cannot Do

- If the patient loses capacity, a decision-maker cannot undo decisions the patient has made to withhold life-sustaining treatment, except in rare circumstances in which the patient's condition has improved, and the patient would have made a different decision, had they known about the change.
- Decisions must be consistent with known wishes or in the best interest of the patient.
- 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, NPs, PAs & all clinicians
- Develop your 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
- [Authority of a Health Care Agent and Surrogate](#)
- [NYSDOH MOLST Checklists](#)
- VitalTalk.org
- Bomba, P. A., & Karmel, J. B. (2015). [Medical, Ethical and Legal Obligations to Honor Individual Preferences Near the End of Life](#). Health Law Journal, 20(2), 28-33.
- Crucial Conversations: Tools for Talking When Stakes Are High by Kerry Patterson, Joseph Grenny, Ron McMillan, Al Switzler, Stephen R. Covey (Foreword)