



Making Medical Treatment  
Decisions for Unrepresented  
Older Adults: Updates to the  
AGS Position Statement

1

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law professor  
bioethicist

2



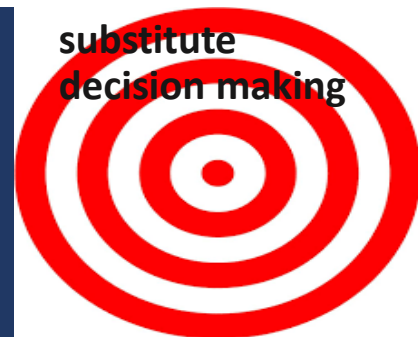
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4



5



6

roadmap

7

3 points

8

**prevent** patients  
from becoming  
unrepresented

9

patients who **seem**  
unrepresented  
probably are **not**

10

when Pt **really** is  
unrepresented, make  
Tx decisions **carefully**

11

prevention

12

# PREVENTION IS BETTER THAN CURE



13

**best** way to  
**protect** the  
unrepresented

14

**prevent** them  
from becoming  
unrepresented

15



16



17

# FAIL

18

so...

19

what if  
prevention  
**failed**

20

patient is here  
& **seemingly**  
unrepresented

21

Pt who seems  
unrepresented  
usually is not

22

4 reasons

23

Pt might **not**  
lack capacity

24

even if Pt lacks  
capacity, that  
may be **fixable**

25

friends or family  
can usually be  
**found**

26

AD, POLST, or  
other GPV can  
often be **found**

27

**capacity**

28

3

**WARNING**

29

1

**WARNING**

30

**not** all or  
nothing

31

patient might have  
capacity to make **some**  
decisions but not **others**

32

patient may **lack**  
capacity for  
**complex** decisions

33

**still** capacity  
**simpler** decisions

34

**still** capacity to  
**appoint** agent

35

**SO...**

36



37



38



39

may **fluctuate**  
over time

40

capacity in  
**morning**  
not afternoon

41

MON	TUE	WED	THU
<b>no</b>		<b>yes</b>	

42

SO...

43

make **serial**  
assessments

44



45

**even** if really  
lacks capacity

46

reversible

47

**restore** capacity  
if possible

48



we prefer to hear  
from patient  
**herself**

49

do not want 2<sup>nd</sup>  
best substitutes  
unless **necessary**

50

if Pt can decide



patient decides

51

if Pt can decide **w/ help**



help them

52

**but**

53

some patients  
**really** lack  
capacity

54

need a  
surrogate

55

someone who can  
**speak for Pt** when  
they cannot speak  
for themselves

56

ideally, people  
appoint their  
**own** agents

57

but

58



59

no agent  
↓  
default surrogate

60

**not** chosen  
by patient

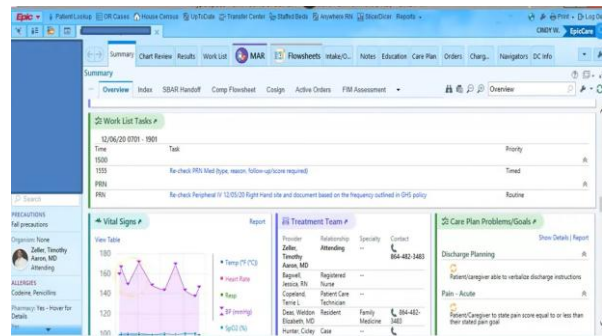
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chosen off  
**a list**

62

**diligent**  
search

63



64

not just **your** records  
+ referring facility  
+ PCP

65

DATE	VISITOR'S NAME	REASON FOR VISIT	PHONE	TIME IN	TIME OUT	RESIDENT
8.22.23	James Smith	See Mom	218.117.1910	9:03		Jan Edwards
8.22.23	Kim Rains W	Resident wound treatment		9:05	10:46	Russ Sims
8.22.23	Linda Toms	FAMILY	178.107.1400	9:23		FREDA JO MS
8.22.23	Rich Frenche	visiting Mom	771.171.8761	9:28	11:00	Jenny Mae
8.22.23	Deborah Smith	visiting family	785.967.3774	9:45		Jimmy Smith
8.22.23	Chadwick John	FAMILY	334.555.5508	9:52	11:03	Nancy Brown
8.22.23	Maeve March	visiting Parents	179.173.2570	9:55	12:10	Teresa Jack
8.22.23	FRED Low MD	IN THERAPY FOR PAIN	321.678.1372	9:56	1:22	JEFF JACKSON
8.22.23	John W. [unclear]	rehabbing mom	834.884.3203	10:14am		Miss [unclear]
8.22.23	Johnny [unclear]	family	714-1033-0804	11:23am	12:00pm	P. MULL

66



67



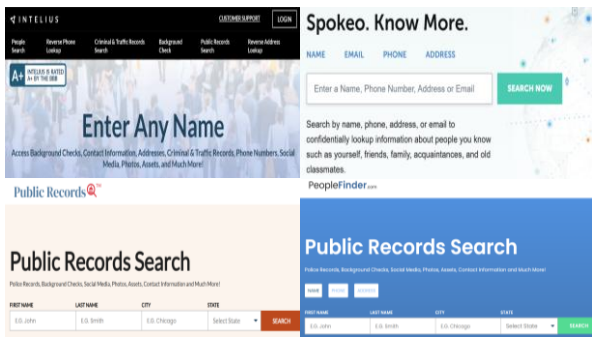
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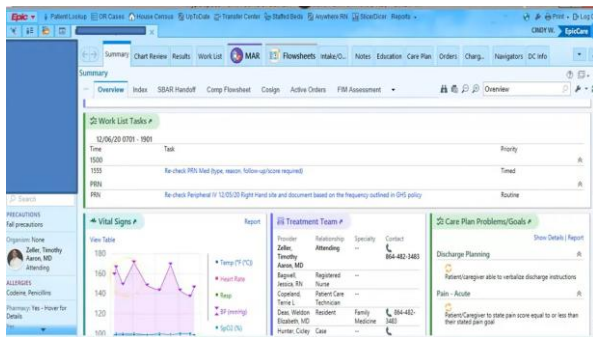
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even if you find  
no available,  
willing surrogate  
**still** source GVP

77

look for  
**AD & POLST**

78



79

portable orders for life-sustaining treatment  
Oregon POLST® Registry

• PATIENTS AND FAMILIES • EDUCATION CENTER • OREGON POLST • CONTACT • OPR PROVIDER PORTAL

80



81

no AD, POLST  
**still** source GVP

82



83

no capacity  
no agent  
no surrogate  
no AD or POLST

84

guardian  
conservator

85

ask **court** to  
appoint SDM

86



87

slow  
expensive  
cumbersome

88



89

who  
decides

90

2 qualities

91

efficiency  
&  
fairness

92

oversight & vetting

93

court

94

fair                      A  
efficient                F

95

solo  
physician

96



efficient    A  
fair        F

97

solo physician  
approach is  
**common**

98



99



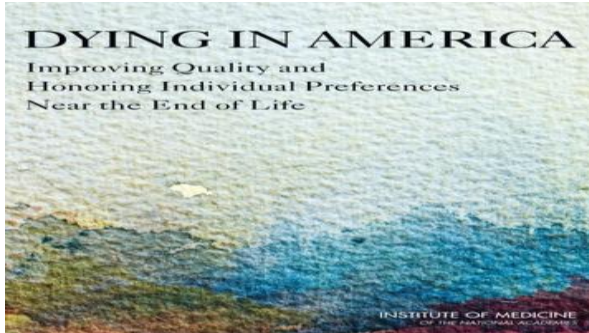
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“**attending  
physician** ...  
make decisions”

101

“causes **angst** for  
the greater ethics  
community”

102



103

“having a **single health professional** make unilateral decisions ...”

104

“**ethically unsatisfactory** in terms of protecting patient autonomy and establishing transparency”

105

**2** reasons

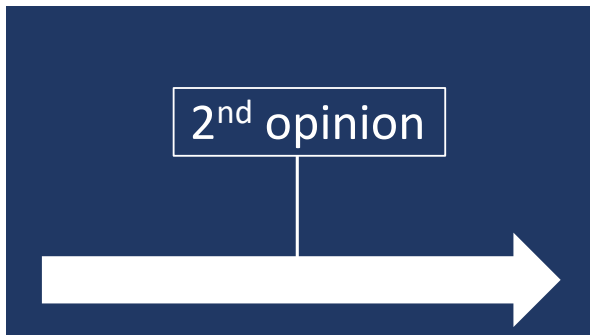
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bias & COI  
unchecked

107

less carefully  
considered

108



109

better

110



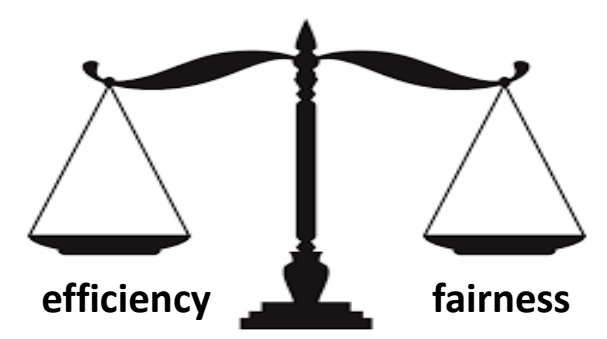
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112



113



114

accessible  
quick  
convenient

115

expert  
neutral  
careful

116

that's

who

117

how  
to decide

118

substituted  
judgment

if possible

119

comply with  
evidence of  
patient's GVP

120

if cannot

121

best  
interest

122

is treatment  
**proportionate** in terms  
of benefits gained  
versus burdens caused

123

conclusion

124



risk - value discordant Tx

125



126

# 1

127

**advance care planning**  
to prevent patients  
becoming unrepresented

128

# 2

129

strategies to determine if  
seemingly unrepresented  
patient **really is**

130

careful **capacity**  
assessments

131

diligent **searches** for  
potential surrogates

132

diligent **searches**  
for AD, POLST,  
evidence of GPV

133

3

134

when prevention  
fails & **have**  
unrepresented  
patient

135

manage decision-  
making with a **diverse**  
**interprofessional,**  
**multidisciplinary**  
**committee**

136

use **all available**  
**information** on patient  
preferences & values

137



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