

Title: How Do We Make Decisions when the Patient's Identity is Unknown?

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Case:

Unidentified Patient *John Doe One* is a 20-year-old gentleman who presented to the Emergency Department (ED) following pedestrian hit-and-run motor vehicle accident. Upon admission in the ED, *John Doe One* was hemodynamically unstable with a Glasgow Coma Score (GCS) of 4. He was intubated upon arrival. No identifying information was included in the patient's belongings or on the patient. CT scans were performed and demonstrated extensive bilateral subarachnoid, subdural, and intraparenchymal hemorrhage; hypodense edema and mild right to left mass effect and 1-2 mm midline shift; thoracic fractures showing spinal cord injuries and displacement. Patient *John Doe One* was taken directly to the operating room and subsequent admission to the ICU for further management.

Following admission to the ICU, the neurology team was consulted to evaluate the patient given total lack of brainstem reflexes. They performed the initial brain death exam along with an apnea test with findings consistent with death by neurological criteria. Decisions are needed for treatment and possible organ donation. Patient *John Doe One* remained unidentified.

Questions:

1. How do we make decision for patients without decision making capacity whose identity is unknown?
2. What are the ethical and legal challenges that need to be considered?

3. What are some strategies for determining the identity of the patient and locating surrogate decision makers?
4. What are helpful strategies for supporting the clinical team during this process?

Objectives:

1. Define unrepresented patients.
2. Identify the ethical challenges that accompany caring for patients whose identity and decision maker is unknown.
3. Discuss strategies for addressing the ethical and legal complexities in the care of patients who are unidentified.

Summary:

- ▶ Unrepresented patient: “A patient in a health care organization is incapacitated and has no available surrogate, this means that the patient cannot consent to proposed health care and that nobody else is available who is authorized to consent on the patient’s behalf.” (Pope, 2019)
- ▶ Vulnerable for:
 - Over treatment
 - Under treatment
 - Delayed treatment
- ▶ Ethical issues
 - Respect for inherent dignity of the unrepresented person
 - ▶ Exert sufficient effort to identify the person and people who may be able to represent the interests of the patient
 - Respect for the relationships including family and friends that are central to the person’s life who may have interests in decisions regarding treatment
 - Equity and fairness in being aware of how unrecognized bias may influence the way the clinical team responds to the situation where a person who is not represented that can result in over, under or delayed treatment
- ▶ Legal context
 - Maryland law
 - §5–607. A health care provider may treat a patient who is incapable of making an informed decision, without consent, if: (1) The treatment is of an emergency medical nature; (2) A person who is authorized to give the consent is not available immediately; and (3) The attending physician determines that: (i) There is a substantial risk of death or immediate and serious harm to the patient; and (ii) With a reasonable degree of medical certainty, the life or health of the patient would be affected adversely by delaying treatment to obtain consent.
- ▶ Strategies
 - Involve social work and other resources to begin identification process and create a coordinated plan for identification

- When necessary, engage police to help identify the person including possible fingerprinting if allowable
- Media and social media strategies to request information to identify the person
- Establish a threshold for determining when sufficient effort has been exerted and when alternative pathways should be considered
 - ▶ Generally, exhaust available means for identification
 - ▶ Timing may depend upon the clinical status of the patient, urgency of decisions etc.
 - ▶ Be mindful of the risks for over, under or delayed treatment and the justification for each decision
 - ▶ Documentation of measures undertaken is essential.
- Staff support
 - ▶ Staff may benefit from coordinated communication about the plan for identification, timing and process for decision making in the absence of a designated healthcare agent or surrogate
 - ▶ Offer additional resources such as ethics committee or RISE team
 - ▶ Depending on the circumstances of the case, additional debriefing may be offered.

References

[Godfrey, D., Sabatino, C.](#) Who Decides if the Patient Cannot and There is No Advance Directive: Research and Recommendations on Clinical Practice, Law and Policy, ABA Commission on Law and Aging. Washington, D.C.

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[Pope, T, et al.](#) (2020) Making Medical Treatment Decisions for Unrepresented Patients in the ICU. An Official American Thoracic Society/American Geriatrics Society Policy Statement.” American journal of respiratory and critical care medicine vol. 201,10 (2020): 1182-1192. doi:10.1164/rccm.202003-0512ST