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Ethics for Lunch  
Johns Hopkins Hospital

## **Capacity, Guardianship, and Difficult Decisions**

**Moderator:** Cynda Hylton Rushton PhD, RN, FAAN.

**Panelists:** Susan Longley, RN, JD, CPHRM; Matt Norvell, DMin; Karishma Popli, MD, MBE; and Mollie Selmanoff, LCSW-C, CCM

Objectives:

1. Distinguish among surrogate, healthcare agent and guardian for persons who lack decisional capacity.
2. Discuss the ethical frameworks for decision making for persons who lack capacity.
3. Identify the legal process for guardianship within Maryland.
4. Explore steps that the clinical team and hospital can take to assure that the patient's best interests are respected.

The panel discussed a case of a 45-year-old male who was admitted to the hospital after collapsing at home. He was found to have a previously undiagnosed and aggressive form of brain cancer. He lacked decisional capacity, and he needed short and long term medical decisions to be made. He did not have family members or close friends who could provide insight into his wishes or make decisions on his behalf. He did not have an advance directive or a designated healthcare agent. Given the complexity and urgency of his medical situation, and the lack of a readily available surrogate, the hospital legal counsel, in collaboration with ethics committee, determined that seeking guardianship was the most appropriate course of action.

### **Learning points from the discussion:**

- **Ethical Framework:** This case involves ethical principles guiding healthcare decisions, including respect for persons, beneficence, non-maleficence, and justice. In cases where patients lack capacity, the standards of substituted judgment (what the patient would decide if able) and best interests (balancing benefits and burdens) are applied.
- **Legal Framework:** The Maryland Healthcare Decisions Act of 1993 outlines the legal framework for healthcare decision-making for adults who lack capacity. This includes advance directives, surrogate decision-making, and guardianship.
- **Surrogate Decision-Making:** The hierarchy for surrogate decision-makers in Maryland starts with a guardian of the person, followed by a spouse or domestic partner, adult children, parents, adult siblings, and other relatives or friends.
- **Guardianship Process:** The guardianship process, where a court appoints a guardian for individuals deemed unable to make responsible personal decisions. The Johns Hopkins Hospital only considers guardianship requests for admitted patients. The process involves due process, including notice, the right to counsel, and a hearing.
- **Practical Application:** Social workers often play a crucial role in the guardianship process when it is anticipated the patient will not regain decisional capacity, exhausting

all resources to find family or friends and coordinating with physicians to complete the necessary certifications.

- **Challenges and Recommendations:** Challenges in the guardianship process include the timing of court dates and the availability of certifying physicians. Recommendations for clinical teams include early notification of social work, regular communication with the identified guardian, and ensuring the guardian is well-informed about the patient's condition and treatment plan.
- **Importance of Advance Directives:** This case is a reminder of the importance of having an advance directive to ensure your healthcare wishes are respected and that the person you choose makes decisions on your behalf.

#### **Possible references:**

- For further information on the Maryland Healthcare Decisions Act <https://www.marylandattorneygeneral.gov/Pages/HealthPolicy/hcda.aspx>
- For a broader discussion of ethical decision-making for incapacitated patients, see "Protecting Incapacitated Patients' Rights and Best Interests" (<https://pmc.ncbi.nlm.nih.gov/articles/PMC10696349/>).
- For a discussion of the challenges in applying the best interest standard, see "Decision Making in an Incapacitated Patient" (<https://www.journals.uchicago.edu/doi/pdf/10.1086/JCE199304110>).