**Caring for "Unrepresented Patients" - Strategies to Avoid Moral Distress and Substandard Care**

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## Terminology

Unbefriended

Unrepresented

Adult orphan

Patient w/o proxy

Incapacitated & alone

## Definition

**3** conditions

# 1

Lack capacity

# 2

No available, applicable AD or POLST

**3**

No reasonably available authorized surrogate

**Nobody** to consent to treatment

**Step by step flowchart**

**1**

Does the patient have **capacity**?

If yes, then **patient** makes treatment decision.

If no, can patient decide with **"support"**?

If yes, then **patient** makes treatment decision.

If no, proceed

**2**

Is there an available AD or POLST

Does the AD or POLST clearly **apply** here

If yes, follow AD or POLST (but involve surrogate)

If no, proceed

**3**

If patient lacks capacity, a **SDM** must make the treatment decision.

| | | |
|---|---|---|
| Is there a court-appointed guardian? | If so, is the guardian reasonably available? | If no guardian . . . |
| Is there a healthcare agent (DPOAHC)? | If so, is the agent reasonably available? | If no agent . . . |
| Is there anyone on the default surrogate priority list? | If so, is the surrogate reasonably available? | Have social workers diligently searched for surrogates |

If no, then →

**Nobody** to consent to treatment

**4**

Is the situation an emergency

If yes →

Is there any reason to believe the patient would object

If no, proceed on basis of **implied** consent

**5**

Is there an functioning guardianship system?

Usually

**Not**

If so, seek a court appointed guardian

Even if a guardian is forthcoming, may need to make decisions in the **interim**

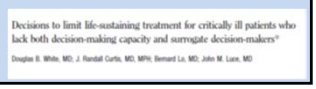
**Big problem**

**3 - 4%** nursing home population


Incapacitated and Alone:
Health Care Decision-Making for the Unbefriended Elderly

> 50,000

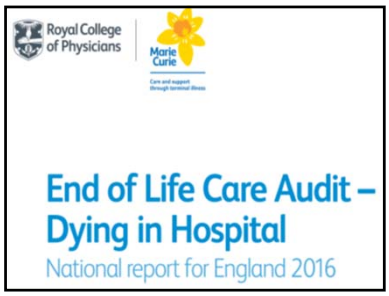
16% ICU admits


Decisions to limit life-sustaining treatment for critically ill patients who lack both decision-making capacity and surrogate decision-makers*

5% ICU deaths


ARTICLE Annals of Internal Medicine
Life Support for Patients without a Surrogate Decision Maker: Who Decides?

> 25,000



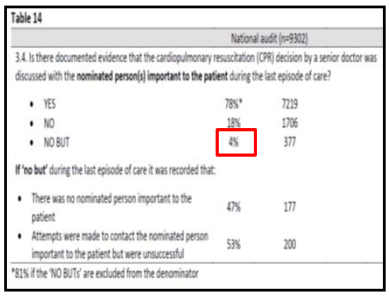
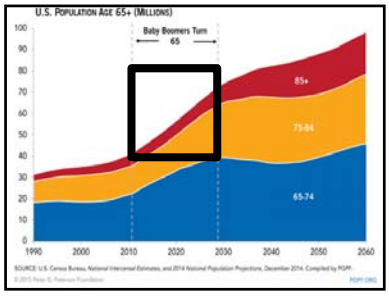



Table 14

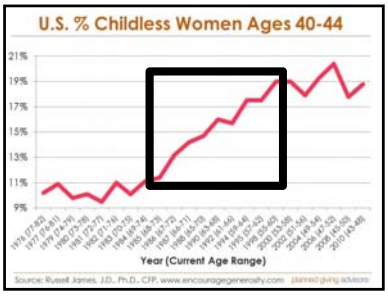
| | National audit (n=9302) | |
|---|---|---|
| 3.4. Is there documented evidence that the cardiopulmonary resuscitation (CPR) decision by a senior doctor was discussed with the **nominated person(s) important to the patient** during the last episode of care? | | |
| • YES | 78%* | 7219 |
| • NO | 18% | 1706 |
| • NO BUT | 4% | 377 |
| **If 'no but'** during the last episode of care it was recorded that: | | |
| • There was no nominated person important to the patient | 47% | 177 |
| • Attempts were made to contact the nominated person important to the patient but were unsuccessful | 53% | 200 |

*81% if the 'NO BUTs' are excluded from the denominator

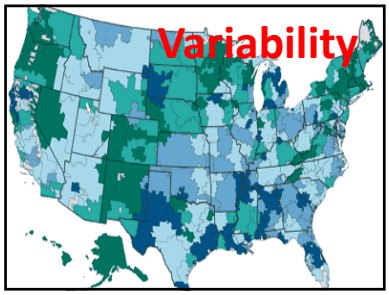
**Growing problem**








**Law as causal factor**




Some states will have **fewer** unrepresented patients

Some states will have **zero** unrepresented patients

# Why?

**Longer** default surrogate lists

# More relatives

Spouse
Adult child
Parent
Adult sibling
Grandparent / adult grandchild
Aunt /uncle, niece / nephew
Adult cousin

# Close friend

Social worker
Ethics committee

Existence of public guardian system

# Slow
# Expensive

**Ethical Problems**

Nobody to authorize treatment

**3** ways to respond

**1**

**No** treatment

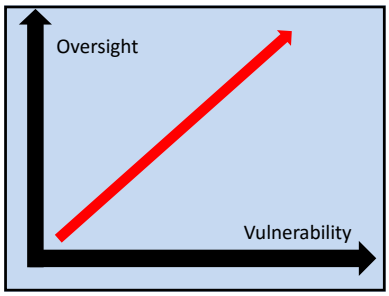
**Wait** until emergency (implied consent)

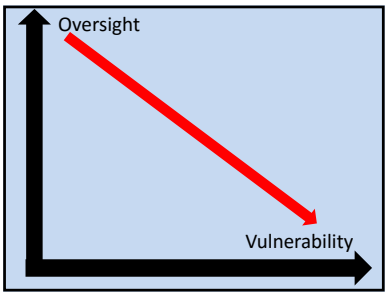
**2**

Physician acts **without** consent

Most common approach

Bias
COI
Careless

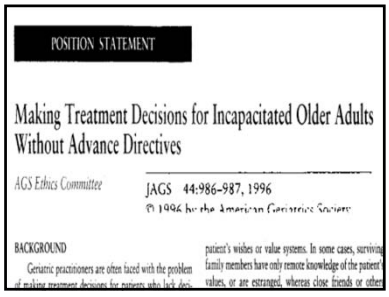



3

Scrutiny
Vetting


In addition to new **laws**



POSITION STATEMENT

Making Treatment Decisions for Incapacitated Older Adults Without Advance Directives

*AGS Ethics Committee*

JAGS 44:986–987, 1996

BACKGROUND

Geriatric practitioners are often faced with the problem

patient's wishes or value systems. In some cases, surviving family members have only remote knowledge of the patient's values, or are estranged, whereas close friends or other

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