

# Mental Illness and Capacity

Bioethics: Autonomy & Health (Fall 2012)

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# Sliding Scale Model of Capacity

| Patient's treatment choice                          | Other's risk/benefit assessment of that choice in comparison with other alternatives | Level of decision-making competence required | Grounds for believing patient's choice best promotes/protects own well-being                         |
|---|--|--|--|
| Consents to lumbar puncture for presumed meningitis | Net balance <b>substantially better</b> than for possible alternatives               | <b>Low/minimal</b>                           | Principally the benefit/risk assessment made by others   |
| Chooses lumpectomy for breast cancer                | Net balance <b>roughly comparable</b> to that of other alternatives                  | <b>Moderate</b>                              | Roughly same benefit/risk assessment made by others ; best fits patient's conception of own good     |
| Refuses surgery for simple appendectomy             | Net balance <b>substantially worse</b> than for another alternative(s)               | <b>High/maximal</b>                          | Principally from patient's decision that the chosen alternative best fits own conception of own good |

# Involuntary Hospitalization

- ❄ Involuntary *hospitalization* determination separate from involuntary *treatment* determination (Buchanan & Brock 311)
- ❄ Grounds for involuntary commitment
  - ❄ For patient's own good
  - ❄ For the good of others
  - ❄ Spectrum of criteria (narrow → broad)

# Narrow Criteria: Imminent Threat

- ❄ To self – suicide risk

  - ❄ Falls under state's *parens patriae* powers

- ❄ To others – intentional or unintentional endangerment of others that will likely lead to death

  - ❄ Involuntary confinement/treatment part of state's police powers

# Broader Criteria: Gravely Disabled

- ❄ For patient's own good
  - ❄ How limited are the state's *parens patriae* powers?
  - ❄ When is it justified to treat a non-dangerous mentally ill person differently than we would treat a similarly situated non-dangerous person without a mental illness?
- ❄ Likely "to suffer substantial mental or physical deterioration" (1982 APA Guidelines)
  - ❄ "substantially unable to provide for some of his basic needs"
  - ❄ Lack of treatment → severe mental or physical distress, impairment



# Capacity & Involuntary Commitment

- ❄ According to Buchanan & Brock, “for the patient’s own good” arguments should only be used when the patient lacks capacity for the hospitalization decision
- ❄ Capacity as decision-specific and choice-specific
- ❄ Mental illness is sufficient for incapacity only if
  - ❄ It impairs what the patient would otherwise consent to
  - ❄ What the patient would consent to or refuse is unclear, so surrogate is needed

# Capacity and Certainty in Degrees

More risk to individual:

Higher standard for capacity

More certainty of capacity determination req'd

Less risk to individual:

Lower standard for capacity

Less certainty of capacity determination req'd



# Discussion Questions

- ❄ Do you find the imminent threat or gravely disabled standards more compelling?
  - ❄ Which is ethically preferable for general policy?
- ❄ Do you agree that someone with a mental illness should be found to lack capacity before he/she can be involuntarily hospitalized?
- ❄ How can a disability-conscious bioethics promote and protect the liberty and welfare interests of mentally ill patients?



The background features several long, thin icicles hanging vertically from the top. The background is a soft, out-of-focus bokeh of warm, golden-yellow and light blue lights, creating a festive and wintry atmosphere.

Thank you for this semester!

Happy Holidays!