ETHICS IN PUBLIC MENTAL HEALTH

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Training Overview

Table of contents

- Ethical Practice as Process
- Foundations & Principles
- Autonomy, Informed Consent, Capacity to Make Treatment Decisions

Aims

- Underscore ethical practice is a process
- Provide functional knowledge
- Contextualize capacity and consent

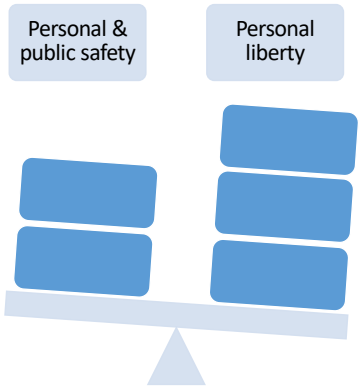
Ethical Practice as Process

Ethical Practice is a Process

- Ethics is not just about reaching an endpoint that is ethical; it is also about the process and procedures followed to reach such decisions.
- "Ethical decision making is a process. There are many instances in social work where simple answers are not available to resolve complex ethical issues." -NASW Code of Ethics
- I.1.b. Ethical Decision Making (ACA Ethics Code)
  - When counselors are faced with an ethical dilemma, they use and document, as appropriate, an ethical decision-making model that may include, but is not limited to,
    - consultation;
    - consideration of relevant ethical standards, principles, and laws;
    - generation of potential courses of action;
    - deliberation of risks and benefits; and
    - selection of an objective decision based on the circumstances and welfare of all involved.

Applying Ethics Often Means Balancing Interests

- Besides extreme cases and defined rules, there are few set answers for many cases
- Cases involve the conduct and interests of multiple people, groups, and/or authorities
- So, many issues and cases require balancing of interests that are at odds
- Ethical practice is a process



Ethical Practice as Process and Risk Management

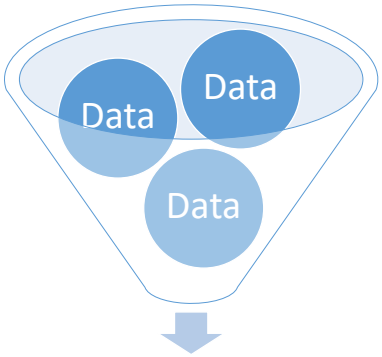
- For example, jury will seek to determine if a suicide was foreseeable (an element of malpractice standard)
  - They will look to see how thorough the clinician was
  - Collateral information (or reasonable lack thereof)
- The scrutiny will be on clinical process that led to conclusion more so than the conclusion
  - To determine whether actions were in line with accepted professional standards, i.e., what reasonable clinicians would do under the circumstances
  - "Reasonableness" standard
    - E.g., "The prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time."

Documentation and Risk Management

- Lack of documentation is <u>not</u> protection against liability
- Poor documentation can lead to misunderstanding of work, which can lead to problems should lawsuit be filed
  - At best, things will be complicated
  - At worst, erroneous verdict or unduly high settlement
- Good care + good documentation = the best defense

Documentation

- Mental health professionals bring clinical skills and expertise
- Experts at assessing generally and for risk
  - Really good at reviewing relevant information
  - Applying tools as available and appropriate
  - And distilling all that data down to informed clinical conclusions



Conclusion & Recommendation

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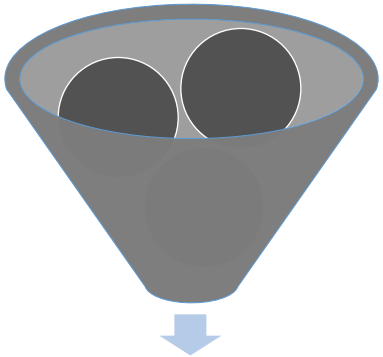
Documentation

- We're not always as good at documenting the process
- Yet: Contemporary standards of care emphasize transparency in risk formulation and clinical decision making
- Also, documentation facilitates good clinical practice



Conclusion & Recommendation

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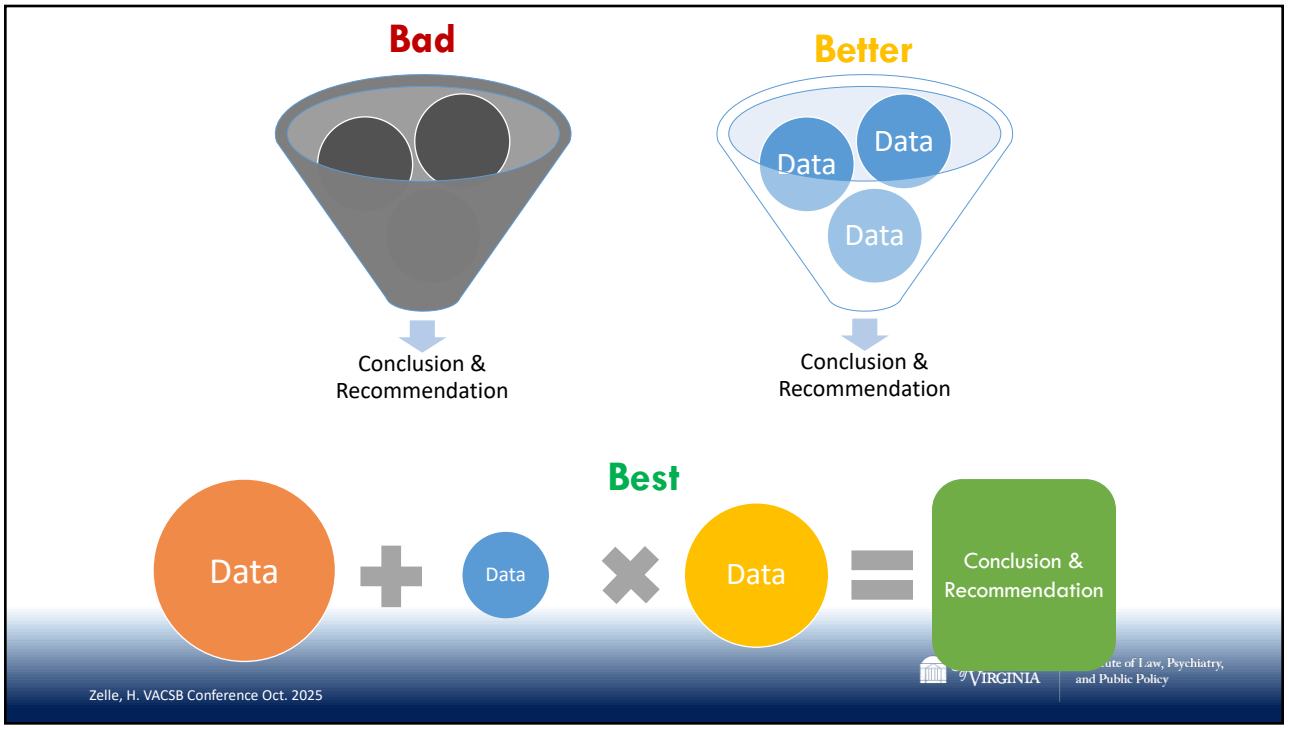

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Foundations & Principles

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Importance of Ethical Practice and Policy

- Because Ethics.
  - Ways of understanding and examining moral life
  - Norms about right and wrong human conduct that are widely shared and therefore form stable social compact
    - Standards of conduct like moral principles, rules, ideals, and rights
- A little more concretely:
  - Civil rights of clients
  - Standards of practice
  - Risk management
  - A major defense against complaints

Importance of Ethical Practice and Policy

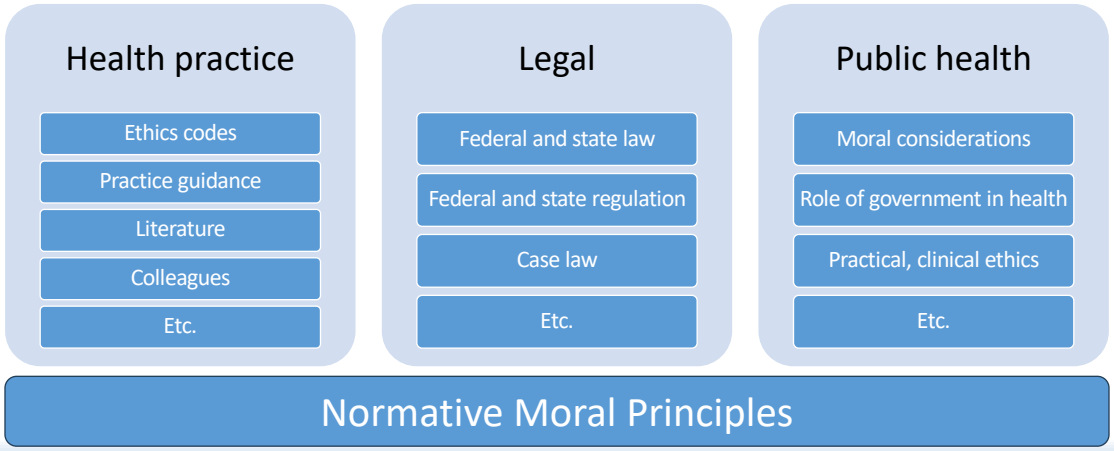
Health care services

- Professions have professional morality with standards of conduct that are acknowledged and encouraged by those in the profession → *Standards of practice*
- "Reasonableness" standard
  - E.g., "The prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time."

Health care policy

- Ethical values underlie all policy
  - When making a policy choice, are presupposing a prioritization of values
  - When there is disagreement, likely has roots in differing prioritization of values
- Ethics can enrich and improve policy--e.g., encouraging fair, transparent deliberative policy process
  - PwMI are historically disadvantaged, disenfranchised citizens

Ways to Frame (and Sources of) Ethical Guidance in Mental Health Practice



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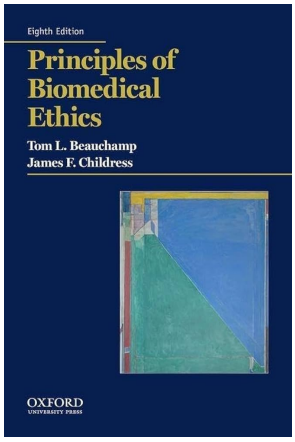
Core Biomedical Ethical Principles

- Respect for autonomy
  - Moral decision-making assumes rational agents making informed, voluntary decisions
- Non-maleficence
  - Do not intentionally cause harm, through commission or omission; standard of care that avoids or minimizes harm
- Beneficence
  - Duty to be of benefit, and to take steps to prevent and remove harm
- Justice
  - Fairness, fair distribution of goods, distributive justice



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Ethics Principles in Professional Codes

APA

- Beneficence and Nonmaleficence
- Fidelity and Responsibility
- Integrity
- Justice
- Respect for Rights and Dignity

ACA

- Autonomy
- Nonmaleficence
- Beneficence
- Justice
- Fidelity
- Veracity

NASW

- Service
- Social justice
- Dignity and worth of the person
- Importance of human relationships
- Integrity
- Competence

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Professional Ethics Codes

- Embody fundamental principles, though different groups may use different verbiage or applied definitions
- ACA and American Psychological Association Codes both note fundamental principles in their preamble material then go on to set out concrete standards
  - Principles are aspirational and guide professionals
  - Standards set forth enforceable rules
- Professions may also set out guidelines, which would not be enforceable like standards but which certainly inform standards of practice

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Ethical Principles, Practice Standards

- Ethics codes typically define *principles*
- Then operationalize further into *practice standards*

ETHICAL PRINCIPLES OF PSYCHOLOGISTS AND CODE OF CONDUCT

CONTENTS

Mission

The mission of the American Counseling Association is to enhance the quality of life in society by promoting the development of professional counselors, advancing the counseling profession, and using the profession and practice of counseling to promote respect for human dignity and diversity.

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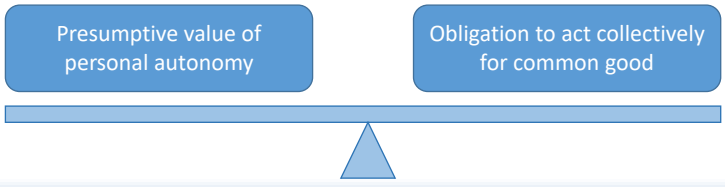
Ethics with a Community/Population Focus

- Less about right vs. wrong, more about assessing the collective ethical valuation
  - Which ethical values are involved, how they are prioritized by stakeholders, whether there is consensus
- Public health ethics
  - Can overlap with individual-focused clinical ethics
  - Key principles of beneficence, nonmaleficence, respect for persons, and justice just as foundational
    - But expanding scope of thinking to address public health interventions
  - Frameworks reflect counterbalance between:



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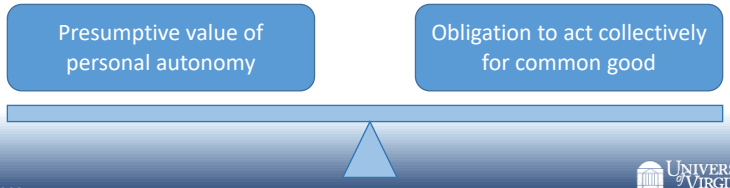
Autonomy and Involuntary Civil Commitment

"Indeed, the degree of lack of behavioral control necessary to justify involuntary commitment is fundamentally a moral, social, and legal question—not a scientific one. Social and behavioral scientists can only provide information about the pressures affecting an actor's freedom of choice. The law must determine for itself when the actor is no longer to be treated as autonomous."

Stephen Morse (1982; quoted in Slobogin et al., 2020, p. 829)



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3-Step Framework

- Geared toward helping policymakers consider a policy in its context
- The framework is not designed to find what the 'right' option is
- Rather it helps determine what option(s) is most justifiable
  - Rarely can all ethical values, stakeholder norms and claims, be accommodated or equally prioritized
- Steps
  1. Assess the Issue
  2. Moral Considerations in Public Health (highlighting just this one today on the next slide)
  3. Justificatory Conditions

Bernheim, R.G., P. Nieburg, and R.J. Bonnie. 2007. Ethics and the practice of public health. In Law in public health practice , 2nd ed, ed. R.A. Goodman, 110–135.
Childress, J.R., R.R. Faden, R.D. Gaare, et al. 2002. Public health ethics: Mapping the terrain. Journal of Law, Medicine & Ethics 30(2): 170–178.
Ortmann, et al. (2016). Chapter 1 in D.H. Barrett et al. (eds.), Public Health Ethics: Cases Spanning the Globe, Public Health Ethics Analysis 3

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2. Moral Considerations in Public Health

- Producing benefits
- Avoiding, preventing, and removing harms
- Producing maximal balance of benefits over harms and other costs (often called utility)
- Distributing benefits and burdens fairly (distributive justice) and ensuring public participation including the participation of affected parties (procedural justice)
- Respecting autonomous choices and actions, including liberty of action
- Protecting privacy and confidentiality
- Keeping promises and commitments
- Disclosing information as well as speaking honestly and truthfully (often grouped under transparency)
- Building and maintaining trust

Childress, Faden, et al. (2002) *J. Law, Medicine & Ethics*, 30:169-177.

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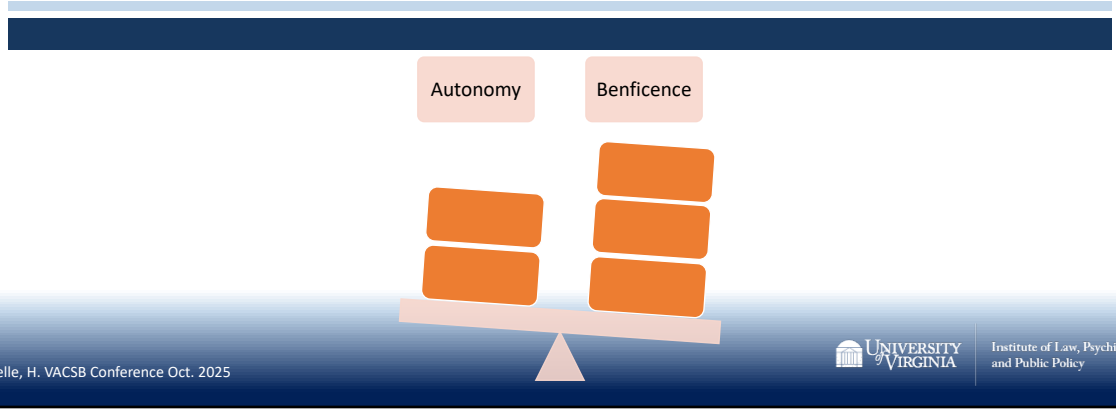
Autonomy, Informed Consent, & Capacity to Make Treatment Decisions



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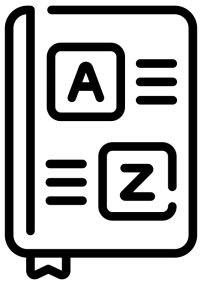
A quick note about terminology



- "Capacity" and "competence" are often used interchangeably
- There is no universally agreed upon distinction between them
- We will use the term "capacity" today

Differentiating Terminology

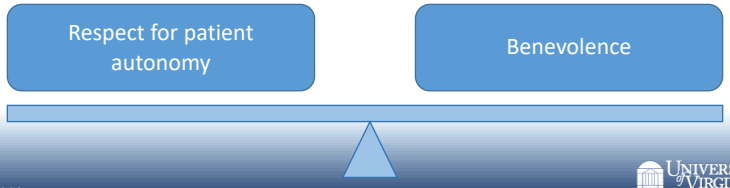
Capacity = the ability to make an informed decision about providing, continuing or withholding healthcare treatment

Informed decision = a decision by someone who is able to understand the nature, extent and likely consequences of the proposed healthcare decision and who makes a rational evaluation of the risks and benefits of alternatives to that decision

Consent = the voluntary agreement of a person (or the person's agent or authorized representative) to specific treatment or services

Autonomy and Informed Consent

- Cornerstone of research ethics since 1940s = Balancing risks and benefits to research subjects
  - *Nuremberg Code* (1947)
  - *Declaration of Helsinki* (World Medical Association, 1964, 1975)
  - *Belmont Report* (U.S. National Commission for Protection of Human Subjects…, 1978)
  - *Common Rule* (U.S. Dept. Health and Human Services, 1991, 2018)
- Influenced development of bioethics, which in turn influenced clinical ethics since 1970s
  - Previously, paternalistic and focused on providing information and care based on physician's judgment
  - But respect for autonomy emphasizes right to receive information and make own decisions



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Courts Tackle Informed Consent in Clinical Settings

"What is the extent of a physician's duty to confide in his patient where the physician suggests or recommends a particular method of treatment?

What duty is there upon him to explain the nature and probable consequences of that treatment to the patient?

To what extent should he disclose the existence and nature of the risks inherent in the treatment?"

Natanson v. Kline, 1960 (p. 403)

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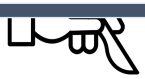
Clinical Informed Consent Case Law

Natanson v. Kline (Kan. Sup. Ct, 1960)

- Administered high doses of radiation to cancer patient without disclosing risks



Canterbury v. Spence (D.C. Ct of Appeals, 1972)

- Surgery without disclosing risk of paralysis

Zinermon v. Burch (Sup. Ct, 1990)

- Man admitted 'voluntarily' to psychiatric hospital despite significant symptoms

Zinermon v. Burch 494 U.S. 113 (1990)

Facts

- Darrell Burch was admitted "voluntarily" to a state hospital in Florida
- At the time he signed the voluntary admission forms, though, he was heavily medicated, disoriented, and suffering symptoms of psychosis
- Mr. Burch filed suit, arguing that the hospital had deprived him of his liberty by admitting him "voluntarily" when he was in fact unable to give informed consent

The Supreme Court of the United States found in favor of Mr. Burch*

- The Court suggested that voluntary commitment of an incompetent person is unconstitutional
- A state must comply with state procedures for admitting involuntary patients, or determine whether a patient is competent to consent to voluntary admission.
- Therefore, some assessment of capacity should be made prior to commitment to determine whether voluntary option is possible

"[E]ach [person] is considered to be master of [their] of own body…"

Natanson v. Kline (p. 406)

"The root premise is the concept, fundamental in American jurisprudence, that "[e]very human being of adult years and sound mind has a right to determine what shall be done with his own body. . . ."

Canterbury v. Spence (p. 780)

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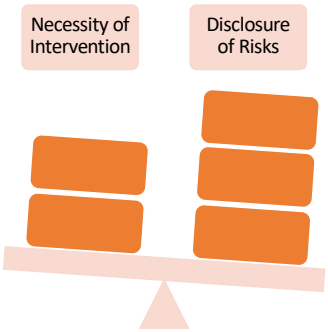
Informed Consent and Balancing Considerations

- Nature of the procedure/intervention
- Risks and benefits
- Reasonable alternatives



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Decisional Capacity and Ethics

- Each person has the right to participate meaningfully in decisions regarding all aspects of treatment or services affecting the person
- Including a person in decision making demonstrates respect for a person's rights and dignity
- The law presumes that every adult has capacity to make an informed decision unless the person is determined to be incapable of this in accordance with law
- Several sources of legal rules establish the need to assess capacity to consent to treatment
- Capacity is fluid – it changes over time and can vary for different decisions

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Fundamental Features of Capacity

Capacity is functional and contextual

→ Functional: It is defined by what abilities are needed

→ Contextual: It is defined by demands of a particular decision

Capacity is fluid

→ It can change over time

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Capacity Defined

- The ability to make an informed decision about healthcare
- "Incapable of making informed decisions" =
  - The person is "unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision."

(Va. Code § 54.1-2982)

Va Code § 54.1-2983.2(A)

"Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision in accordance with this article.

A determination that a patient is incapable of making an informed decision may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions.

No person shall be deemed incapable of making an informed decision based solely on a particular clinical diagnosis."

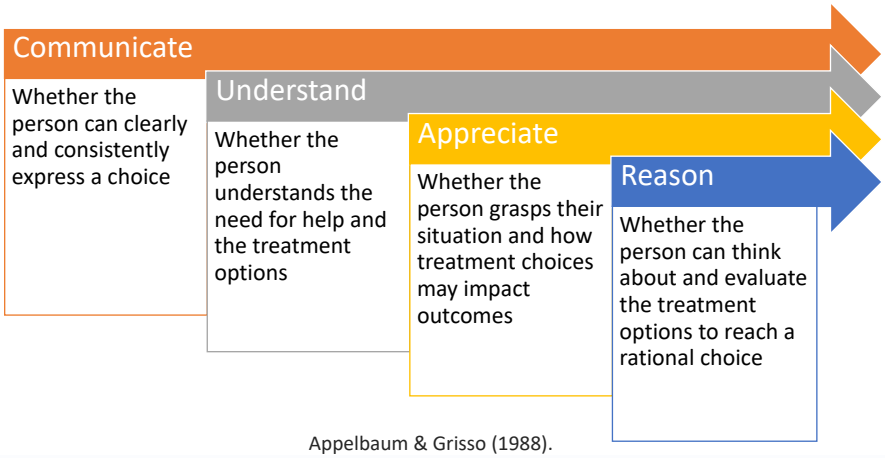
Assessing Capacity Resources

Appelbaum, P.S. (2007). Assessment of patients' competence to consent to treatment. *New England Journal of Medicine, 357*, 1834-1840.

Grisso, T., & Appelbaum, P. S. (1998). Assessing competence to consent to treatment: A guide for physicians and other health professionals. New York: Oxford University Press.

Appelbaum, P.S. & Grisso, T. (1988). Assessing patients' capacities to consent to treatment. *New England Journal of Medicine, 319*, 1635-8.

Capacity in a Nutshell



Appelbaum & Grisso (1988).

Criterion	Patient's Task
Communicate a choice	Clearly state preferred treatment option
Understand relevant information	Grasp fundamental meaning of information from a clinician
Appreciate the situation and its consequences	Acknowledge the medical condition and likely consequences of treatment options
Reason about treatment options	Engage in reality-based decision-making based on relevant information

Appelbaum (2007)

Criterion	Clinical Approach
Communicate a choice	Ask the individual to express a choice about treatment
Understand relevant information	Ask the individual to paraphrase information about condition and treatment options
Appreciate the situation and its consequences	Ask the individual to describe their views of the condition, proposed treatment, likely outcomes
Reason about treatment options	Ask the individual to compare treatment options and consequences; offer specific reasons for the option they have selected

Appelbaum (2007)

Sliding Scale

- Seriousness of likely consequences of the individual's decision will often be a factor in capacity determinations

Capacity is functional and contextual

→ Functional: It is defined by what abilities are needed

→ Contextual: It is defined by demands of a particular decision

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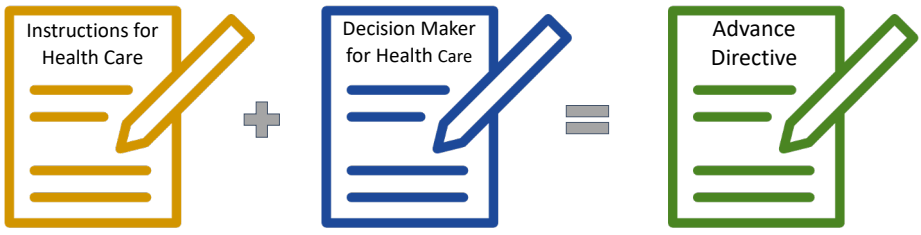
Honoring Decisions when Capacity is Absent



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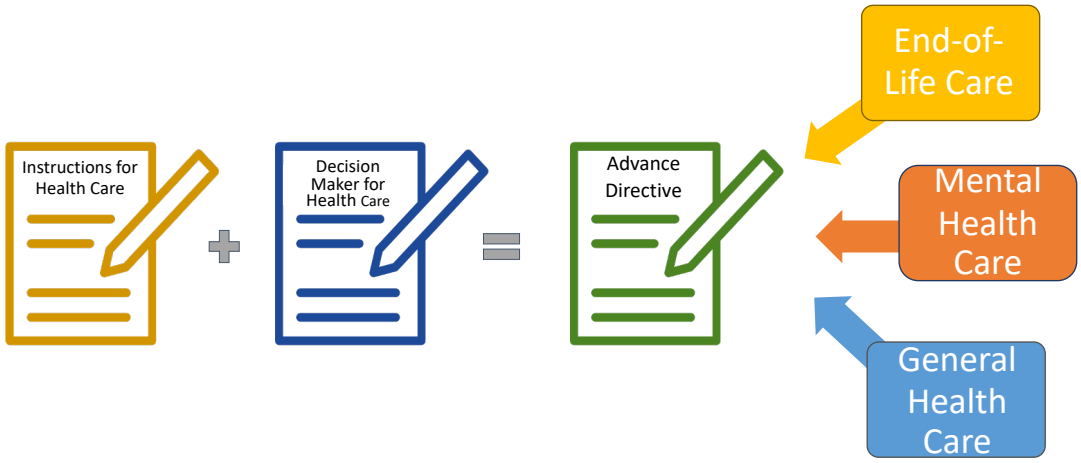
Advance Directives in Virginia



Advance Directives

- Mental health elements can include:
  - Authority of an agent to consent to admission to inpatient mental health care
  - Authority of an agent to consent to admission to inpatient mental health care even over objection
  - Authority of an agent to consent to medications
  - Alternative transportation information
  - Interventions and medications that are most effective in crisis
  - Contact information, indication of preference about notifying others about condition and location
  - Etc.

In Closing

Self-Care as an Ethical Practice

- ACA Code of Ethics Section C. Professional Responsibility
- See also, e.g.,
  - APA Code 2.06 Personal Problems and Conflicts
  - NASW Code 4.05 Impairment

Section C

Professional Responsibility

Introduction

Counselors aspire to open, honest

publico). In addition, counselors engage in self-care activities to maintain and promote their own emotional, physical, mental, and spiritual well-being to best meet their professional responsibilities.

Thank you!

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