

## The Ethical Practice

### Case #2

(Submitted by Rick Greco, DO, member of the Ethics Committee)

Mr. Jones is a 72 year old diabetic male with end stage renal disease who has been on dialysis for three years. He has been a resident at an extended care facility (ECF) for two years. Admission to the ECF was prompted by confusion and behavior that proved to be too difficult for the family to manage at home. His dementia is thought to be secondary to multiple small infarcts. Mr. Jones was admitted to the hospital for management of a pneumonia which has since cleared. Before returning to the EFC, he was found to be in Complete Heart Block. His heart rate dropped frequently to the 30s and occasionally to the high 20s. His nephrologist and cardiologist recommended a cardiac pacer.

The family refused the pacer prior to his strokes, basing their decision on previous discussions with the patient. They feel he would not want a pacemaker or to go through any other surgical procedure. The family includes a well-educated daughter, who is his chosen medical power of attorney (MPOA) and his wife, from whom he is divorced, but has retained a good relationship. The physicians disagree with the MPOA's decision and ask for an ethics consult. They are concerned that the MPOA is not representing the patient's best interest. Their argument is that although the patient is confused on most days and has poor short term memory, he appears to enjoy life and has a positive attitude. They believe he is agreeable to the procedure though he does not fully understand it.

### Ethical Consultation

The ethics committee went to great lengths to establish that the patient did not have decision making ability. The MPOA documentation was appropriate and the family seemed educated, reliable and devoted to the patient and did not appear to have any mal intent. The conflict the physicians and the family faced centered around the point of reference for the decision-making. The MPOA chose to use discussions with the patient when he was fully cognitive and able to rationally discuss issues. This was at the same time that he made the decision to start dialysis. The physicians are basing their reasoning on his current attitude and presumed values.

### Outcome

Though this sophisticated family had videotaped the patient multiple times during the hospital stay, including several times when he was asked about the procedure, they felt confident that he was not able to make an informed decision. To avoid conflict, the family yielded to the wishes of the doctors. They indicated that if the doctors felt that Mr. Jones was capable of making an informed decision, they should go with it; however, they would not sign a consent form. Mr. Jones was sent to surgery only to have the procedure cancelled by the anesthesiologist, who could not obtain consent from the patient. Eventually the MPOA's decision held and the patient went back to the nursing home without a pacer.

### Ethical Analysis

This type of case is unfortunate, but not so uncommon in clinical practice. The first challenge is to establish whether Mr. Jones has decisional capacity. As in this case, this is not always a simple task. If Mr. Jones has decisional capacity, the ethical analysis of this case is quite simple. The physician would act according to the principle of autonomy and, therefore, preserve Mr. Jones' right to self-determination. While the physicians indicate that Mr. Jones is agreeable to the procedure, they also note that he does not fully understand it. Decision-making capacity implies that someone has informed consent. This includes an understanding of the procedure, along with its potential benefits and risks, as well as the patient's ability to articulate his/her preference. In

this case, Mr. Jones lacked decisional capacity because of his inability to meet the criteria of informed consent.

Mr. Jones previously had embarked on advanced care planning. He identified his daughter as his decision-maker when he no longer could make decisions. The daughter as the MPOA should be asked to make decisions for Mr. Jones according to the principle of substitute judgement, that is, making a decision based on her knowledge of what Mr. Jones would have wanted. In this case, she clearly knew his wishes. If she did not know his wishes, her decision would be based on the principle of best interest, that is, a judgement as to what is best for the patient. In this case, the anesthesiologist acted appropriately. The family supported the patient's autonomy. Physicians and other health care professionals need to strive to preserve autonomy as much as possible and avoid paternalism. They also need to avoid coercion as suggested in this case history.