

# Decision-Making Capacity & Informed Consent



**INFORMATION**

# Capacity to Give Informed Consent



- Don't confuse Capacity & Competence
- Patients have the right to make intentional health care decisions without external, controlling influences.
- If patients do not have capacity, the attending physician can obtain consent from the designated surrogate decision-maker
- Attending physicians are in the best position to determine Capacity for decision-making
- Adults are assumed to be competent

# Capacity & Competence: How are different?



## Capacity

- Clinical assessment by **practitioner**
- **Specific** medical decision at a specific point in time
- **Purpose:** Individual medical treatments, tests, AMA discharge, disposition after discharge



## Competence



- Legal decision made by a **judge**
- Can be broad, global & span a significant period of time
- **Purpose:** Ability to enter into a contract, prepare a will, stand trial, various medical decisions
- **Probate or LPS conservatorship**

# Current Process



- Patient needs to make a non-emergent health care decision(s):
  - Procedure
  - Tests
  - Discharge plan or general care
  - Leaving AMA
- Medical decision-making capacity in question
- Psychiatry referral is requested to determine capacity
- PFS or PAT team coordinates referral
- Often leads to delays in treatment &/or discharge

# CURVES: An easier way for Attending Physicians to evaluate medical decision-making Capacity



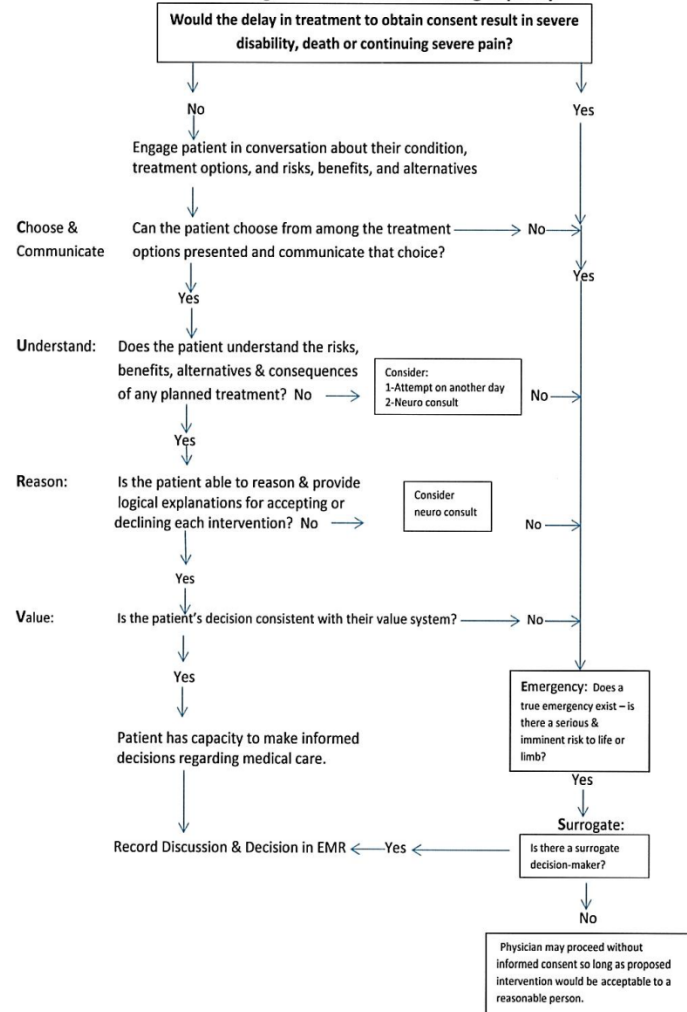
It begins with a conversation & an algorithm...

- **Choose & Communicate:** Can the patient choose from among the treatment options & communicate that choice?
- **Understand:** Does the patient understand the risks, benefits, alternatives, & consequences of any planned treatment?
- **Reason:** Can the patient reason & provide logical explanations for accepting or declining each intervention?
- **Value:** Is the patient's decision consistent with their value system?
- **Emergency:** Does an emergent, serious & imminent risk to life or limb exist?
- **Surrogate:** Is there a surrogate decision-maker?

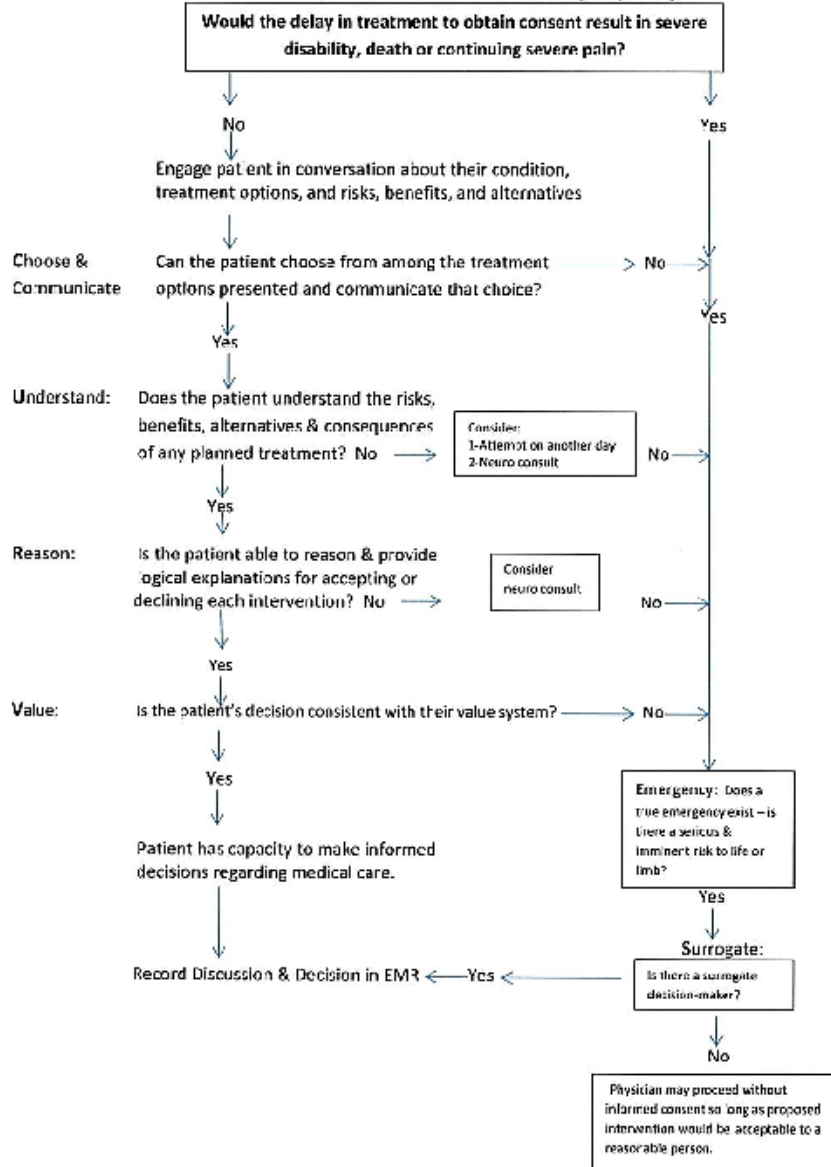
# CURVES Algorithm

- Developed by Dr. G. Chow, Johns Hopkins School of Medicine
- Endorsed by our Medical Executive Committee
- Reviewed and approved by Kaweah Delta Health Care District and Medical Staff legal teams
- Endorsed by Kaweah Delta Health Care District Bioethics Committee

## ADDENDUM A: Determining Medical Decision-Making Capacity



**ADDENDUM A: Determining Medical Decision-Making Capacity**



# New & Improved Process



- Patient needs to make a non-emergent health care decision(s):
  - Procedure
  - Tests
  - Discharge plan or general care
- Medical decision-making capacity is in question
- Attending physician utilizes CURVES mnemonic to determine medical decision-making capacity
- May request mentoring by a “Psych Buddy” by consulting the Liaison schedule/contact information in AMiON
- Attending physician documents evaluation utilizing CURVES template in the patient’s medical record



# Additional Notes



- Any physician can determine capacity, not only psychiatrists. In fact, many times the psychiatry team may request that the primary team to be present during the capacity evaluation, as psychiatrists may not be the experts on the risks/benefits/alternatives of certain medical managements or surgical interventions.
- Having a psychiatric diagnosis, whether stable or acutely decompensated, does not preclude a patient from having capacity for any decision. For example, a patient who believes aliens have abducted him may still be able to decide if he wants to take a certain medication or not. It would need to be determined if the patient's psychiatric condition is interfering with their decision making capacity in that particular instance.
- Capacity needs to be assessed for each individual decision (ex: just because they lack capacity to refuse a lab draw doesn't mean they lack capacity to refuse a certain medication). It is fluid and may even change day to day if conditions change.

# Need Help?



***Utilize the CURVES model. It guides a conversation with a patient that can help you assess the capacity of the patient. If needed you can request a psychiatrist to guide you through this. Ask your nurse to call PAT to help identify a psychiatrist that can be made available for you.***

# Physician Documentation



- Once the physician signs their note, the documentation will be in the documentation section which can be filtered to narrow your search. You can choose “All Physician Notes” which will decrease the number of results.

The screenshot shows a medical software interface. On the left is a sidebar with various menu items. The 'Documentation' item is highlighted with a red box. The main area displays a table of medical services. A dropdown menu is open over the 'Display' column, with 'All Physician Notes' selected and highlighted by a mouse cursor. The table contains the following data:

Service	Time	Type
7/8/2019 14:44:00 PDT	Hemoglobin POC	Progress Note Generic
7/8/2019 14:44:00 PDT		Progress Note Generic
7/2/2019 14:41:00 PDT	T1Face	Hemoglobin POC - Text
7/2/2019 14:41:00 PDT		Facesheet
6/26/2019 11:42:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:42:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:37:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:37:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:21:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:21:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:07:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/26/2019 11:07:00 PDT	CARD ICD/Pacemaker Screening Tool	CARD ICD/Pacemaker Screening T
6/19/2019 14:16:51 PDT	Admission H&P Note	History and Physical
6/19/2019 14:16:49 PDT	MED History and Physical	History and Physical
6/19/2019 14:15:13 PDT	Daily Progress Note	History and Physical
6/19/2019 14:14:50 PDT	Admission H&P Note	History and Physical
6/19/2019 14:11:38 PDT	Admission H&P Note	History and Physical

# References



- Chow, GV, Czarny, MT, Hughes, MT, & Carrese, JA. CURVES: A mnemonic for determining medical decision-making capacity and providing emergency treatment in the acute care setting. *CHEST*. 2010 February;137(2):421-427.
- Curtis, JR. Life and death decisions in the middle of the night: Teaching the assessment of decision-making capacity. *CHEST*. 2010 February;137(2):248-249.
- Spike, JP. Informed consent is the essence of capacity assessment. *The Journal of Law, Medicine and Ethics*. 2017;45:95-105.

# End of Module



Thank you for completing the  
eLearning Module.