

COLLEGE OF MEDICINE  
FLORIDA STATE UNIVERSITY




## Long-Term Care: Resident-Centered vs. Resident-Directed

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### Ethical Principles Underlying Regulation (Yes, You *can* legislate morality.)



- Beneficence (Doing good)
- Nonmaleficence (Preventing harm)
- vs.
- Autonomy/Self-determination



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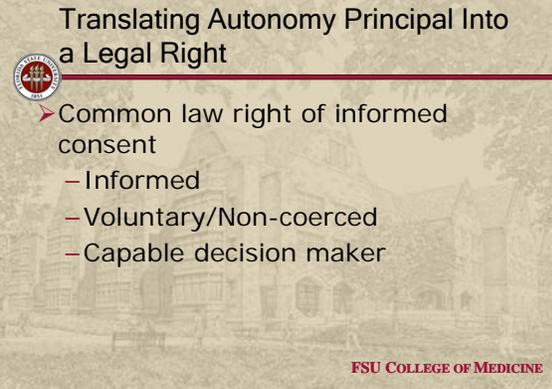
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### Translating Autonomy Principal Into a Legal Right



- Common law right of informed consent
  - Informed
  - Voluntary/Non-coerced
  - Capable decision maker



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➤ Specific statutes and regulations

- Federal COPs for NFs, 42 CFR § 1396r (C)(1) (A)
- Wisc. Stat. § 448.30 (medical informed consent)
- Wisc. Stat. § 50.08 (consent for psychotropic medications)
- Wisc. Stat. § 49.498(3) (NF resident's right to participate in planning care and treatment)
- Wisc. Stat. § 50.9 (resident of NF or community-based residential facility control over \$\$ matters)
- Wisc. DHS § 83.32(3)(j) + (k) (assisted living self-determination)

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Problem of Impaired Decisional Capacity

- Capacity v. Competence
- Decision-specific
- Minimal vs. perfect capacity
- May wax and wane
- May be impacted by external factors that can be controlled

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➤ Determined on a functional basis, *not* on an outcome or categorical basis

- The role of standardized capacity tests

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- Ability to make and express a choice
- Ability to give reasons
- Are the reasons rationally related to the facts
- Ability to appreciate the personal consequences of the choice

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### Surrogate Decision Making



- Guardianship, Wisc. Stat. § 54.25
- Durable (springing) power of attorney naming health care agent, Wisc. Stat. § 155.20
  - Substituted judgment
  - Best interests
- Living Will, Wisc. Stat. Chap. 154

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### Case Discussions



- Getting past the "Every case is different" syndrome

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## Case 1



- Mr. V, 86-year-old man
- Advanced dementia
- Sectarian nursing home
- At a certain point, stopped eating and put on NG tube
- Bedridden, incontinent, lies in nearly fetal position, in apparent distress, pulling at feeding tubes

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- Wrist restraints
- Several comorbidities

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- Only relative is cousin, who wants feeding tube discontinued.
- Years earlier, Mr. V said, "If I ever become senile like my neighbor, please shoot me."
- NH refuses, citing religious beliefs
- Physician refuses to "starve" Mr. V to death

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## Case 2



- Same as Case 2, except Mr. V is a 26-year-old man with severe traumatic brain injury suffered in a motorcycle accident?

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## Case 3



Ms. A., 75-year-old woman  
When admitted to the NH, oldest daughter already was her plenary legal guardian, having been appointed several months earlier when Ms. A suffered a stroke that left her with garbled speech and mild aphasia. Ms. A did *not* object to her daughter's appointment as guardian.

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- Social worker in NH is concerned. Social worker always has to plead with the daughter to spend any \$\$ to meet Ms. A's basic needs. Ms. A was left a very comfortable estate by her late husband and the social worker observes the daughter driving a new, expensive car, always dressed in the latest fashions, and sporting a home address in a ritzy neighborhood.

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## Case 4



➤ Jimmy is an assisted living resident who wanders from the facility. He walks several miles and forgets to return home. He might sustain injury if he continues to leave the facility unattended, as he forgets to return home and is unsteady on his feet. ALF suggests that: Jimmy wear an ID bracelet; only leave the premises when escorted by a family member or facility volunteer; and/or alert the staff when he is leaving the facility.

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➤ Jimmy agrees to wear an ID bracelet, but insists on being able to leave the premises unattended and does not want to inform staff each time he departs the premises. His family understands and supports his desire to come and go as he pleases.

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## Case 5



➤ Shirley is an insulin-dependent diabetic residing in an ALF. She has orders from her physician to adhere to an American Diabetes Association diet. However, she loves sweets and frequently sneaks regular desserts from her tablemates at meals. She says she does not like diabetic desserts. The physician has informed her, and she has signed a document indicating her understanding, that eating regular desserts could elevate her blood sugar to a level that could place her at an extreme health risk.

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## Reference



- Marshall B. Kapp, *Nursing Home Culture Change: Legal Apprehensions and Opportunities*, GERONTOLOGIST (2013), doi: 10.1093/geront/gns131.

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