



# Tipping the Scales: Identifying a Surrogate Decision-Maker for an Incarcerated Patient



Deirdre O’Sullivan, M.D.,<sup>1</sup> Roxanne Fries, M.D.,<sup>2</sup> Stephanie Cho, M.D.,<sup>3</sup> and Bo Fu, M.D.<sup>3</sup>

1. University of California Los Angeles, 2. Los Angeles County + University of Southern California Medical Center, 3. Keck School of Medicine of the University of Southern California

## Background

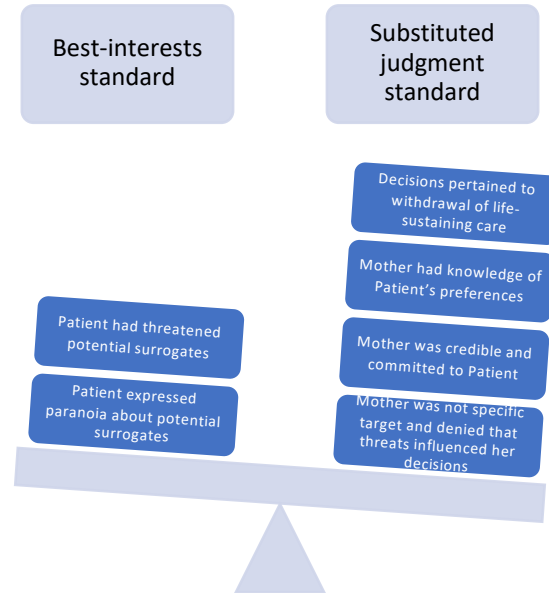
- Broad recommendations exist to help guide treatment when patients lack decisional capacity
- However, these guidelines may be challenging to apply in special populations
- Choosing an appropriate surrogate decision-maker for incarcerated patients is notoriously complex<sup>1</sup>

## Case

- 41-year-old incarcerated man with schizophrenia and depression was admitted after a suicide attempt resulting in severe injuries
- While hospitalized, he requested withdrawal of care
- On evaluation, he failed to demonstrate decisional capacity
- Patient was paranoid that his parents, brother, and hospital staff could not be trusted
- He had been arrested for attacking his father and strangers
- Patient could not identify other potential surrogates
- Psychiatry was asked to assist in identifying the most appropriate surrogate decision-maker

## Discussion

- Without an advance directive, substituted judgment using a familiar surrogate is preferred over a best-interests standard
- Surrogates using the substituted judgment standard should have the ability to make reasoned judgments, adequate knowledge and information, emotional stability, and a commitment to the incompetent patient’s interests without conflicts<sup>2</sup>
- If substituted judgment is unavailable, the best-interests standard directs a decision-maker to choose the option with the highest probable net benefit for the patient<sup>2</sup>



## Case Application

- Patient’s threats towards family raised concern for conflicts of interest with all potential familiar surrogates
- However, substituted judgment would better honor the patient’s autonomy, which was especially important because decisions involved withdrawal of life-sustaining care
- Substituted judgment by family was ultimately deemed preferable to a best-interests standard implemented by the hospital ethics committee
- Mother was identified as the most suitable surrogate after consideration of all family members and possible conflicts of interest
- Life-sustaining treatment was briefly continued
- As the patient’s condition declined, his mother consented to comfort care based on what she believed was aligned with his wishes

## Conclusion

- Interpersonal dynamics, legal status, and illness severity complicate identification of appropriate surrogate decision-makers
- Weighing the relative importance of different ethical principles can guide evaluation of surrogate options

## References

1. Tobey M, Simon L (2019). Who should make decisions for unrepresented patients who are incarcerated? *AMA J Ethics*, 21:E617-624.
2. Beauchamp TL, Childress JF (1994). *Principles of biomedical ethics*. New York: Oxford University Press.