

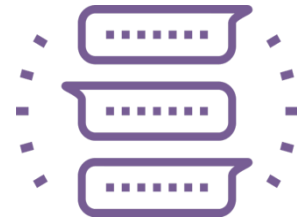
# Key Ethical Implications of Substitute Decision- Making & Guardianship



# Webinar Essentials



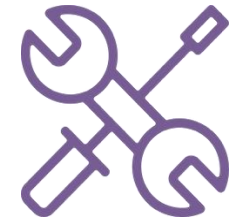
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# Today's Presenters



**Lorna Lee-Riley, MSSW, LCSW, CCM**

*Director of Education and Industry Relations*  
**The Commission**

Ms. Riley is a seasoned social work leader with more than three decades of experience in healthcare, specializing in case management, hospice and end-of-life care, and interdisciplinary care coordination



**Robert Franklin, PhD, CCM**

*Certified Employee Assistance Professional & Clinical Supervisor*  
**Department of War**

Dr. Franklin specializes in operational stress, life transitions, couples therapy, case management, clinical supervision, and minority challenges.

# Ethical Decision-Making When Informed Consent Cannot Be Obtained:

Substitute & Supported Decision-Making and  
Guardianship

# Welcome & Introductions

Welcome and  
facilitator  
introductions

Interdisciplinary  
audience  
acknowledgment

Shared ethical  
responsibility in  
complex care  
decisions

# Purpose of the Training



Patients may lack capacity to provide informed consent



Clinicians must navigate ethical, legal, and clinical challenges



Focus on patient-centered, rights-respecting practice



Emphasis on minimizing risk and protecting autonomy

# Learning Outcomes

By the end of this webinar,  
participants will be able to:

- Define key concepts related to capacity, consent, and guardianship
- Distinguish among surrogate decision-makers and guardians
- Apply ethical principles and frameworks to real-world scenarios involving vulnerable adults and dependents

# What Is Decision- Making Capacity?

A clinical determination, not a global label

Task-specific and time-specific

May fluctuate based on condition or context

# Core Elements of Capacity

Understanding  
relevant  
information

Appreciation of  
how information  
applies personally

Reasoning  
through options

Communicating  
a consistent  
choice

# Capacity vs. Competency

**Capacity:** Clinical assessment by providers

**Competency:** Legal determination by a court

A person may have capacity for some decisions but not others

# Common Causes of Impaired Capacity

TBI, PTSD, moral  
injury

Severe  
depression,  
substance use  
disorders

Dementia, stroke,  
delirium

Intellectual  
disabilities

Acute medical  
crises or  
medication  
effects

# Elements of Informed Consent

Disclosure of risks, benefits, and alternatives

Voluntariness (free from coercion)

Understanding

Decision-making capacity

Appropriate documentation

# Ethical Principles in Consent

**Autonomy** – Respect for self-determination

**Beneficence** – Acting in the patient's best interest

**Nonmaleficence** – Do no harm

**Justice** – Fair and equitable treatment

**Fidelity** – Trust, honesty, and professional responsibility

# When Consent Cannot Be Obtained

Emergency exceptions to consent

Activation of surrogate decision-making

Follow legal hierarchies and ethical standards

# Informal Surrogate Decision-Makers



Spouses



Adult children



Parents or next-of-kin



Military context: Command involvement limited to fitness-for-duty

# Formal Surrogate Decision- Makers

Medical Power of Attorney

Durable Power of Attorney

Advance directives

Court-appointed guardians

# Decision-Making Standards

- **Substituted Judgment:** Based on known patient wishes
- **Best Interest:** Used when wishes are unknown
- **Least Restrictive Alternative:** Preserve autonomy whenever possible



# What Is Guardianship?

Legal removal or limitation of decision-making rights

Significant ethical and civil rights implications

# Types of Guardianship

Full guardianship

Limited guardianship

Temporary or emergency  
guardianship

# Ethical Challenges of Guardianship

Loss of autonomy and rights

Risk of abuse or neglect

Overuse when alternatives exist

Cultural and family conflict, including military dynamics

# Alternatives to Guardianship

Supported  
decision-making  
agreements

Case  
management and  
interdisciplinary  
supports

Limited  
conservatorships

Representative  
payees

Advance planning  
and POA

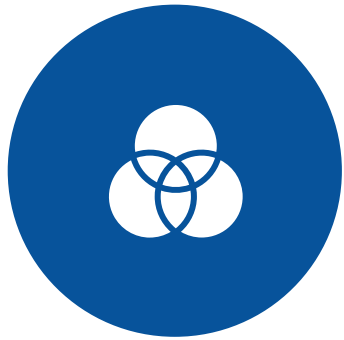
# Ethical Decision-Making Framework



A step-by-step clinician approach:

- 1 Identify the ethical question
- 2 Clarify capacity and limitations
- 3 Identify stakeholders
- 4 Review laws and policies

# Ethical Decision-Making Framework (Continued)



Explore least-restrictive alternatives



Apply ethical principles



Make and document the decision



Communicate transparently

# Practical Tools & Documentation

- Capacity assessment templates
- Clear documentation language
- Red flags for guardianship abuse
- Texas and federal resource referrals



# Key Takeaways

Capacity is nuanced and contextual

Guardianship is a last resort

Ethical frameworks support defensible decisions

Patient rights and dignity must remain central

# Questions & Discussion



## References

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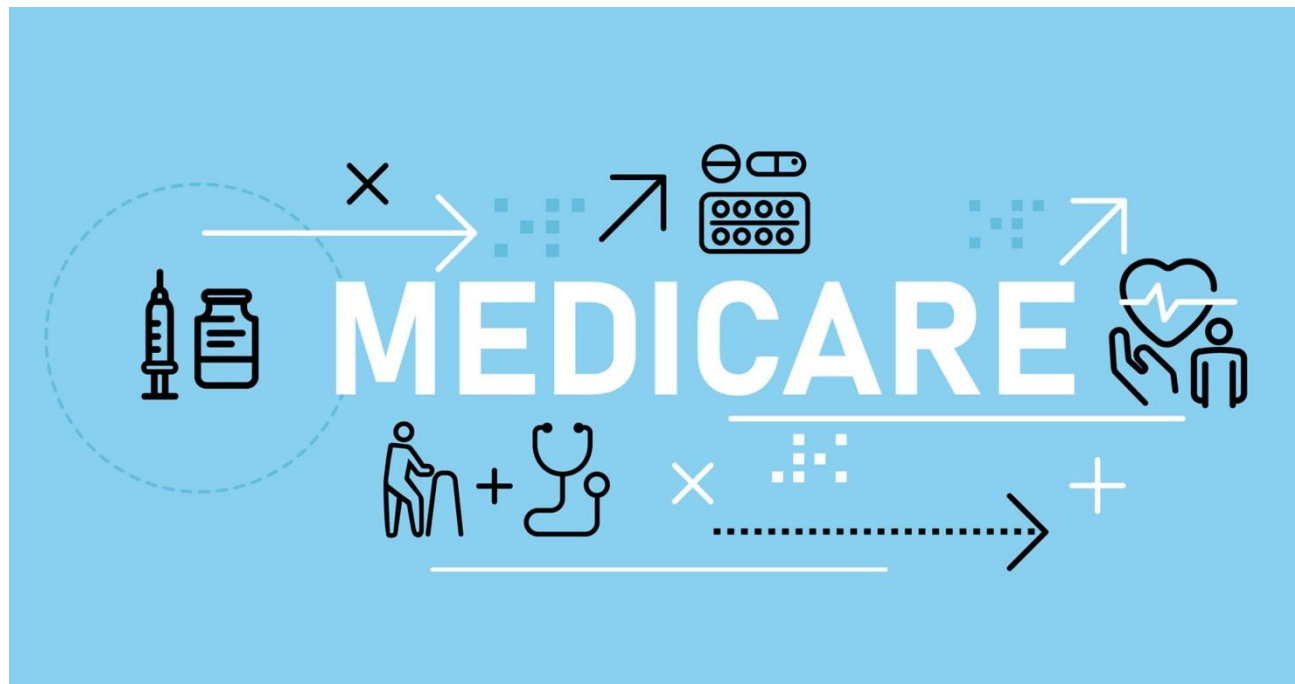
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**April 29, 2026**

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