

# Ethical Issues in Emergency Psychiatry



Nathan Gold Allen, MD<sup>a,\*</sup>, Jeffrey Steven Khan, MD<sup>b</sup>,  
Mohammad Shami Alzahri, MD, MSc<sup>c,d</sup>, Andrea Gail Stolar, MD<sup>b</sup>

## KEYWORDS

- Ethics • Decision-making capacity • Confidentiality • Involuntary treatment
- Emergency psychiatry

## KEY POINTS

- The capacity of patients with psychiatric illness should be assessed by determining their ability to communicate a choice, understand the relevant information, appreciate the risks and benefits as they apply to them, and rationally manipulate information.
- The need to deliver effective treatment, maintain patient and staff safety, and comply with the law should be balanced against a strong ethical imperative to maintain the confidentiality of psychiatric patients.
- When using involuntary treatment use the least restrictive means possible to achieve the goal of restoring the patient's autonomy, protecting against dangerousness, and addressing impairment from psychiatric illness.

## INTRODUCTION

Care of patients with acute psychiatric conditions presents numerous clinical challenges to emergency physicians, including assessment of risk for harm to self and others, assessment of impairment to the patient's decision-making capacity, assessment of the need for hospitalization, evaluation for the presence of an underlying medical condition, the provision of care in an environment of shrinking outpatient and community resources, and the unfortunate but frequent overlap between psychiatric conditions and unstable social situations, substance abuse, and the criminal justice

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<sup>a</sup> Section of Emergency Medicine, Department of Medicine, Center for Medical Ethics & Health Policy, Baylor College of Medicine, One Baylor Plaza, Suite 310D, Houston, TX 77030, USA;

<sup>b</sup> Menninger Department of Psychiatry and Behavioral Sciences, Baylor College of Medicine, One Baylor Plaza, BCM350, Houston, TX, 77030, USA; <sup>c</sup> Section of Emergency Medicine, Center for Medical Ethics & Health Policy, Baylor College of Medicine, One Baylor Plaza, Houston, TX 77030, USA; <sup>d</sup> King Saud University, Riyadh 12372, Saudi Arabia

\* Corresponding author.

E-mail address: [Nathan.Allen@bcm.edu](mailto:Nathan.Allen@bcm.edu)

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system. Ethical issues abound in these clinical challenges, and this article enumerates some of the most significant and pressing of them. The broad ethical issues of capacity and consent, confidentiality and privacy, and involuntary treatment are core issues that practicing emergency physicians are likely to confront regularly in the care of patients with emergency psychiatric conditions and, as such, should be prepared to respond to effectively. Although resource use for psychiatric care and failings in the social safety net are important issues, they are not actionable for individual practicing clinicians in the same manner and are not explicitly treated in this article. There are many approaches to analyzing ethical challenges. This article draws most heavily on the work of Beauchamp and Childress<sup>1</sup> and their analysis of ethical issues in terms of autonomy, beneficence, nonmaleficence, and justice.

## CAPACITY AND CONSENT

Respect for patients' autonomy is operationalized through the process of informed consent and by allowing patients the right to accept or to refuse medical treatment. However, the ability of individuals to exercise their autonomy can be impaired by various disease states. In such cases, an assessment of a patient's capacity to make the relevant medical decision is warranted. Capacity refers to an individual's ability to make rational decisions, the assessment of which can be completed by health care professionals.<sup>2</sup> Studies show that up to 30% to 50% of patients undergoing a psychiatric admission lack capacity.<sup>3</sup> In addition, in a study of capacity among medical inpatients, clinicians and relatives of the patients rarely detected the presence of incapacity.<sup>4</sup> The prevalence of incapacity and difficulty recognizing it underscore the importance of being able to assess capacity effectively in the emergency department (ED). Any physician can assess capacity, and in the emergency setting all physicians should be prepared to do so. Although a psychiatrist is often helpful in this determination, a psychiatrist is not required to determine a patient's capacity to make medical decisions. Providers should be aware of the inherent bias of only questioning a patient's capacity when the patient is refusing treatment. Even when a patient agrees to treatment, if there is a concern for the patient's ability to make reasoned choices, an assessment is warranted.

Capacity is not an all-or-none phenomenon. Although a patient may retain the ability to decide whether or not to consent to a blood draw, if the risk is low and the benefits potentially high, the patient may not have the ability to rationally weigh the risks, benefits, and alternatives in order to consent to a highly invasive surgical procedure. Thus, the level of capacity required in any particular circumstance increases as the stakes become more significant. Capacity is therefore also situation specific, which means that capacity generally exists on a continuum but is a threshold concept for any specific decision.<sup>5</sup>

### *Assessing Capacity*

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When determining capacity, 4 abilities should be assessed, as outlined by Appelbaum and Grisso<sup>6</sup>: the ability to communicate a choice, the ability to understand the relevant information, the ability to appreciate the risks and benefits, and the ability to rationally manipulate the information at hand<sup>6,7</sup> (**Table 1**).

There are tools to assist clinicians in determining decision-making capacity. The MacArthur Competence Assessment Tool for Treatment (MacCAT-T) is one such instrument, and is a validated and reliable tool often used in research.<sup>8</sup> However, emergency physicians may find it easier to use a simpler tool, such as the mnemonic CURVES, developed by clinicians from Johns Hopkins. The first 4 letters correspond

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