



# The Use of Involuntary Interventions in APS

NAPSA Conference— Workshop 207

St. Paul, MN

October 2, 2013

# Presenters

- Paul L. Caccamise, LMSW, ACSW  
Vice President for Program, Lifespan
- Alan Lawitz, Esq.  
Director, Bureau of Adult Services  
NYS Office of Children & Family Services
- Workshop participants

# Goals of Workshop

- Understand the meaning of involuntary decisions and interventions in PSA work
- How to work in a legal, ethical and effective manner with involuntary individuals and those with impaired capacity
- Understand guidelines/principles for involuntary interventions
- Options for involuntary interventions
- Indications and contraindications for involuntary action

# Goals of Workshop (cont.)

- Resolving ethical dilemmas in involuntary actions
- Issues of capacity/assessment of capacity
- Review case examples

# Involuntary Measures in Social Work Practice

## ■ 1.02 Self Determination

Social workers respect and promote the right of clients to self determination and assist clients in their efforts to identify and clarify their goals. Social workers may limit clients' right to self determination when, in the social workers' professional judgment, clients' actions or potential actions pose a serious, foreseeable, and imminent risk to themselves or others.

Source: Code of Ethics of NASW

<http://www.socialworkers.org/pubs/code/code.asp>

# Involuntary Measures in Social Work Practice

## ■ 1.01 Commitment to Clients

Social workers' primary responsibility is to promote the wellbeing of clients. In general, clients' interests are primary. However, social workers' responsibility to the larger society or specific legal obligations may on limited occasions supersede the loyalty owed clients, and clients should be so advised.

Source: Code of Ethics of NASW

<http://www.socialworkers.org/pubs/code/code.asp>

# Involuntary Measures in Social Work Practice

## ■ 1.14 Clients Who Lack Decision Making Capacity

When social workers act on behalf of clients who lack the capacity to make informed decisions, social workers should take reasonable steps to safeguard the interests and rights of those clients

Source: Code of Ethics of NASW

<http://www.socialworkers.org/pubs/code/code.asp>

# Situations Requiring Involuntary Interventions

- Financial exploitation/incapacity
- Protection from environmental dangers
- Protection from abuse/neglect
- Inability to care for self/home
- Self-neglect
- Refusal of medical care/health care
- Incapacity to make medical decisions
- End of life decision making (legal guardian)



# Case Example

## Miss M



- African American woman in 70s
- Called police because stove not working
- Found rotten food in fridge, one year old
- Turkey from Thanksgiving on a pot on stove. (It was January.)
- Using pail as toilet
- House “tagged” by Health Dept.
- “Too busy” with church group to organize house

# Guidelines for Ethical Practice

## ■ Client perspective:

- Loss of control
- Intrusion on civil rights
- Loss of autonomy
- Lack of urgency

## ■ Why is this intervention necessary?

- Imminent danger?
- Health or safety issues?
- Unpopular/unappealing lifestyle or behaviors?
- Cultural factors?

# Guidelines for Ethical Practice

- Consequences of inaction
- Inability (on part of PSA client) to understand consequences
- Will the intervention achieve the intended objective?
- Capacity issues and evaluation
  - Intermittent capacity or “focused” capacity

# Surrogate Decision Making

- First principle: What does client want?
- Least restrictive measure
- “Substituted judgment” – What would client want/do if she were able to state preference”?
- What is in “best interest” of client?

# Process of Decision Making

- “Fact finding”
  - Speak with client
  - Communicate role: health and safety need to take priority
  - Collaterals: Family members, spouse, partner, facility staff, close friends, neighbors, clergy, etc.
  - Living will? Recorded statements of wishes.
  - Previous life style –pattern of values
  - Medical records
  - Previous evaluations

# Process of Decision Making

- Use of clinical supervision
- Formal assessment of capacity
- Ethics Committee
- Agency vs. individual APS worker's decision and intervention
- Document!

# Assessment of Diminished Capacity

- Presumption of capacity
- Capacity “domains”
- Cultural considerations
- Role of ageism

# Assessment of Diminished Capacity

- Role of undue influence – use of role and power to manipulate the decision making of another
  - “Induced vulnerability”
- Impaired Executive Function
- Identifying sources of diminished capacity/bolstering capacity



# Take Away Lessons: #1

Impairment/Diagnosis  $\neq$  Incapacity

# Take Away Lessons: #2

“Problem is not impairment; it’s not appreciating it or not knowing how to solve it.”

Addressing Capacity Assessment

Mark Lachs, MD Huffington Post: June 2013

[http://www.huffingtonpost.com/mark-lachs-md/nyc-elder-abuse-conference\\_b\\_3542580.html](http://www.huffingtonpost.com/mark-lachs-md/nyc-elder-abuse-conference_b_3542580.html)

# Take Away Lessons: #3

## ■ Don't immediately invoke involuntary measures

We should seek to empower all adults despite impairments and instead use tests that specifically measure capacity.

Addressing Capacity Assessment

Mark Lachs, MD Huffington Post: June 2013

[http://www.huffingtonpost.com/mark-lachs-md/nyc-elder-abuse-conference\\_b\\_3542580.html](http://www.huffingtonpost.com/mark-lachs-md/nyc-elder-abuse-conference_b_3542580.html)

# Case Example

## Mrs. R

- Caucasian widow in 70s; Eastern European background
- Jewish – fairly observant
- Referred to APS by MD
- Type 1 diabetes; gangrenous toes
- MD strongly recommends amputation of toes
- Condition to lead to systemic sepsis
- Mrs. R refuses on religious grounds
- Pursue involuntary intervention? Other options?

# Assessment of Capacity

- Capacity is not necessarily global.
- Assessment of multiple domains.
- ACED – Assessment of Capacity for Everyday Decision Making (Jason Karlawish, MD – UPenn)

ACED: <http://www.jasonkarlawish.com/articles/assessment-capacity-everyday-decisionmaking-aced-instrument-puts-assessment-our-ethics-and->

# Assessment of Capacity

- ACED/SPACED – specific assessment of decisional abilities needed to make “informed refusal.”
- MacArthur Competency Assessment Tool for Medical Treatment Decisions (MacCAT-T)

[http://www.macarthur.virginia.edu/treatment.html#N\\_1\\_](http://www.macarthur.virginia.edu/treatment.html#N_1_)

# Case examples

## Ms. K

- Ms. K is a 43 year old Caucasian woman who has lived in her car in a suburb of Rochester for four years.
- Brother in area called APS.
- “A loner,” disheveled, smells bad.
- Schizophrenic?
- Goiter-untreated; hyperactive thyroid
- Not receptive to medical or MH care

# Surrogate Decision Making

- First principle: What does client want?
- Least restrictive measure
- “Substituted judgment” – What would client want/do if she were able to state preference?
- What is in “best interest” of client?-the least intrusive, most normalizing, and least restrictive course of action possible



# Case Example

## Mr. J

- Mr. J is a Latino gentleman in his 70s
- Problems with mobility, frail, “physically weak”
- Lives alone but has help from “two friends,” Luis and Jim
- Bring him food, shovel snow
- Refused to go to MD
- Bank concerned – accounts drained in six months – almost \$100K
- Mr. J: “They are nice to me and loyal.”



# Hierarchy of Measures to Protect Persons with Impaired Capacity

- Financial Management Volunteer
- Power of Attorney
- Health Care Proxy
- Representative Payee
- Guardianship/Conservatorship

# Guardian's Role

- “Exercise the utmost care and diligence”
- “Exercise the utmost degree of trust, loyalty and fidelity in relationship with client.”

# Other Involuntary Measures

- Mental health “arrest”; involuntary mental health evaluation
- Access order
- Temporary, involuntary placement (STIPSO in NYS)

# Case Example

## Mrs. T



- Caucasian woman in late 80s
- Lives in upscale Assisted Living Facility
- Referred to APS by bank because of mx withdrawals each day at ATMs, “cash back transactions”
- Grandson, Adam, tells her he needs to buy “medical marijuana”
- Adam’s sister, Taylor, is also asking for \$ now
- Mrs. T is anxious; assets getting depleted; rent is behind

# Case Example

## Mrs. T (cont.)

- Mrs. T keeps detailed ledgers of transactions
- APS urged her to designate Lifespan as POA
- Did so but won't give up check book
- Started keeping ledgers but can't remember all the transactions or what they are for
- Her verbal accounts are becoming repetitive
- Checks, withdrawals continue daily
- Mrs. T has started borrowing \$ from neighbors

# Case Example

## Mrs. L

- Caucasian woman in 80s
- Referred to APS by MD
- Rectal bleeding/suspicion of colon cancer
- Mrs. L delusional: Feen-A-Mint cure
- Refusing diagnostic testing
- Pursue involuntary intervention?