

Considerations for Treating Patients with Alzheimer's Disease

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ALZHEIMER'S DISEASE, a progressive neurologic disorder that causes brain atrophy, is the most common cause of dementia. According to the Alzheimer's Association, as of 2022 there are approximately 9.5 million Americans with Alzheimer's disease, including 4.5 million Americans over the age of 65 with Alzheimer's dementia and an estimated 5 million Americans over the age of 65 with mild cognitive impairments from Alzheimer's. The prevalence of this disease is expected to increase as the population continues to age and live longer.

CONSENT AND ALZHEIMER'S DISEASE

Patients with Alzheimer's disease can create challenges for medical professionals who may need to obtain their informed consent for treatment. As a legal matter, obtaining informed consent means the physician has disclosed to the patient the reasonably foreseeable risks of the proposed treatment that a reasonable physician would have disclosed under similar circumstances, as well as the benefits and alternatives of the proposed treatment. See New York Public Health Law § 2805-d. When raised as part of a medical malpractice action, a lack of informed consent claim must demonstrate that a reasonably prudent person would not have undergone the treatment or procedure if fully informed. See id. § 2805-d(3). Lack of informed consent claims are limited to nonemergent treatment, surgeries and tests, and to diagnostic procedures involving invasion or disruption of the

patient's bodily integrity (i.e. a CT scan with IV contrast). See id. § 2805-d(2).

Consent to treatment may not be valid if the patient lacks sufficient cognitive capacity due to Alzheimer's disease or other cognitive mental illness. In such a situation, the physician must carefully evaluate the patient to determine whether they have the capacity to offer informed consent. The physician should evaluate whether the patient understands their medical condition, appreciates the nature and consequences of the treatment, can make a rational judgment, can communicate a clear choice and is able to comprehend the risks, benefits and alternatives of the treatment.

CHANGES OVER TIME

Since Alzheimer's is a progressive disease, the capacity of an Alzheimer's patient to consent to treatment will diminish as the neurological impacts from the disease become more pronounced. A physician treating a patient with early onset Alzheimer's disease or mild cognitive impairments should consider recommending the appointment of a healthcare proxy. A healthcare proxy will be able to make medical decisions on behalf of the patient when it is determined that the patient no longer has the capacity to make such decisions for themselves. A mentally incapacitated patient without a healthcare proxy may not be able to consent to a treatment or test that is in their best interest. In this scenario, the physician may have to consult with the patient's family members about having

a legal guardian appointed to make necessary medical decisions on behalf of the patient.

PATIENTS WITH NO HEALTHCARE PROXY

For patients without a healthcare proxy who are admitted to hospitals, residential care facilities and hospices, Article 29 of the New York Public Health Law provides a mechanism for a surrogate to make healthcare decisions for a patient found to be incapacitated. See New York Public Health Law § 2994-C(2). The initial determination of incapacity by an attending physician must be followed by an independent concurring determination. See id. § 2994-C(3). Physicians should consult the policies and procedures of their respective hospitals and facilities for rendering such determinations. Once deemed incapacitated pursuant to Section 2994-C, the following may act as a surrogate in decreasing priority: a guardian appointed pursuant to Article 81 of the New York Mental Health Law, the spouse or domestic partner, an adult child, a parent, an adult sibling or a close friend. See id. § 2994-D(1). A proactive approach to this sensitive situation will often be in the patient's best interests. ■

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