Capacity and Competence
http://www.som.ucsf.edu/som/education/gme/links/riskmanagement.asp

<table>
<thead>
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<th>Key Points:</th>
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<td>• Capacity: decision-making ability, determined by any attending physician</td>
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<td>• Competence: capacity to make medical decision, determined by the courts</td>
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<td>• Assess capacity even when patient agrees with your recommendations</td>
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<td>• Consult psychiatry, ethics committee, and/or risk management in difficult situations</td>
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1. Capacity
   • Balance autonomy with harm
   • Usually not challenged when the patient agrees with the physician, but still should be assessed
   • Standards
     o Makes and communicates a choice
     o Appreciates
       ▪ Medical situation and prognosis
       ▪ Nature of recommended care
       ▪ Alternative courses of care
       ▪ Risks, benefits, and consequences of each alternative
     o Decisions are consistent with patient’s values and goals
     o Decisions do not results from delusions
     o Uses reasoning to make a choice
   • Standards may be stricter when options have greater risk
   • Questions
     o “Tell me what you believe is wrong with your health now.”
     o “What is [] likely to do for you?”
     o “What do you believe will happen if you do not have []?”
     o “If these benefits or risks occurred, how would your everyday activities be affected?”
     o “Tell me how you reached your decision. Help me understand your decision.”
   • Mental status tests: can have abnormal tests but have capacity and be deemed competent
   • Restrictions on refusal of care (based on prior cases):
     o Communicable diseases
     o Pregnancy
     o Treating competent patients for their own benefit
   • Documentation
   • Surrogate decision-making and substituted judgment: what decision would the patient make if he/she were capable?

2. Who determines capacity: attending physicians – housestaff under attendings in an urgent situation
   • Psychiatry: helpful for additional documentation in difficult evaluations
     o 5150: 72 hour legal hold placed on person who “as a result of a mental disorder, is a danger to others or to himself or herself, or gravely disabled”
     o Age >21 with Alzheimer’s, brain injuries, or other organic brain disorders or intoxication may be held under 5150

3. Competence: patient has the capacity to make informed decisions about medical interventions
   • Determined by the courts, but in practice determined *de facto* by physicians
   • Can be competent in one realm, but not another

4. Resources
   • Risk management: 353-1842, website above
   • Ethics committee: Bernie Lo