LETTER TO THE EDITOR

Substituted Judgment

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To the Editor:—Dr. Torke and colleagues urge us to reject substituted judgment in favor of a narrative approach to surrogate decision-making.¹ While we find much to applaud in their approach, we think they perpetuate an unnecessarily narrow conception of “substituted judgment.” Further, we are puzzled by their suggestion that the “family in crisis” be the focus of moral concern, rather than the incompetent patient.

The central idea of substituted judgment is to determine what the patient would choose if she could. Current understandings of substituted judgment, both in practice² and as allowed by law in most states,³ permit surrogates to “consider the life story of the patient and make decisions that seem consistent [with their knowledge of] ... the patient’s previous choices and experiences... but with consideration of the context of the patient’s current illness.”¹ Torke, et al., however, leave the reader with the mistaken impression that this approach is *not* substituted judgment and therefore may be legally impermissible and perhaps outside current ethical norms. This is far from the case.

The authors’ “life story” approach is more aptly contrasted with what has become known as the “subjective” standard, legally imposed in only a few jurisdictions, under which the surrogate must relate prior statements by the patient indicating what the patient *already decided* about treatment in the circumstances that are now present.⁴ Under the more widely accepted “substituted judgment” approach, a patient’s prior statements about preferences are also important, but are neither required nor dispositive. Many different kinds of evidence, including family members’ beliefs about a patient’s

values and personality, can be considered⁴. Under substituted judgment, the patient’s current condition, treatment options, prognosis, and degree of suffering, if any, should also always be carefully considered.

The narrative approach Torke et al., describe is a desirable *tool* for implementing substituted judgment, rather than a new substantive standard. However, in several instances, the authors *do* appear to propose a new substantive standard—one that may elevate moral concern for the interests of the family over that for the incompetent patient (note references to the family as “patient” and to reaching “consensus” among family members). A move of this sort at a minimum calls for more careful definition and argument.

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REFERENCES

1. **Torke AM, Alexander GC, Lantos J.** Substituted judgment: the limitations of autonomy in surrogate decision making. *J Gen Intern Med.* 2008;23(9):1514–7.
2. **Lo B.** *Resolving Ethical Dilemmas: A Guide for Clinicians.* Third Edition. Philadelphia: Lippincott Williams and Wilkins; 2005:86.
3. **Meisel A, Cerminara KL.** *The Right to Die: The Law of End-of-life Decisionmaking.* Third Edition. New York: Aspen Publishers; 2004:§§4.02[B]–4.03[B].
4. **Meisel A, Cerminara KL.** *The Right to Die: The Law of End-of-life Decisionmaking.* Third Edition. New York: Aspen Publishers; 2004:§§4.06[A]–[C].

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