



The Right to Manage Your Own Health Care Decisions

A conversation with Devorah Anne Vester Borenstein, Esq.

1. Tell us about a person's right to manage health care decisions with a mental illness diagnosis.

A diagnosis of a mental illness does not automatically mean an individual cannot manage her own health care decisions or make a health care plan. While it is true that a mental illness such as major depression, bipolar disorder, schizophrenia, obsessive-compulsive disorder, and panic disorder may disturb a person's ability to assimilate or process information or relate to others, it is also true that an individual can have symptoms and yet still be competent to make health care decisions. It is entirely possible for a person to manage a mental illness as one would manage a physical illness.

2. Who can make a health care plan?

Any adult 18 years old or older who is competent has the right to make a health care plan. Competency is the ability to (1) comprehend information pertinent to the decision to be made, (2) appreciate the relevance of such information with regard to a person's circumstances, (3) use logical thought processes in comparing the risks and benefits of available treatment options and, finally, (4) maintain and communicate consistent choices.

Everyone is different and competency can be very fluid. It is not always an "either/or situation": one can be competent in some areas, but not in others. For example, a person may be competent to execute a health care proxy, but may not be able to balance a checkbook or manage finances to pay for care. Competency can also change with time: one can lose it and then regain it over a period of time. Whenever a person is diagnosed with an illness, whether physical or mental, a physician can perform a medical examination to determine whether the patient is competent to make effective health care decisions. The physician evaluates a person's abilities and limitations and can write a letter or a report finding that the patient is competent - or not - to issue advance directives at that particular moment in time.

3. When should a person consider health care planning and what steps should one take?

All adults should consider making a health care plan early in adulthood or at any point later on, but if one has not done so, it is important to consider a health care plan when first diagnosed with an illness. Like many other diseases or disorders, it can be difficult to know how an illness will progress. Making a plan as soon as possible, and with as much detail as possible, can provide your family and care providers with essential information. The first step is to have a physician evaluate for competency. Most people would agree that it is preferable for a person to be evaluated by her own physician, or by a primary care physician in conjunction with another health professional who is familiar with the patient's nuisances,



lifestyle, and points of view on treatment and medications. What one doctor might see at an initial consultation may not be the same as what another doctor, who actually knows the patient, her history and progression of the given illness, sees and understands.

If competent to make a plan, a person should designate a health care agent and alternate agent and in a health care proxy in which she clearly directs the agent as to the kind of care she wants both now and in the future. For example, a person might write down in a health care proxy her preferences regarding medications, including the use of antipsychotic medications, where necessary, specific types of treatments she may or may not want, and the physicians or healthcare professionals with whom the agent should consult, etc. If a person becomes incapacitated even for a short while, the agent is responsible for communicating the incapacitated person's preferences and choices to family and treating physicians so that everyone can understand and respect the individual's preferences for care.

4. What are some of the obstacles in making a plan and getting quality care?

People diagnosed with mental illness are typically subject to a greater degree of scrutiny than people suffering from a physical ailment or condition. Sadly, there is a heavy social stigma that accompanies a mental illness. Consequently, the rights of a people diagnosed with a mental illness can be ignored, overlooked or even denied. For example, if I say I have bipolar disorder rather than a chronic heart condition, it can often create a fear in others who may automatically assume that I cannot manage my care or voice my preferences for the care I want or do not want. About 57 million Americans, experience a mental health disorder every year. With good medical care, 70-90 percent of people live successful lives and, just as with a physical illness, go to work, have families, and contribute in their communities. This is important to consider so we do not unreasonably, unfairly or unjustly deny people their rights to direct their own health care when diagnosed with an illness that might compromise their capacity.

5. What supports are helpful in making a plan and getting quality care?

As for everyone, getting person-centered care contributes to a better quality of life. Physicians can help a person understand an illness and its particular symptoms, as well as create a personal roadmap for the care and challenges that might occur over a person's lifetime. Having a medical evaluation and obtaining from a physician a letter or report that supports competency is a part of that plan. It is also important for people with mental illness to be able to share their experiences in a peer group to freely express fears, concerns, and frustrations and discuss their challenges in a supportive environment. I would like to see more groups offering a community-based forum to help people diagnosed with a mental illness begin this discussion and start to make a plan that advocates for rights and quality care.

Attorney Devorah Anne Vester Borenstein is a solo practitioner in Newton, practicing in the areas of mental health litigation, mental health appeals, children and family law appeals, and elder abuse. She is an active member of the Mental Health Litigation Unit Panel of the Committee for Public Counsel Services, which oversees the provision of legal representation to indigent persons in criminal and civil cases and administrative proceedings in which there is a right to counsel. In addition to her own private clients, Attorney Borenstein represents numerous clients as court-appointed counsel in guardianship and commitment actions.