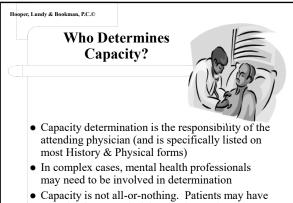
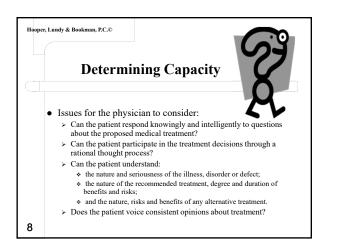


2

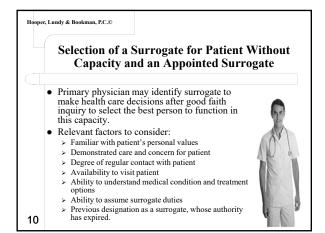


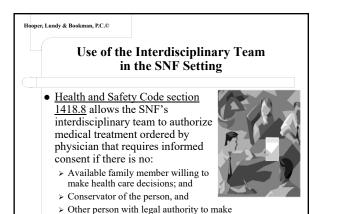
capacity for some decisions and not others.

7



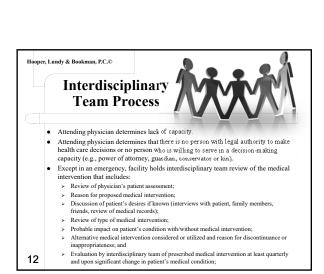
	What Happens if Adult Lacks Capacity and Has No Conservator	
•	General Rule: If patient lacks capacity and no conservatorship and there is not a medical emergency, treatment should be withheld until either: > Patient regains capacity	
	 Agent appointed pursuant to valid power of attorney for health care, or a surrogate is available and gives consent; 	
	 Court order issued; 	
	 Conservator appointed; 	
	 In special circumstances, patient's closed available relative has consented; 	
	 California Supreme Court case indicated that if patient is incompetent, authority to consent is transferred to patient's legal guardian or closest available relative 	
	Should not rely if relative's motives are questionable; there is a question as to	

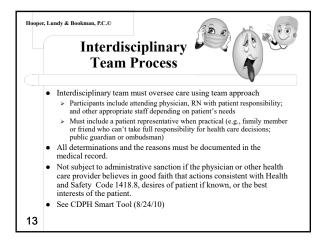


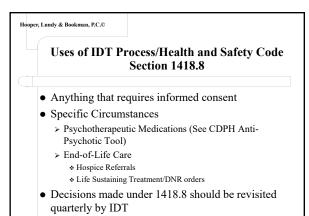


health care decisions

11







14	

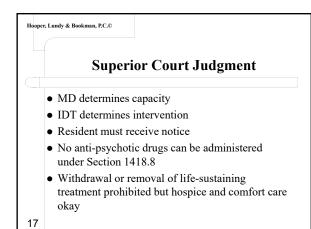
Hooper	Lundy & Bookman, P.C.0			
	Related Patients Rights Provision			
	• Cal. Code Regs, Title 22, section 72527			
	 (c) If a patient lacks the ability to understand these rights and the nature and consequences of proposed treatment, the patient's representative shall have the 			
	rights specified in this section to the extent the right may devolve to another, unless the representative's authority			
	is otherwise limited. <u>The patient's incapacity shall be</u> <u>determined</u> by a court in accordance with state law or <u>by</u>			
	the patient's physician's unless the physician's			
	determination is disputed by the patient or patient's			
15	representative.			



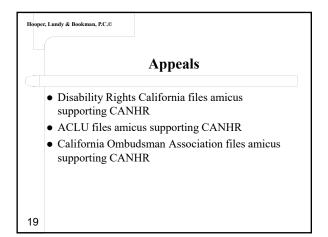
16

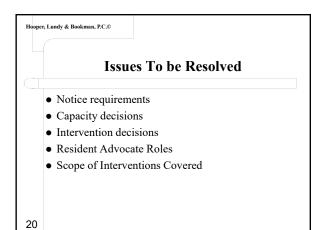
Challenges to the IDT Process

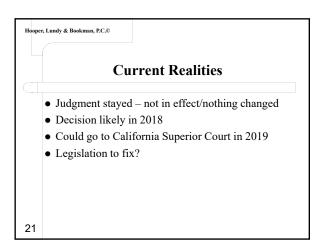
- CANHR Litigation Against CDPH
- Attacks on IDT Process/Health and Safety Code Section 1418.8
 - > Notice to Resident?
 - > Determination of Capacity –MD or Court/Tribunal?
 - > Determination of Intention IDT or Court/Tribunal?
 - > Use of Resident Advocates
 - > Use of Process for Psychotherapeutic Drugs and End-of-Life Care (Hospice and Comfort Care)

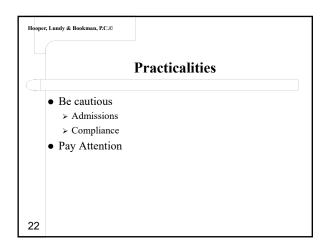


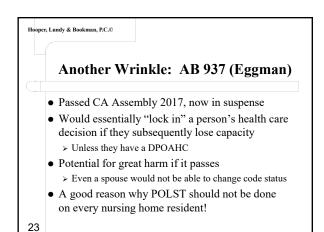
	Anneala
	Appeals
•	DPH appeals judgment
•	CANHR Cross-appeals
•	CAHF files amicus supporting DPH
•	CMA/CHR/CMA file amicus supporting DPH
•	AARP files amicus supporting CANHR

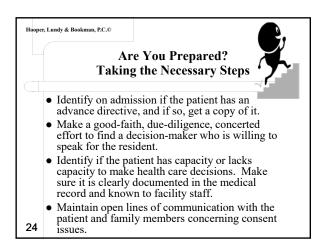


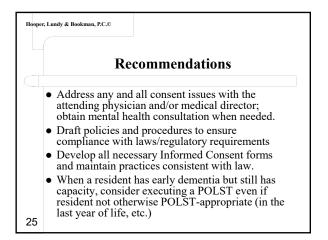


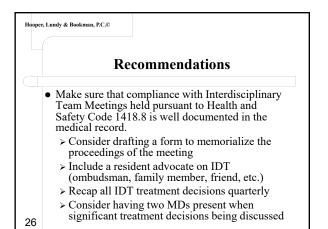












	Recommendations				
• (p	Continually educate staff on policies and rocedures regarding consent issues.				
• (Create and implement a process for monitoring ompliance with consent issues.				
• (Consult legal counsel when necessary.				
	tay tuned as to the outcome of the current CANHR case.				







