Capacity Assessment

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Learning Objectives

- At the completion of this module, the learner will be able to:
  - Describe the meaning of capacity assessment and its key elements.
  - Understand approaches to capacity assessment and risk identification.
  - Apply knowledge of capacity assessment using case studies.
Decisional Capacity Assessment

- Assessing a patient’s decision-making capacity is a part of every patient encounter.
- For the most part, the process is spontaneous & straightforward.
  - Through dialogue, the clinician is able to confirm that the patient understands their health situation & options for care.
However......

- Some important socio-demographic forces have made capacity assessment more prominent
  - Aging population and the prevalence of cognitive changes, dementia and co-morbidities have increased
- Cognitive & physical changes in our older adult population are linked with declines in every-day functioning that includes loss of decision-making skills

As a result.....There are times when there is a need to access a patient’s decision-making capacity more thoroughly.
Consider......

- What should you do when an older adult patient, particularly one who is frail, vulnerable, dementing or eccentric, begins to make decisions that put themselves or others at risk OR that are inconsistent with that person’s long-held values?

- At what point does decision-making that is affected by a disease process, no longer represent “competent” decision-making?
Capacity: What is it?

- Capacity is defined as the ability to both understand information relevant to a decision and to appreciate the consequences of a decision.

Understand

→ Ability to focus on factual understanding

→ Ability to cognitively grasp & retain information

→ Ability to process information regarding available options & risks

Appreciate

→ Ability to reason and ability to attach personal meaning to decisions

→ Ability to realistically appraise potential outcomes and ability to justify choices

There are four decision-making abilities that patients require to be able to demonstrate capacity:

1. Ability to understand relevant information
2. Ability to appreciate a situation & its consequences
3. Ability to reason
4. Ability to communicate & express a choice

# 1. Ability to understand relevant information

<table>
<thead>
<tr>
<th>Definition</th>
<th>Questions to determine</th>
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<tbody>
<tr>
<td>This is the ability to comprehend basic information about a problem, its potential solutions, and the risks &amp; benefits associated with those solutions. Factors influencing this ability include the patient’s level of education and intelligence, and how information is presented.</td>
<td>What is your understanding of your condition?</td>
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<td>What options are available for your situation?</td>
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<td>What do you understand about the benefits of treatment?</td>
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<td>How will treatment help you?</td>
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<td>What do you think would happen if you decide not to have treatment?</td>
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2. Ability to appreciate the situation & its consequences

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<th>Definition</th>
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<tbody>
<tr>
<td>This is the ability to recognize how a problem or solution pertains to one’s own situation. Factors influencing this ability include the type of decision to be made and the complexity of the situation.</td>
<td>What do you believe is wrong with your health now?</td>
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<td>Do you believe that this treatment/diagnostic test</td>
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<td>- could benefit you?</td>
</tr>
<tr>
<td></td>
<td>- could harm you?</td>
</tr>
<tr>
<td></td>
<td>We have talked about other treatments. Can you tell me what they are?</td>
</tr>
<tr>
<td></td>
<td>What do you believe will happen if you decided not to have this treatment/diagnostic test?</td>
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### 3. Ability to reason

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<tr>
<td>This is the ability to consider potential solutions to problems by:</td>
<td>Tell me how you reached your decision to have (or not have) this treatment / diagnostic test?</td>
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<tr>
<td>→ describing how a solution would affect his/her everyday life</td>
<td>What things were important to you in making this decision?</td>
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<tr>
<td>→ demonstrating how one solution is better in comparison to another</td>
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<td>→ demonstrating logical thought processes in determining a choice</td>
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</table>
# 4. Ability to communicate and express a choice

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| This is the ability to render a clear choice for the decision under consideration. This choice should be consistent with:  
→ expressed beliefs & values  
→ previous decisions & actions  
→ cultural or religious beliefs. This ability is often preserved despite impairments in the other decision-making abilities. | You have been given a lot of information about your condition/situation. Have you decided which option is best for you?  
Have you made a decision about which treatment you want to proceed with? |
A critical conceptual & legal development has been the shift to consideration of these key abilities to determine capacity.

→ Depending on the complexity of the situation, a person’s ability to render a decision should be judged on the presence of these abilities.
Key elements of capacity

A. Presumption of capacity

B. Capacity is:

→ domain-specific
→ decision-specific

Presumption of capacity

- People are presumed capable to make choices for themselves, unless proven otherwise
- Onus is on the clinician to prove incapacity
- Assessments should focus on enhancing independence and allowing people to make decisions where possible
  → Aim is to preserve autonomy as long as possible while ensuring patient vulnerability is protected
Presumption of capacity

- **Important to note**: Illness can temporarily impair capacity

- If a person appears incapable, the clinician should determine whether reversible factors are present i.e. infection (pneumonia, UTI, influenza), endocrine disorder, cardiovascular disease, chronic pain

- Where loss of decision-making capacity is expected to be only temporary, important decisions should be delayed
Presumption of capacity

- Lack of adequate information should not be mistaken for lack of decision-making ability

- Clinicians need to provide clear & adequate information for the decision and to ensure that the information has been understood
Capacity is domain-specific

- Concept of global capacity - people considered capable or incapable for all decisions – is no longer held

- People may have capacity in one domain but lack capacity in another – each domain is tested separately
Capacity is domain-specific

- For example, within personal care decision-making there are six domains: health care, nutrition, clothing, shelter, hygiene & safety.

- Within each domain, there is a hierarchy of decisions that could be made from simple to complex.

- Person may be capable of making simple decisions but incapable of making complex decisions. Eg. May be able to make simple grocery purchases but unable to handle banking activities. May be able to make decision re: receiving flu vaccine but unable to consent to surgery.
Capacity is decision-specific

- Capacity assessment focuses on the specific abilities that an individual needs to make a decision regarding a specific situation.

- Lack of capacity should not be taken to mean that the patient cannot participate in decision-making – they should be allowed to participate to the extent possible.
Relevance of Capacity Assessment

- Declaration of incapacity removes a fundamental freedom and right to make choices for oneself

- People should only be declared incapable when it has been firmly established that they lack the ability to make decisions or are at serious risk because of their incapacity

(Silberfeld & Fish 1994, Qualls & Smyer 2007)
Points to Remember

- Capacity deals with the process of decision-making and does not depend on the actual choice made.
- Capacity is **not** a test result or a diagnosis.
- Capacity is not a single ability that people have or not have – we use different abilities to make different kinds of choices – capacity is task-specific.
Points to Remember

- Assessing capacity requires a consideration of the whole person – need to balance autonomy (self-determination) and beneficence (protection)

- Capable people are able to make rational decisions, based on their values, goals, knowledge and understanding of the issues facing them – they have the ability to identify and accept risk

4 C’s of Capacity

Another way of looking at capacity:

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<tbody>
<tr>
<td><strong>Context</strong></td>
<td>Does the person understand the situation they are facing?</td>
</tr>
<tr>
<td><strong>Choices</strong></td>
<td>Does the person understand the options?</td>
</tr>
<tr>
<td><strong>Consequences</strong></td>
<td>Does the person understand the possible ramifications of choosing various options?</td>
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<td><strong>Consistency</strong></td>
<td>Do they fluctuate in their understanding of choices?</td>
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Measuring Capacity

- There is no single universally accepted test for determining decision-making capacity.
- As a minimum, clinicians need a reliable and valid process as capacity is a multi-dimensional concept.
- Decisional tools/aids can be helpful to guide the process.
- There is no evidence that scores from standard tests of cognitive ability are reliable indicators of capacity – they are language-based and scores are influenced by education, culture and language.

Decision Tools/Aids

- Aid to Capacity Evaluation (ACE)
- Capacity Assessment Tool (CAT)
- Assessment of Capacity for Everyday Decision-Making (ACED)
- MacArthur Competence Assessment Tool – Treatment (MAC-CAT-T)
Aid to Capacity Evaluation (ACE) – Administration

Name of patient: __________________________ Date: __________________________

Record observations that support your score in each domain, including exact responses of the patient. Indicate your score for each domain with a check mark.

1. Able to understand medical problem
   (Sample questions: What problem are you having now? What problem is bothering you most? Why are you in the hospital? Do you have (name of problem)?)
   Observations: __________
   □ Yes □ Unsure □ No

2. Able to understand proposed treatment
   (Sample questions: What is the treatment for (your problem)? What else can we do to help you? Can you have [proposed treatment]?)
   Observations: __________
   □ Yes □ Unsure □ No

3. Able to understand alternative to proposed treatment (if any)
   (Sample questions: Are there any other (treatments)? What other options do you have? Can you have [alternative treatment]?)
   Observations: __________
   □ Yes □ Unsure □ No □ None □ Disclosed

4. Able to understand option of refusing proposed treatment (including withholding or withdrawing proposed treatment)
   (Sample questions: Can you refuse [proposed treatment]? Can we stop [proposed treatment]?)
   Observations: __________
   □ Yes □ Unsure □ No

5. Able to appreciate reasonably foreseeable consequences of accepting proposed treatment
   (Sample questions: What could happen to you if you have [proposed treatment]? Can [proposed treatment] cause problems/side effects? Can [proposed treatment] help you live longer?)
   Observations: __________
   □ Yes □ Unsure □ No

6. Able to appreciate reasonably foreseeable consequences of refusing proposed treatment (including withholding or withdrawing proposed treatment)
   (Sample questions: What could happen to you if you don’t have [proposed treatment]? Could you get sick/die if you don’t have [proposed treatment]?
   What would happen if you have [alternative treatment]?)
   Observations: __________
   □ Yes □ Unsure □ No

Overall Impression

□ Definitely capable □ Probably capable □ Probably incapable □ Definitely incapable

Comments:
(for example: need for psychiatric assessment, further discussion with patient and family)

Date: __________________________

Assessor: __________________________
Assessment may fail to find capacity because ..

- It is not present
- Process used was inadequate
- Person applying the process failed to understand, appreciate or apply the process properly.

(Ganzine et al 2003)
Risk vs Capacity

- Embedded in a capacity assessment is a risk assessment
- “At risk” means there is a chance of suffering or injury
- The issues that triggered the capacity assessment need to be addressed regardless of assessment outcome

(Qualls & Smyer 2007, Silberfeld & Fish 1994)
Risk vs Capacity

- **Look for behaviour that is:**
  - new and not consistent with past behaviour
  - causing harm

- **Important to remember:** a person can choose to engage in risky behaviour despite being aware of the consequences – competent people do sometimes choose to live at risk

- **Need to distinguish tolerable risks vs. intolerable risks**
Identifying Risk

Questions to consider in identifying risk include:

- Is there concrete evidence to suggest a person is at risk of harm to themselves or others?
- Is the risk actual (is the problem happening now?) or potential (could the problem happen in the future)?
Factors that Affect Capacity and Risk

- Supports (human & physical) that alleviate or contribute to the risk
- Patient’s ability & willingness to use these supports
- Patient’s values, beliefs and tolerance level for various risks
- Caregiver’s values, beliefs and tolerance for various risks

(Silberfeld & Fish 1994)
**Level of Risk**

**Nutrition**
- Forgetting to eat
- Rotten food
- Unable to access food
- Inappropriate food
- Eats in restaurant

**Medication Compliance**
- Congestive heart failure
- Diabetes
- Hypertension
- Arthritis
- Vitamins

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Dr. Karen Fruetel, "Living with Risk & Dementia, SWOGAN Conference April 2002)
Worksheets to Identify Risk

### Capacity Assessment Worksheets: Identifying Risks

#### Personal Care

- **A. Nutrition**
  - Self report
  - Informant
  - Behavioral evidence
  - Able to alone: prepare food
    - S = N
    - U = N/A
    - J = N/A
  - Able to alone: arrange purchase of food
    - S = N
    - U = N/A
    - J = N/A
  - Able to eat alone
    - S = N
    - U = N/A
    - J = N/A
  - Knowledge of special dietary needs
    - S = N
    - U = N/A
    - J = N/A
  - Knows what to eat for adequate nutritional needs
    - S = N
    - U = N/A
    - J = N/A
  - Other:
    - S = N
    - U = N/A
    - J = N/A

- **B. Clothing**
  - Self report
  - Informant
  - Behavioral evidence
  - Able to alone: dress
    - S = N
    - U = N/A
    - J = N/A
  - Clothes are adequate for weather
    - S = N
    - U = N/A
    - J = N/A
  - Other:
    - S = N
    - U = N/A
    - J = N/A

- **C. Hygiene**
  - Self report
  - Informant
  - Behavioral evidence
  - Able to alone: use bathroom
    - S = N
    - U = N/A
    - J = N/A
  - Washes hands
    - S = N
    - U = N/A
    - J = N/A
  - Keeps living environment clean
    - S = N
    - U = N/A
    - J = N/A
  - Personal grooming:
    - S = N
    - U = N/A
    - J = N/A
  - Other:
    - S = N
    - U = N/A
    - J = N/A

- **D. Safety**
  - Self report
  - Informant
  - Behavioral evidence
  - Sufficient mobility to meet needs:
  - S = N
    - U = N/A
    - J = N/A
  - Does not exhibit life-threatening behavior:
    - S = N
    - U = N/A
    - J = N/A
# Patient Risk Assessment Framework

<table>
<thead>
<tr>
<th>Patient Name: ________________________________</th>
<th>Date: ________________________________</th>
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<tbody>
<tr>
<td><strong>Is there a disorder that might affect decision-making ability?</strong></td>
<td>If no - STOP</td>
</tr>
<tr>
<td><strong>What are the actual current risks?</strong></td>
<td>List</td>
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<td><strong>Are the risks intolerable?</strong></td>
<td>Explain:</td>
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<td>a) Risk has increased due to recent changes</td>
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<td>b) Person has suffered actual harm</td>
<td></td>
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<tr>
<td>c) Person engaging in risky behaviour they would normally have avoided</td>
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<tr>
<td>d) Exposes others to risk of harm</td>
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</table>
# Risk Framework

<table>
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<tr>
<th>Whose interests are being served?</th>
<th>Patient’s view:</th>
<th>Advanced directives / Power of Attorney</th>
<th>Caregivers / SDM</th>
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</thead>
<tbody>
<tr>
<td>What intervention is recommended to deal with risk?</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Is formal capacity assessment required?</td>
<td>Type</td>
<td>Expected results:</td>
<td></td>
</tr>
</tbody>
</table>

Patient Care Resources and Duration/Nature of Contact
(family or other caregiver, formal caregiver – CCAC, physician, assessments – SGS)

1. 
2. 
3. 
4. 
5.

Developed by Dr. Karen Frueel, Geriatrician, LHSC, London
Relevant Legislation

- **Health Care Consent Act**
  - Consent to Treatment
  - Admission to LTCH
  - Designation of SDM

- **Substitute Decisions Act**
  - Allows for designation of POA

- **Mental Health Act**
  - Governs fair and equal treatment for persons who require mental health services
Formal Capacity Assessment

- completed by an assessor trained through the Ministry of the Attorney General

- most common reason:
  - When there is no family and a guardian must be appointed
  - Conflict within a family
  - When a specific financial transaction must occur
Additional Resources
Additional Resources

Ontario

**Ministry of the Attorney General**

**THE CAPACITY ASSESSMENT OFFICE**

Questions and Answers

Available:

www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.pdf

**A Practical Guide to Capacity and Consent Law of Ontario for Health Practitioners Working with People with Alzheimer Disease**

Available:

www.alzheimerott.org/graphics/center/consentlawe.pdf
Check your understanding:

→ Cecil Fields

→ Clara Gray
References

References