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ELDER CARE

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Medical Decision-Making Capacity

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Capacity for Decision-Making

All patients are presumed to have the capacity to make informed medical decisions about their own treatment, unless a medical professional deems them unable to do so. Capacity is the term that applies to medical decision-making, and is determined using a prescribed clinical assessment. "Capacity" is often used interchangeably with "competence," but competence is a legal term regarding reasonable rational and factual understanding as determined by a court of law. While medical professionals can make an assessment of capacity, only a court can make a determination regarding competence.

Why Directly Assess Medical Decision-Making Capacity

Lack of capacity for medical decisions is common. Among patients hospitalized for medical problems, about one-quarter may lack capacity, whereas nearly half of people in nursing homes lack medical decision-making capacity.

For many patients, however, impaired decision-making goes undetected or conversely, patients are assumed not to have capacity when they actually do. A patient's difficulty with language, low health literacy, speech or hearing impairment, or a known diagnosis of cognitive impairment or dementia can unduly influence a clinician's "sense" of their patient's capacity.

Commonly, clinicians fail to assess decision-making capacity except when they suspect a patient's impaired ability to make decisions based on their interactions. Other times, capacity is questioned when patients disagree with a clinician's recommendation. Rather than performing an assessment only when a patient's specific treatment choice is counter to the expected response, or when a clinician senses that something is just not right, all older patients should be assessed for capacity on all medical decisions as a matter of course.

How to Assess Medical Decision-Making Capacity

The first step in assessing a patient's decision-making capacity for a specific clinical situation is to directly

interview the patient. Through a series of questions that are summarized in the table on the reverse side of this page, the goal is to determine whether the patient can:

- (1) clearly and consistently communicate a choice;
- (2) understand all the relevant information;
- (3) understand the situation and the consequences of treatment options; and
- (4) reason about the treatment choices.

Note that tests of cognition, such as the Mini-Cog, should not be used to determine capacity for specific decisions. Also note that capacity may change over time, decision by decision, and must be assessed with each new decision.

The Spectrum of Decision-Making Capacity It is important to keep in mind that there is a spectrum of capacity, and capacity is best understood as being specific to the particular medical decision being made. For example, a patient may have the capacity to consent to a low-risk, high-benefit procedure such as a blood draw, but not for a procedure with major risks and potentially uncertain benefits, such as aortic valve or lung cancer surgery that requires more complex decision-making. This "sliding scale" approach to assessing capacity takes into consideration the higher degree of reasoning and understanding required for high-risk, complex treatment decisions.

Formal Assessment Tools There are several widely used tools for formal clinical assessment of decision-making capacity. The Aid to Capacity Evaluation (ACE) tool is considered to be the most clinically useful. It is available on the Internet at <http://www.jcb.utoronto.ca/tools/documents/ace.pdf>. Other clinically useful tools are the Hopkins Competency Assessment Test (HCAT), CURVES (see resource list on next page) and the Understanding Treatment Disclosure (UTB) instrument.

Consultation A psychiatric consultation is not usually needed, but may be prudent in situations involving patients with psychiatric illnesses such as severe depression or psychosis. A bioethics consult can also be helpful.

TIPS ABOUT ASSESSING MEDICAL DECISION MAKING CAPACITY

- Be sure language barriers are addressed with an interpreter, and vision or hearing deficits corrected with glasses, vision aids, or hearing assistive devices. Sometimes apparent difficulties with decision making are due to such problems.
- When assessing capacity, begin with the criteria in the table on the reverse side of this page.
- If lack of capacity is still suspected, perform a formal assessment using the Aid to Capacity Evaluation tool.

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Documentation and Further Steps

The clinician must both document the assessment and render a judgment as to whether or not the patient has medical decision-making capacity, and enter that judgment into the medical record. Remember that capacity need not be static, and can fluctuate over time, and by situation.

If the patient is found to be lacking in medical decision-making capacity, then a surrogate decision-maker (ideally a health care proxy with durable medical power of

attorney) and advance directives should to be consulted. Each state defines the order of surrogates in the event that there is no designated health care proxy.

Other Factors

Finally, it is important to consider factors, such as cultural and religious beliefs, that may influence informed consent or decision-making. When appropriate, a cultural or religious leader should be brought in prior to a declaration of lack of capacity for decision-making.

Assessing Capacity	
Criteria Tested	Example of What to Ask the Patient
Sensory Deficits	<ul style="list-style-type: none"> Assure use of glasses, pocket talker, interpreter where needed
Ability to clearly communicate their choice for treatment or non-treatment	<ul style="list-style-type: none"> Can you tell me what you have decided to do (regarding the treatment choices)? Note: The choice must remain stable long enough to be acted upon; consider asking the question at a different time or day
Ability to understand the relevant information (regarding medical condition and treatment)	<ul style="list-style-type: none"> We've talked about several different treatments. Please tell me in your own words what your health problem is, the recommended treatment, possible benefits and risks (how likely they are to help, and what risks they have), and what is likely to happen if you choose not to have the treatment? Note: The patient should paraphrase and understand the fundamental meaning
Ability to understand the situation and the consequences of treatment options	<ul style="list-style-type: none"> What do you believe will happen to you if you are treated? What about if you are not treated? Why do you think this treatment was recommended? Note: The patient should have "insight" and acknowledge their illness
Ability to reason about treatment choices, consistent with personal values	<ul style="list-style-type: none"> Would you let me know how you came to the decision (regarding the treatment choices, to accept or reject)? Note: Talking to the patient's family and friends can be helpful to find out if the decision makes sense in light of their life-long values and decisions.
Brief mental status examination such as MMSE or Mini-Cog	<ul style="list-style-type: none"> If the patient scores poorly, it does not mean that decision-making capacity is lacking. But, it is an indication for further evaluation.
<p>If the patient is unable to meet any of the criteria in the left-hand column, the patient should undergo a formal assessment of decision-making capacity using one of tools discussed on the previous page.</p>	

References and Resources

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