Case

An 82 year old female who is wheelchair dependent due to multiple sclerosis with a history of moderate dementia, diabetes mellitus, and chronic kidney disease is evaluated at a skilled nursing facility for fatigue. Lab results demonstrate hyperkalemia in the setting of progressively worsening renal function. As the astute clinician on duty, you discuss the possibility of hemodialysis however she adamantly refuses. During your evaluation, you observe that she is only oriented to person and place. She thinks that George Bush is the current president. How do you proceed?

Defining Capacity

“Determination of an individual patient's ability to adequately make a specific decision.”

- It is determined by the process of the patient's decision making instead of the final decision.
- It is dynamic, and can be influenced by situational, psychological, medical, and neurological factors.


Defining Competence

“Legal determination of whether an impaired mental capacity limits a patient's ability to make a legally relevant decision or action.”

Why is it important?

- Capacity is required for informed consent
- Preserves autonomy
- Decision making capacity cannot be assumed.
- Many clinicians regularly fail to recognize lack of capacity.
- Physician predicted lack of capacity is 6% of patients who actually lacked capacity
- Usually missed diagnosis, but they were correct when they made the diagnosis.
- Proceeding with intervention which patient does not want is assault.

Who can determine capacity?

- Any licensed clinician
- However, many clinicians lack formal training in evaluating capacity
Capacity in Older Adults

- Normal cognitive aging, sensory impairment, mood disorders, social isolation place older adults at risk of impaired capacity.¹
- Impaired cognition is associated with loss of capacity to consent, seen in patients with Alzheimer's disease and MCI.²
- It may be impaired for a temporary time (e.g., critical illness).
- It may be intact for some decisions and not for others.


Prevalence of Incapacity


Criteria for Consent to Medical Treatment

1. Patients must be given adequate information regarding nature and purpose of treatment, risks, benefits, and alternatives (including no treatment).
2. Patient must be free of coercion.
3. Have medical decision-making capacity.


Assessing Capacity

1. Does the H&P confirm that the patient can communicate a choice?
   - If NO → surrogate decision-maker or seek guardianship.

2. After presenting information, does the patient understand the key elements?
   - What is your medical illness?
   - What is the treatment being recommended?
   - What happens if you accept the treatment?
   - What happens if you refuse the treatment?
   - What are the alternatives?
   - Tip: Ask patient to rephrase information.
Assessing Capacity

3. Can the patient appreciate how the information applies to them?
   • Can the patient assign personal values to the situation?
   • Does the patient recognize benefit of intervention to them?
   • Can the patient recognize harms of intervention to them?

   If NO → surrogate decision maker or seek guardianship

4. Can the patient reason through information rationally and logically?
   • Can the patient compare different interventions rationally?
   • Can the patient recognize the consequences of a decision?

   If NO → surrogate decision maker or seek guardianship

Assessing Capacity

5. Is the patient’s decision making capacity stable over time?

   If NO → surrogate decision maker or seek guardianship

Capacity Assessment Tools

• May assist in determining capacity for informed consent
• Better inter-rater reliability
• Assess patient’s ability to reason through a hypothetical medical decision making vignette


Pseudo-incapacity

• When information provided in a way patient cannot understand (e.g. medical jargon)
• Poor therapeutic relationship
• Language barrier
• Health literacy
• Educational barriers
• Undiagnosed depression
• Cultural differences
Patient lacks capacity, now what?

- Can decision making capacity be optimized?
  - Treat reversible conditions e.g. delirium, medication effect
  - Stop and simplify information
  - Use alternative modes of communication
  - Psychotropic dosages
- Can it be reassessed at a later date?
- Surrogate decision-maker

Capacity in Nursing Home Patients

- Patients in nursing homes are often cognitively impaired and therefore lack decision making capacity
- Clinicians depend on previous advanced directives or designated decision maker
- Formal surrogate may be court-appointed or designated in advanced directives
- Informal surrogates – based on hierarchy in state law
  1. Spouse
  2. Children
  3. Parent
  4. Sibling

Surrogate Decision-Maker

- Early identification of surrogate decision maker is recommended in patients at risk of lacking capacity

Take home points:

- Capacity assessment is important to preserve autonomy.
- Capacity assessment is especially important in older adults.
- It can be assessed by any clinician
- Capacity is dynamic.
- Follow algorithm to assess capacity or use available tools
- Identify surrogate decision maker early

Decision-making capacity:

1. Understand
2. Appreciate situation
3. Reason
4. Communicate decision

References