Assessing Capacity in Elder Abuse

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Conceptual Basis
Autonomy:

YOU HAVE THE RIGHT TO MAKE YOUR OWN DECISIONS, GOOD OR BAD, STUPID OR SMART, WHETHER OTHERS AGREE OR NOT

So long as you have the **CAPACITY** to make them & you are not **UNDULY INFLUENCED**.
Self-Determination

People have the right to choose:

- How they want to live
- Where they live
- How they spend their money
- What kind of medical care they get
- How they want to die
Balance between:

- Paternalism and Self-Determination
- Protection and Autonomy
- Safety and Risk
Types of Capacity
Capacity to do what?
Capacity to decide what?
Forms of Capacity

- Decision Making Capacity
- Executive Capacity
Decision Making Capacity

- Sign a contract (purchase an annuity)
- Sign a will (testamentary capacity)
- Give away property/assets
- Medical decision making (take a medication, treat a condition, leave a facility)
- Identify alternative decision makers (DPOA, successor trustee, executor)
- Decline services
What’s a “Decision”? 

• Understand the facts surrounding the decision 

• Appreciate the impact of the decision including one’s capabilities & limitations 

• Have the reasoning to generate alternative choices, anticipate consequences, and evaluate/compare 

• Choosing the one that is best for oneself
Executive Capacity

• Manage finances (pay bills, pay taxes, cash transactions)
• Maintain home (tend to yard, fix broken pipe)
• Tend to personal grooming
• Plan meals, shop for food and prepare meals
• Take medications as prescribed
Executive Capacity

- Can you execute your decision?
Case: Mrs. Evans

- 85 y/o woman being investigated for self neglect
  - Multiple falls & hospitalizations
  - Large number of medications
- Questions:
  1. Does she want to take her medications as prescribed? (decisional capacity)
  2. Is she able to manage her medical needs? (executive capacity)
Assessing Capacity: A Four-Step Process
Step One: Can the person process information and think logically in general terms?

Does the machinery work?

- You have to actually test for it.
- Common mistake is to assume it’s OK
Cognitive Assessment Domains

1. Attention, concentration
2. Orientation, Short-term memory
3. Retrieval of long-term memory
4. Language: comprehension and expression
5. Visual-spatial abilities
6. Reasoning
7. Executive Functions
Can The Person Behave Logically, Rationally and Abstractly?

“Executive Functions”

logic          organize
consequences    plan
judgment        alternatives
insight         reason
Objective Measures of Cognition

- Neuropsychological Test Battery
- Mini Mental Status Exam (MMSE)
- Montreal Cognitive Assessment (MoCA)
- Saint Luis University Mental Status Examination (SLUMS)
- Cognitive Abilities Screening Instrument (CASI)
- Trail Making Test (TMT)
Evaluating Cognition

• Open ended questions:
  Tell me about your family…
  How did that work out for you?
  What are you most worried about?

• Closed ended questions:
  What is your address?
  Where is your son right now?
  How do you get your medications?
Case: Dr. Richards

- Retired university prof of English literature
- Social and outgoing, gregarious
- Humor and intellectualization
- Testing revealed significant cognitive impairment
- Responding to phone scams
Subjective Measures of Cognition

- Listen for repeats
- Listen for odd words/phrases/verbal mistakes
- Push for specificity in responses
  (so help me understand, was it like this… or like this…)
Avoidance Strategies

• Changing the subject
• Using humor, charming
• Asking you a question
• Giving an “all-purpose answer”
Step Two: Assess for Other Deficits

- Mood disorders - depression & anxiety
- Perceptual disturbances - hallucinations
- Thought disorders – delusions
- Sensory loss – hearing & vision
- Medical conditions, physical limitations
- Functional: ADL’s & IADL’s
Case: Mrs. Perez:

- 65 y/o widow, lives alone in own home
- Believes neighbors are poisoning her
- Hires contractor to install security system
- Charged $300,000 for a system that was worth $24,000
Step Three:
The Interview - *THIS* Decision

- Reason for the decision
- Consequences of the decision
- Benefits & risks of the decision
- Alternatives considered
- Consistency of the decision
Structured Methods to Assess Decisional Capacity

- ACED  Assessing Capacity for Everyday Decisions
- EXIT25  Executive Interview
- LFDSS  Lichtenberg Financial Decision Decision Screening Scale
- FCI  Financial Capacity Instrument
Step Four:

- Obtain information from collateral sources (family, caregivers, APS, Ombudsman, police, medical)
- Consistency with this individual’s values, beliefs and preferences
- Consider larger cultural and religious background
- Consider this family’s culture
- Steps taken to enhance capacity? What worked, what failed?
82 y/o married woman, Dx with Parkinson’s disease
Husband won’t spend $ on care
Leaves her alone many hours
Multiple falls, bedsores, dehydration
Grossly inadequate care
Assess Level of Risk

- What is the impact of a negative outcome?
- How may this result in harm to the individual?
Conceptual Framework for Capacity Assessment

Clinical Judgment

Functional Elements
- Diagnosis
- Cognitive Underpinnings
- Psychiatric and Emotional Factors

Values and Preferences
- Risk Considerations
- Steps to Enhance Capacity

Legal Standard

Source: Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists © American Bar Association Commission on Law and Aging- American Psychological Association
Questions & Comments