Assessing Capacity in Older Adults

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Situation Awareness

Task/System Factors
- State Of The Environment

Individual Factors
- Goals & Objectives
- Preconceptions (Expectations)
- Information Processing Mechanisms
  - Long Term Memory Stores
  - Automaticity
- Abilities
- Experience
- Training

SITUATION AWARENESS
- Perception Of Elements In Current Situation (Level 1)
- Comprehension Of Current Situation (Level 2)
- Projection Of Future Status (Level 3)

Feedback
- System Capability
- Interface Design
- Stress & Workload
- Complexity
- Automation

Decision

Performance Of Actions
Self-Neglect

• Failure to adequately manage:
  – Independent living tasks
  – Risk: prevention of harm

• Diminished capacity for self-care/protection increases vulnerability:
  – Abuse
  – LTC placement
  – Morbidity & mortality
Self-Neglect: Legal/Ethical Issues

• Dilemma: when vulnerable adults jeopardize health/safety by refusing help
• Conflicting social/personal values
  – autonomy vs. safety
• Legal presumption of competence
• Medical tradition: do no harm
Self-Neglect: Legal/Ethical Issues

• When safety can justifiably trump autonomy
  – Lack of decisional capacity
  – Lack of executive/procedural capacity

• Contexts:
  – Acute: temporary (reversible delirium)
  – Chronic: ongoing (irreversible dementia)
Self-Neglect: Clinical Challenges

• Vulnerable older adults with:
  – Decisional & procedural capacity
  – Executive incapacity

• Difficulties in identifying & diagnosing:
  – Good verbal & social skills
  – Subjective claims about intact abilities
  – Objective evidence of poor skills
Capacity: Introduction

- Distinction between competency and capacity
- Medical & psychiatric conditions that can diminish capacity
- Tests of capacity
- Practical approaches to assessing capacity
Competency vs. capacity

• Competency
  – legal issue: requires judicial review
  – determined in a court of law: contestable
  – due process protections

• Global: guardianship or conservatorship

• Specific: limited guardian/conservator
Capacity vs. competency

- Capacity
  - clinical issue
  - determined in medical setting
  - no immediate judicial oversight
  - task specific
Financial Capacity: Examples of Traditional Tests

• Making a will:
  – personal property, assets
  – what the procedure represents
  – who will be beneficiaries

• Contracting:
  – nature, terms, effects of particular transaction
Decisional Capacity: Informed Consent

- Nature & seriousness of [medical] problem
- Nature of recommended treatment
- Probable degree/duration of risks/benefits:
  - of recommended choice [of treatment]
  - of reasonable alternatives
  - of no decision [treatment]
Competency & Guardianship

- Patient totally incapacitated (e.g. by severe dementia)
- Petition for examination → court-ordered evaluation
- Guardianship hearing
- Appointment of guardian: of person and/or property
- Retention of specified rights
- Periodic judicial review
Cognitive Impairment: Memory, Executive Function

Social Issues:
- Stressors
- Caregiver support
- DPOAHC

Personality/personal Issues:
- Prior intelligence/knowledge/skills
- Previous personality/attitudes
- Advanced directives

Psychiatric Issues:
- Dementia; Anxiety
- Delirium; Depression; Mania; Psychosis
- Personality changes- “LAPD”
  - Labile moods: sudden, disproportionate
  - Apathy (Amotivation); Aggression
  - Paranoia- suspiciousness
  - Disinhibition- catastrophic reactions
  - Agitation; Sundowning; Wandering
  - Reckless/careless/“sexual” behaviors

Medication Issues:
- Antihistamines/anticholinergics
- Antipsychotics- typical/low-potency
- Antidepressants- tricyclics; Steroids
- Sedatives/hypnotics- BZ, OTC’s
- GI- cimetidine, antispasmodics

Medical Issues:
- D- dementias, drugs
- E- eye/ear may aggravate
- M- metabolic, meds
- E- endocrine, epilepsy
- N- nutrition, neurological
- T- trauma, toxic, tumor
- I- infection, immunologic
- A- atherosclerosis: strokes, (sleep) apnea, alcohol

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Executive Functions

• Attention
• Response inhibition: blocking out distractions
• Memory: working memory (“desktop”)
• Planning: sense of the future, generation/selection of options
• Abstract thinking (understanding)
• Implementing plans:
  – Decide: decisional capacity
  – Knowledge of how to perform: procedural capacity
  – Start/sustain/stop: executive capacity
• Set-shifting: flexibility
• Organization: categorizing, sequencing
• Multi-tasking
• Monitoring: awareness of self & others
• Judgment
• Problem-solving: new (vs. familiar/learned)
• Modulation of feelings/emotions/behavior/ego
Cognitive Impairment:
Executive Dysfunction with Intact Memory

Draw a clock!

Patient
- Male, 75 years old
- MMSE = 28 points

Diagnosis
- Definite AD
  (4 years after the drawing)
Early Alzheimer’s Takes Toll on Daily Functioning

At the start of the study, the early-Alzheimer’s group (n = 55) and the control group (n = 63) were presented with various money-related tasks. The early-Alzheimer’s group scored worse than the control group on all tasks, and their performance was worse on certain tasks than on others. A year later, the early-Alzheimer’s and the control groups were tested again on the same tasks. Again, the early-Alzheimer’s group performed worse than the control group.

![Graph showing percent of controls' scores achieved by Alzheimer's group for various tasks.](image-url)

Specific Tests of Decisional Capacity

• Awareness of problem
• Understanding of issues-
  knowledge of, and appreciation for:
  – relevant facts
  – possible choices
  – potential consequences
  – own values, intentions
• Ability to make decisions or delegate to a proxy
Ability / Inability to Reach a Decision

- Comatose
- Severe conceptual disorganization-dementia or delirium
- Psychotic ambivalence
- Severe apathy or neglect: dementia or severe depression
- Least stringent test of capacity
Impaired Understanding

- Delusions or hallucinations
- Severely impaired attention or comprehension
- Cognitive distortions in depression (e.g. ‘things can NEVER get better’)
- Severe impairment of memory and learning
Irrational Decisions

• Denial of likely consequences
• Delusions or hallucinations
• Cognitive distortions in depression
• Disinhibition of mood or behavior: mania, ‘organic’ impulsivity
• More stringent test of capacity
• Caveat: the right to be irrational
Right to Be Irrational

• Bias toward present or near-future benefits vs. more remote risks
• No fear: posture of invulnerability to risks
• Great fear: of loss, humiliation, pain
• Excessive entitlement, lack of empathy for others
• Passions
Impaired Appreciation

- No affective acknowledgement of problem, decision, consequences
- Blunted, depersonalized affect (severe lack of feeling)
- Lack of self-awareness
- Severe negativity
- Understanding limited to ‘saying the right words’
- Most stringent test of capacity
Financial Management: Decisional, Procedural, & Executive Capacities

• Capacity: task-specific
• Capacity to understand personal financial situation
• Capacity to plan finances:
  – Decide: decisional capacity, e.g.
    • To choose a bank, investment
    • To delegate to a protective payee
• Capacity to perform tasks:
  – Knowledge of how to proceed: procedural capacity
• Capacity to implement financial plans:
  – Start/sustain/stop: executive capacity, e.g.
    • to make arrangements for a protective payee
    • to manage finances (carry out financial transactions)
Financial Management: Decisional, Procedural, & Executive Capacities

• Set-shifting: flexibility
  – e.g. saving vs. spending
• Organization: categorizing, sequencing
  – E.g. accounts, bills
• Monitoring: awareness of self & others
  – E.g. keeping track of assets & liabilities; bills & financial statements
Financial Management: Decisional, Procedural, & Executive Capacities

- **Judgment:** e.g.
  - Trust-worthiness of potential helpers
  - Appropriateness of billings, financial statements
  - Value of assets

- **Problem-solving:** new (vs. familiar/learned)
  - E.g. management of unanticipated expenses

- **Modulation:** feeling/emotion/behavior/ego
  - E.g. hyper- vs. hypo-thriftiness
Assessing Capacity: Interview

• Mental Status Exam
  – appearance, level of awareness
  – speech and language
  – psychomotor status
  – thought flow and content
  – affect and mood
  – cognition: orientation, memory, intellect (comprehension & processing of information), judgment, abstract thinking
Capacity Assessment: Interview

• Unstructured opening: listen
• Semi-structured phase: begin to address relevant specific issue(s)
  – ADL’s: personal care
  – IADL’s: maintenance & risk management
    • Living environment:
    • Medical issues
    • Financial issues
  – Solicitation of personal & cultural values
  – Clarification of meanings
Interview: Structured Phase (Formal Questions) & Conclusion-1

- Basic capacities: attention, verbal, recall
  - e.g. Mini-Cog, clock draw, verbal fluency, Trails B
- Decisional & procedural capacities: situational awareness
  - Appreciation of problems & potential solutions
  - Comparative reasoning re alternatives & likely consequences
  - Appreciation of risks/benefits
    - standardized, meaningful case scenarios
    - re deficits
- If disagreement re recommendations:
  - ability to generate & implement viable alternatives
Interview: Structured Phase (Formal Questions) & Conclusion-2

• Procedural & executive capacities: knowledge/implementation/performance
  – e.g. OT assessment (e.g. driving evaluation, financial management)

• Closing: summary and two-way discussion of findings and recommendations
Interview: Challenges-1

- Promotion of patient/family comfort, openness, trust
- Tracking/adjusting to patient’s need for structure and support
- Ascertaining patient’s difficulties with interview process; addressing these before proceeding
Interview: Challenges-2

• Direct but empathic exploration of issues
• Avoidance of unwitting coaching during testing
• Clinical complexity & balancing autonomy/safety:
  – Cognitive dissonance: reconciling clinical ambiguities, competing values
  – Affective dissonance: e.g. feeling torn inside (“cost of caring”)
Medical-Psychiatric Challenges

• Excess morbidities:
  – substances: medications, drugs, alcohol
  – medical problems
  – psychiatric disorders

• Social stressors:
  – interpersonal
  – environmental

• Personality traits and personal values

• Interactions between these factors
Possible Outcomes

• No incapacity
• Totally incapacitated-
  – activate DPOAHC or pursue guardianship
  – if temporary, deactivate proxy arrangement once recovered
• In between: use “sliding scale”
  – the greater the risks, the more stringent the criteria
Undue Influence

• Definition:
  – When a more powerful person gets a weaker one to do what s/he would not have done otherwise

• Methods of exerting undue influence:
  – Isolation of the weaker person
  – Promotion of dependency
  – Inducing fear and distrust of others
Undue Influence vs. Diminished Mental Capacity

• Both raise ? of whether a person is acting freely
• The two concepts often confused, but are distinct:
  – Diminished mental capacity may contribute to a person's vulnerability to undue influence
  – But someone with full mental capacities can be unduly influenced (e.g. hostages, con victims)
• Cognitive assessments alone cannot identify the presence of undue influence
Determination of Undue Influence

- Typically determined by courts
- Factors considered:
  - Appropriateness of the time and setting of the transaction
  - Evidence that older adult was:
    • pressured into acting quickly
    • discouraged from seeking the advice of others
  - Nature of the relationship between the parties (asymmetry)
  - “Fairness” (symmetry) of the transaction
Undue Influence: Legal Issues

• Legal notion of agency (vs. partnership)
  – Principal: e.g. older adult
  – Agent: e.g. DPoAHC

• Fiduciary duties:
  – Requires a specific relationship
  – Entails duty to respect the principal’s values/beliefs
  – Standards: what kind of intent has to be proven
    • to convict in a criminal case
    • to prevail in a civil case
Undue Influence: Legal Issues

• Intention: 2 types
  – General: what a reasonable person would conclude re intent
    • e.g. firing a gun into a crowd
  – Specific: what the specific intent was
    • e.g. firing a gun at a specific person in the crowd
Undue Influence: Legal Issues

• Abuse: involves a hierarchy of power
• Negligence: e.g. bouncing a check
• Fraudulent intent:
  – e.g. intentionally writing a bad check
• Reckless disregard: may imply specific intent
Undue Influence: Legal Issues

- Reckless disregard: may imply specific intent
- In seeking legal remedies to financial abuse: consider earlier cases
  - Look for binding guiding rules (precedents)
  - Look for possible guiding standards
  - Earlier cases may involve 2+ competing standards
  - Domestic abuse cases
**Capacity & Self-Neglect**

**Social issues:**
- Financial: poverty/wealth
- Interpersonal: isolation, loss of supportive significant other (help/companionship)
- Social: housing (quality, availability), hostile milieu
- Fraud: direct/telephone/mail
- Cultural: acquisitiveness
- Legal: burden of proof to establish incapacity to live alone, manage finances

**Personality/personal issues:**
Traits/Values: privacy, autonomy, control, independence, status, trust, sentimentality, thrifty, practical, conscientious
Cohort: Great Depression
Coping styles: less effective
Traits/Values:
- too rigid/flexible; too intense/weak
- openness to experience (change)
- guilt/shame

**Medication Issues:**
Adherence to Rx: poor/ambivalent, overuse/underutilization, Side effects

**Medical issues:**
- increased dependence
- age-related frailty
- illnesses: acute, chronic
- impairments/disability: ADL’s, IADL’s
- chronic pain, falls
- dehydration, malnutrition

**Psychiatric issues:**
Executive dysfunction: decreased ability to plan, initiate/sustain, self-monitor (“CBF”)
Psychosis: schizophrenia, delusional disorder
Mood disorder: depression, mania
Bereavement/grief: protracted, complicated
Anxiety: OCD, agoraphobia, PTSD
Capacity & Self-Neglect: Systems Challenges-1

• Under-recognition of procedural incapacity

• Societal value on autonomy vs. safety
  – History of professional parentalism/abuse
  – Presumption of competence
  – Right to make poor choices

• Absence of simple, widely-used, standardized terminology (akrasia)

- Need for reliable, standardized screening instruments
- Lack of basic neuropsychological training
- Establishment of professional standards re capacity assessments
- Lack of resources to address crisis
- Collective akrasia: ageism & “self-neglect” at the systems level
Self-Neglect:
Procedures/Policies

• Reporting requirements
• Screening tools: e.g. Mini-Cog, AD8, Clock Draw Test, SLUMS, MOCA
• Evaluation tools: PARADISE-2 Model of Mental Capacity (Blum 2002-2006)
• OT assessment vs. neuropsychological testing
• Prevention
• Elder law: further development
Self-Neglect: Management

- **Goal:** balance autonomy & safety
- **Assessment:**
  - is older adult open to intervention?
  - does older adult have capacity to accept/reject intervention?
- **Intervention accepted:**
  - Implementing management plan
  - Addressing causes for self-neglect
  - Referral of older adult/caregiver to services
Self-Neglect: Management

• Intervention declined (w/ capacity)-
  – Education about:
    • Incidence of problem
    • Likelihood of problem persisting/increasing
    • Emergency assistance contacts
  – Back-up safety plan
  – Follow-up arrangements
Self-Neglect: Management

- Intervention declined (w/o capacity)-
  - Adult Protective Services
  - OT assessment (vs. neuropsychological testing)
  - Protective payee
  - Guardianship:
    - of property
    - of person
Self-Neglect: Management

• Clinical assessment of current situation:
  – Decisional/procedural capacities
  – Risks/benefits (trade-offs), e.g.
    • Gains for older adult vs. gains for caregiver
  – Alternatives (ideal/realistic)
Management of Self-Neglect: Ambiguities

– Diagnostic:
  • Degree of vulnerability of older adult
  • Duration/quality of relationships: beneficial vs. exploitative
  • Types of influence: reasonable vs. undue
  • Mistakes made in good-faith vs. negligent/predatory

– Prognostic:
  • Likelihood of harm
  • Issues in near/distant future

– Interventional: multiple possible approaches (complexity)
Management of Self-Neglect: Legal/Ethical Issues

• Principles of autonomy:
  – Freedom, independence
  – Privacy, freedom from unreasonable intrusion
  – Presumption of competence (until proven otherwise in a court of law)

• Principles of safety:
  – Beneficence
  – Protection of the vulnerable (all ages)
Management of Self-Neglect: Legal/Ethical Issues

• Competing standards/principles:
  – Autonomy vs. safety
  – Fiduciary: older adult’s values (vs. one’s own)
  – Parentalistic: others’ values (vs. older adult’s)