ASSESSMENT OF DECISIONAL CAPACITY

- NIRMALA DHAR, LCSW,ACSW
- OLDER ADULT BEHAVIORAL HEALTH COORDINATOR
- OREGON HEALTH AUTHORITY

LEARNING OBJECTIVES

- DEFINITION OF CAPACITY
- GAIN KNOWLEDGE OF TYPES OF CAPACITY
- IDENTIFY INDIVIDUALS AT RISK FOR IMPARIED DECISION MAKING
- IDENTIFY THE CORE EITHICAL TENSION INVOLVED WHEN INDIVIDUALS REFUSE PROFESSIONAL RECOMMENDATIONS
- KNOW HOW TO ASSESS FOR DESIONAL CAPACITY

WHAT IS CAPACITY?

CAPACITY IS THE FUNCTIONAL ABILITY TO MAKE DECISIONS AND TO PUT THAT DECISION INTO EFFECT (CARRY IT OUT)

CAPACITY IS FUNCTION SPECIFIC – THE ABILITY TO DECIDE ON A SPECIFIC QUESTION

THEREFORE, SOMEONE CAN HAVE CAPACITY TO MAKE SOME DECISIONS AND NOT OTHERS

CAPACITY VS COMPETENCE

Competence is a legal construct and is global and absolute. It is a binary yes or no. A court of law determines competence.

Capacity is a clinical construct and is viewed on a continuum - a sliding scale approach. Clinicians determine capacity.

CAPACITY VS COMPETENCY

Legal Competency--Incompetency:

- denotes a legal status determined by a judge
- judgment based on clinical/lay evidence, case/statutory law,

principles of justice, and other non-clinical factors

- judgment of "incompetency" alters legal status by removing

rights of self determination for specific matters

- judgment of "incompetency" requires transfer of decisional

authority to a court appointed proxy: guardian/conservator

Types of Capacity

Testamentary - the capacity to make a will at the time of executing the will

Donative and contractual – capacity to make a gift and understand contracts

Capacity to execute a Durable Power of Attorney

Capacity to consent to Medical Care – to make health care decisions – rooted in the concept of *informed consent*

Capacity to Execute a Health Care Advance Directive

Capacity to Consent to Sexual Relations

Capacity to Drive

FINANCIAL CAPACITY

Knowledge – ability to describe facts, concepts related to financial activities such as knowledge of currency, bank statements, investments, personal financial data.

Skills – ability to demonstrate practical procedures important for financial management such as making change and writing a check.

Judgement – ability to make reasonable sound financial decisions in social situations such as being aware of fraud, invulnerable to coercion and prudent in making investments.

A word about power of attorney

POA is limited to finances only – general and specific.

It is best to obtain a Durable Power of Attorney (DPOA) – no fixed time period and therefore continues in force indefinitely even if the person wo signed it becomes mentally incapacitated.

POA/DPOA are mostly financial – one should ask to have it expanded to include for example Health Information Release, MH assignment etc.

Springing POA – can give a specific date or circumstance under which the POA will go into effect.

POA for healthcare in Oregon is called an advance directive.

Why Complete a Capacity Evaluation?

Help in measuring the clinical impact of cognitive impairment

Help in choosing the types of resources a client needs

Helps in determining whether and how to limit a client's independence

A good capacity assessment can help the care team allocate healthcare resources, supervision and assistance more effectively

Common Reasons for a Capacity Risk Assessment

- The client appears to have some level of impaired capacity
- The client is perceived to be at risk of harm or danger in his/her current situation
- The client refuses to accept services that are offered or that could help reduce/minimize risk
- A decision has to be made about whether to respect the client's right to self determination or to support an intervention plan that is not consistent with the clients stated preference or they are unable to communicate their preference

Soniat,Barbara, Empowering Social Workers for Practice;2011

Risk Factors for Impaired Decisional Capacity

Increasing age and cognitive impairment are associated with a lack of decisional capacity

Studies have shown that people with schizophrenia are more likely to lack decisional capacity than those with depression

Among patients with psychiatric illness, lack of insight into their disease is thought to be a strong predictor of lack of decisional capacity.

Kim SYH et al ,Psychiatr Serv 2002;53:1322-4

Risk Factors

Any diagnoses or treatment that compromises mentation may be associated with impaired decisional capacity.

A range of severity is associated with most diagnoses (e.g.. Mild, moderate, severe)hence no diagnoses in itself is predictive of incapacity.

Measures of neuropsychological impairment (cognitive performance tests) are among the strongest predictors of limited capacity.

Impairments Within Patient Groups

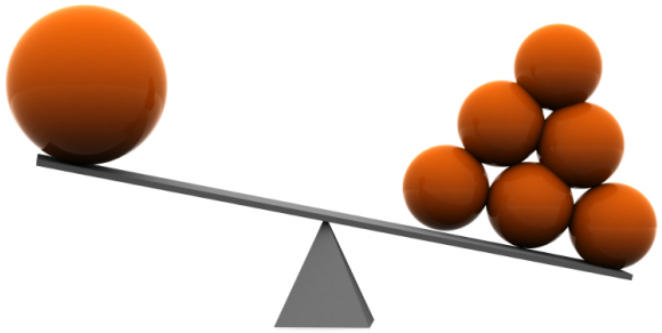
Hospitalized older adults or in nursing homes – high rates between 44% and 69% capacity impairment

Older Adults with Dementia – compared with healthy controls the consent capacity of individuals with dementia is reduced particularly for understanding, reasoning and appreciation

Patients with advanced, life threatening illness and on hospice (Burton, C.Z et al Am J Geriatric Psych 2012, 20(4):306-316)

Moye, Jennifer et al, Journal of Gerent 2007, Vol.62B,No.1, P3-P11

Risk Of Harm



This Photo by Unknown Author is licensed under CC BY

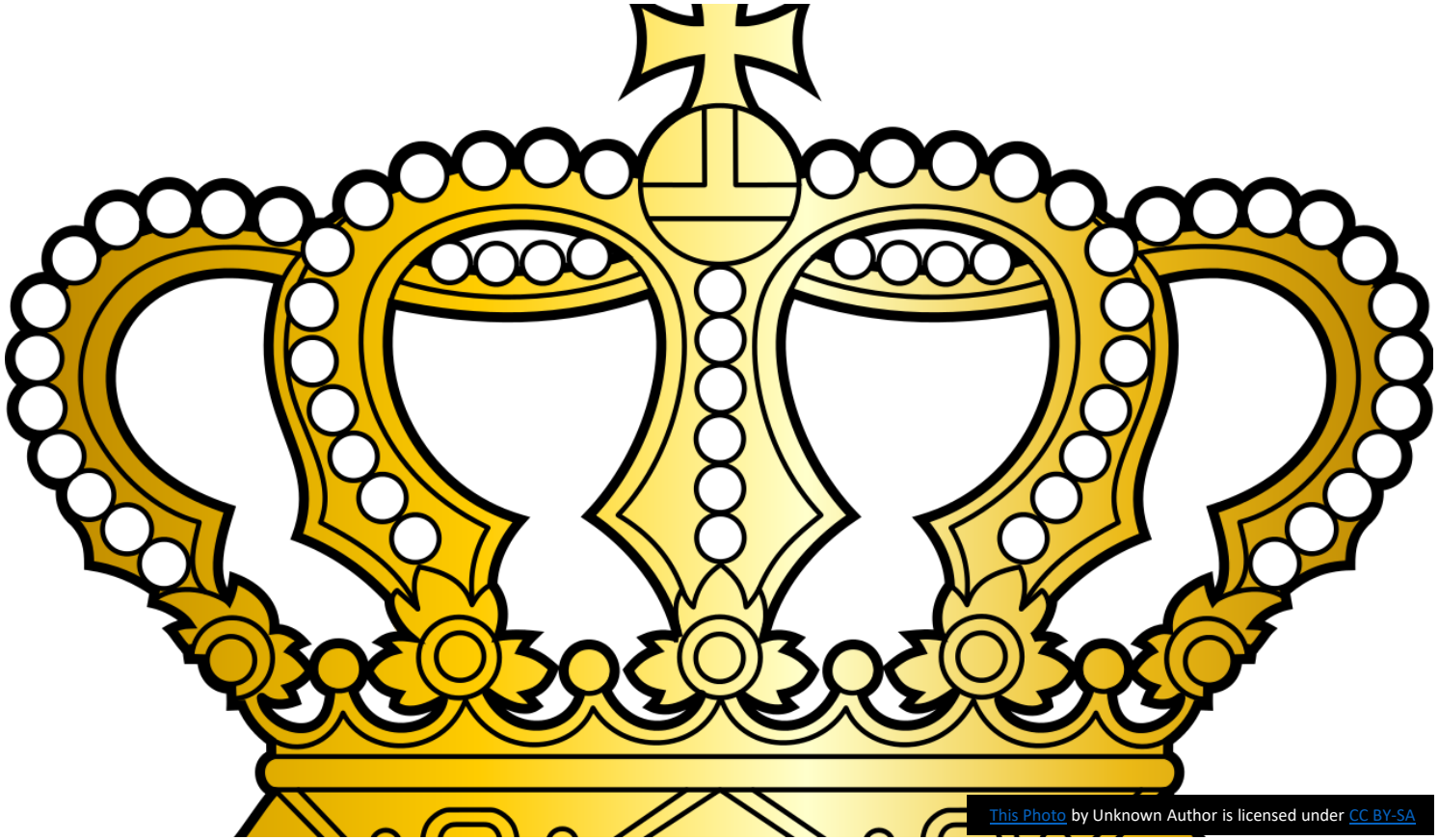
- Capacity evaluations are at heart a RISK ASSESSMENT.
- Highlights the age old tension between self-determination/autonomy and protection/safe-guarding.

KEY ETHICAL TENSION

Obligation to benefit/avoid harm

VS

Obligation to respect individual's/client's right to self-determination/autonomy


This Photo by Unknown Author is licensed under CC BY-SA

Underlining Doctrine

- Doctrine of “parens patriae”
- The obligation of the sovereign to take care of the vulnerable and less fortunate.
- 2 paramount principles: autonomy vs beneficence
- AUTONOMY - the right to make decisions for oneself
- BENEFICENCE - promotion of a person’s/client’s/patient’s well being

Guiding Ethical Principles

- **Beneficence** – improve or maintain the quality of the persons life. Interventions need to be justified by the benefit it brings to the person
- **Non- maleficence** – “do no harm” - avoid undue risk, protect from harm
- BENEFIT IS ALWAYS THE MEASURE OF ETHICAL APPROPRIATNESS
- **Autonomy**
- **Justice**

COMPONENTS OF AUTONOMY

Voluntariness – choosing and acting without controlling influences

Intentionality – willingness, planning and commitment to action

Understanding /Insight – appreciation of the situation , choices and implications

Niak et al 2009

What is RISK

Risk is conceptualized as the potential for a negative consequence due to a variety of factors such as the client's environmental conditions, functional limitations or psychiatric disorders

Severity of risk- extent of harm, injury, danger or loss that is likely to occur

Probability of risk – degree of certainty that an outcome will occur unless action is taken

Soniat, Barbara, Empowering Social Workers for Practice, NASW Press, 2011

Assessing risk….in other words….

Client is:

ABLE AND WILLING

ABLE AND UNWILLING

UNABLE AND UNWILLING

Assessing Degree of Risk

What are the risk factors in a particular situation?

Is there such a thing as acceptable or safe risk?

How long have the risk factors been present?

What is different about the situation now in comparison with the recent past?

What are the potential consequences associated with each risk factor?

How significant are the potential consequences for the client? For others?

What is the likelihood that the consequences will occur if the individual continues to refuse or accept help?

Domains of Vulnerability or What raises a red flag for you!

- Decline in self care behavior and self protection –activities of daily living such as bathing, grooming, ambulation, feeding
- Live in unsafe settings – routine maintenance, appropriate repairs, home environment (e.g. presence of animal waste electrical hazards, uncollected garbage)
- Frequent exacerbations of chronic conditions – medical self-care (includes managing medications, self monitoring of blood pressure or glucose, wound care). Also includes assessment of the way an individual handles acute problems (chest pain) or practical obstacles (running out of medications).
- Activities of independent living – shopping, meal preparation, laundry, cleaning, using telephone , transportation.
- Everyday financial management

Kim SYH et al ,Psychiatr Serv 2002;53:1322-4

Key Question you have as a human services provider!

IS MY CLIENT VULNERABLE TO HARM AND IMPAIRMENTS THAT WILL LIMIT HIS OR HER ABILITY TO CONTUNUE TO LIVE SAFELY AND INDEPENDENTLY IN THEIR OWN HOME?

CAN MY CLIENT MAKE AND IMPLEMENT DECISIONS FOR PERSONAL NEEDS, HEALTH & SAFETY?

DOES MY CLIENT HAVE CAPACITY?

Assessment of Capacity : Two Fold

Cognitive Capacity
(capacity to make a decision)

Executive Capacity
(capacity to perform a task)

CAPACITY

COGNITIVE

- Learning & Memory
- Language
- Attention
- Judgement
- Reasoning
- Speed of processing
- Perceptual-motor

EXECUTIVE

- Planning
- Decision making
- Working memory
- Responding to feedback
- Inhibition (impulse control)
- Mental flexibility
- Task initiation
- Organization and regulation activities

Individuals with capacity can do all of the following:

Understand	Understand the facts involved
Understand	Understand the main choices
Weigh	Weigh the consequences of the choices
Understand	Understand how the consequences affect them uniquely
Communicate	Clearly communicate their decision

Four Parts of Decisional Capacity

Understands
Appreciates
Reasoning
Choice

Elements of Decisional Capacity

The ability to understand the relevant information as it relates to a choice

The ability to appreciate relevance of information for one's situation such as effective interventions that could be helpful

The ability to reason to consider and compare potential consequences of various options including doing nothing

The ability to communicate (express) a choice

Appelbaum PS. NEJM 2007;357:1834-40

Capacity Elements in Plain English

1. Receive Information

2. Understands the basic facts surrounding a decision

3. Appreciates the personal impact of the decision including one's capabilities and limitations – relative to their own values and contexts

3.Have a reasoning process for comparing the options and predicting the consequences of choices

4.To be able to make a choice; make a decision commit to a decision and communicate a decision.

Practical Application

Have a conversation with your client in which you present information related to the choice and sees whether they possess the four abilities mentioned in the earlier slide

Ask them to repeat information back to you in their own words – to paraphrase not repeat it verbatim

Once you have decided that the client lacks capacity for a particular decision assess whether he lacks it for all decisions

Even if a client lacks capacity you need to get **assent** form the client even if someone else is going to give **consent**.

Key Questions to Ask to Determine Capacity of your client:

- <u>Does your client UNDERSTAND the treatment or plan and proposed options for care:</u>
  - What is your understanding of your condition?
  - What are the options for your condition/situation.
  - What is your understanding of the benefits of this treatment or plan and what are the odds that this will work for you?
  - What are the risks of this plan and what are the odds you may have a side effect or a bad outcome?
  - What is your understanding of what will happen if nothing is done?

Key Questions to Ask to Determine Capacity of your Client:

Ability of your client to APPRECIATE how that information applies to their own situation –

Tell me what you really believe about your medical condition? Your current living arrangement?

Why do you think your doctor/case-manager has recommended this for you?

Do you think this is the best treatment/plan for you ? Why or why not?

What do you think would happen to you if you accept this treatment or plan? If you don’t accept it?

Key Questions to Ask to Determine Capacity of your client:

Ability of your client to REASON with that information in a manner that is supported by the facts and the client's own values:

What factors/issues are most important to you in deciding about this plan/treatment?

How are you balancing the pluses and minuses of the treatment or plan?

Do you trust your doctor/case manager? Why or why not?

What do you think will happen to you now? What would happen if you do nothing?

Questions to Ask to Determine Capacity of your client:

<u>Ability of your client to COMMUNICATE and EXPRESS a choice clearly:</u>
You have been given a lot of information about your condition. Have you decided what options is the best for you right now?
We have discussed several choices, what do you want to do?

MORE PRACTICE QUESTIONS

How are you coping with XYZ (area of concern)?

Do you think you are having any difficulty?

Describe your situation. Why do you think it could be a matter of concern?

What do you think could be done to address the concern?

Tell me what other options there are, and what option you might want to take?

What are the pluses or minuses of each option as you see it?

YOU ARE LOOKING FOR INDICATIONS THAT YOUR CLIENT CAN UNDERSTAND THE INFORMATION AND WEIGH THE CONSEQUENCES.

Executive Capacity

Does the client have the ability to execute – carry out/implement – decisions regarding personal needs, health and safety i.e. does the person have the capacity for self care and self protection.

It is the process of putting one's decision into effect either alone or by delegating responsibilities to another more physically able individual.

Execution of one's decisions is predicated on having a predetermined plan, adapting the plan in response to changing or unexpected circumstances and delegating these responsibilities to appropriate surrogates when one is physically unable to carry out the plan.

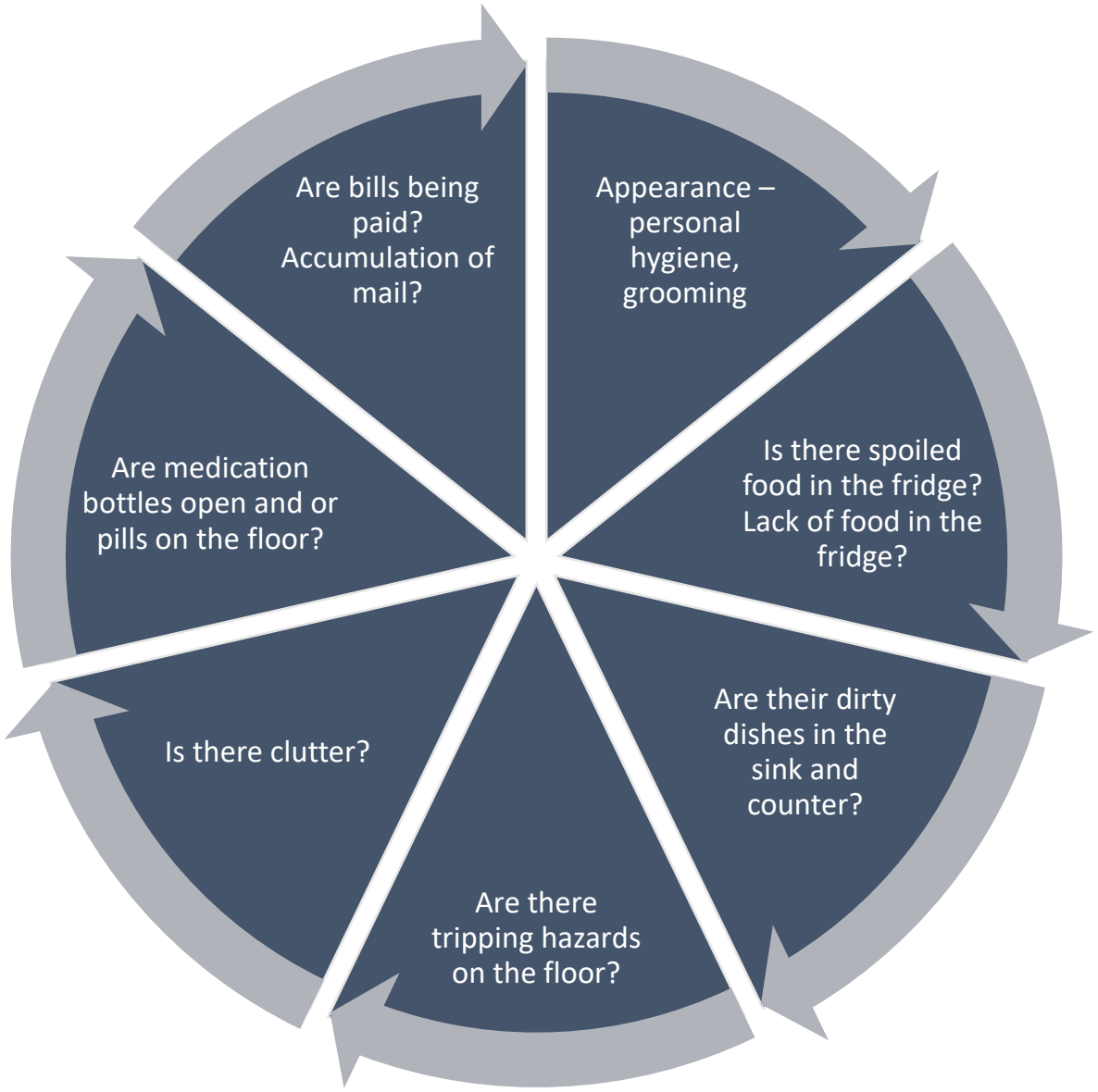
Additional Screenings to help with executive assessment

- Get-Up –And –Go or TUG (Timed Up and Go)- mobility test
- Katz Index Of Independence in Activities Of Daily Living
- Lawton’s IADL Test
- Geriatric Depression Scale (GDS – SF15)
- Kohlman Evaluation of Living Skills (KELS) - most often performed by a registered Occupational Therapist (OTR)

Good Interview Questions :

- Have client explain his/her medical issues and medications. How do you know when to see a doctor? What would happen if you stopped taking your medications?
- What steps would you take if you ran out of your medications?
- How long have you lived in your home? Who else lives with you?
- Can you tell me how you manage your bills - how they budget, pay bills, balance your check book? Do you need help?
- Have then describe a routine day and how they get their meals and take their medications
- If in the home, ask them to bring you a glass of water
- Ask judgement questions: What would you do if you smelled smoke? What would you do if you were having chest pain? What is the number for emergency? What would happen if you did not pay a bill?
- Always also include information from family members, caregivers or other qualified informants.

Pay attention to clues at a home visit:



Capacity-Risk Model For Intervention

Principle 1 **–**When capacity is high, the individual has a right to self determination and a right to refuse services regardless of the level of risk present.

Principle 2 **–** When capacity is moderate and risk is moderate, one should attempt to establish a relationship with the client to client system. Use psychosocial interventions geared to increase capacity and decrease risk.

Principle 3 **–** When capacity is low and risk is high we have a responsibility to provide protective interventions. These interventions may ne involuntary such as petition for guardianship or referral to adult protective services.

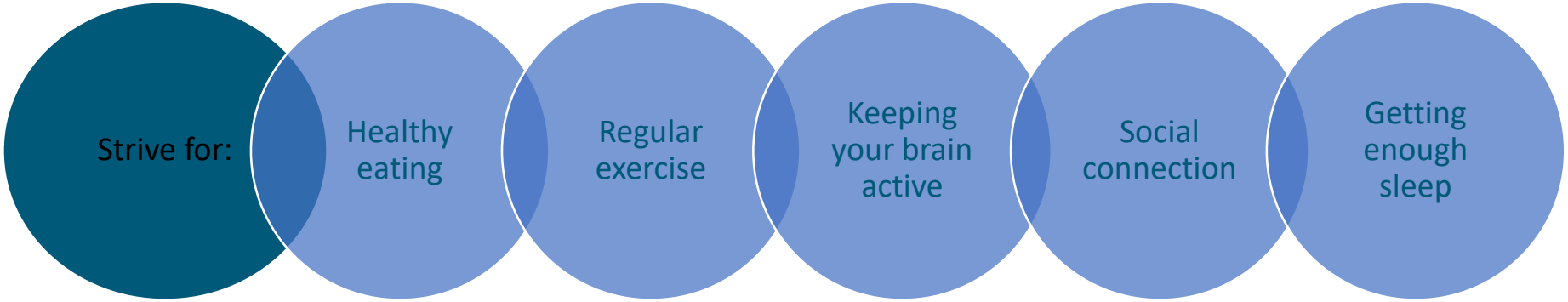
Soniat, B Empowering Social Workers For Practice, NASW Press, 2011

Strategies to Enhance Capacity

Optimize	Optimize health and well being
Accommodate	Accommodate for sensory loss (hearing vision)
Treat	Treat underlying medical or mental health issues
Limit	Limit alcohol and smoking
Develop	Develop a therapeutic alliance
Engage	Engage their social support system for help

Protecting Brain Health

GOOD OVERALL HEALTH MAY HELP TO MAINTAIN GOOD BRAIN HEALTH.



Strategies for enhancing collaboration

Use motivational interviewing techniques :

- Ask open ended questions
- Reflect and Summarize
- Instead of “This is what you must do…” say “What ways might work for you…?” OR
- Instead of “The best way forward is….” say “Some choices that you have are….”

QUESTIONS TO EVOKE/ELICIT CHANGE TALK

WHAT WOULD BE THE GOOD THINGS ABOUT CHANGING YOUR (PROBLEM)?

WHAT WOULD YOUR LIFE BE LIKE THREE YEARS FROM NOW IF YOU CHANGED YOUR (PROBLEM)?

WHY DO YOU THINK OTHERS ARE CONCERNED ABOUT YOUR (PROBLEM)?

QUESTIONS TO ASK IF YOUR CLIENT IS HAVING DIFFICULTY CHANGING

HOW CAN I HELP YOU GET PAST SOME OF THE DIFFICULTY YOU ARE EXPERIENCING?

IF YOU DID DECIDE TO CHANGE, WHAT WOULD YOU HAVE TO DO TO MAKE THIS HAPPEN?

QUESTIONS WHERE YOUR CLIENT HAS LITTLE DESIRE FOR CHANGE

SUPPOSE YOU DON'T CHANGE, WHAT MIGHT BE THE WORSE THAT MIGHT HAPPEN?

WHAT IS THE BEST THING YOU COULD IMAGINE THAT COULD RESULT FROM CHANGING?

Cognitive Screening Tools and Capacity

MMSE has been found to correlate with clinical judgements of incapacity

It has some utility in identifying individuals at the high and low ends of the range of capacity (score of 0 – 30)

No single cut-off score yields both high sensitivity and high specificity

MMSE scores of less than 19 are highly likely to be associated with impaired capacity

Kim SYH et al ,Psychiatr Serv 2002;53:1322-4; Karlawish JHT et al Neurology 2005;1514-9;Etchells et al J Gen Intern Med 1999;14:27-34

COGNITIVE SCRENING TOOLS

St Louis University Mental Status (SLUMS)

- 30 points (7-10 minutes)
- No education bias
- VA population
- Sensitivity 98-100%
- Specificity 98-100%

Montreal Cognitive Assessment (MoCA)

- 30 points (less than 10 minutes)
- Developed for MCI
- Not validated in large samples
- Education bias
- Sensitivity 80-100%
- Specificity 50-76%

Sexual Consent Capacity – Peter Lichtenberg's framework -

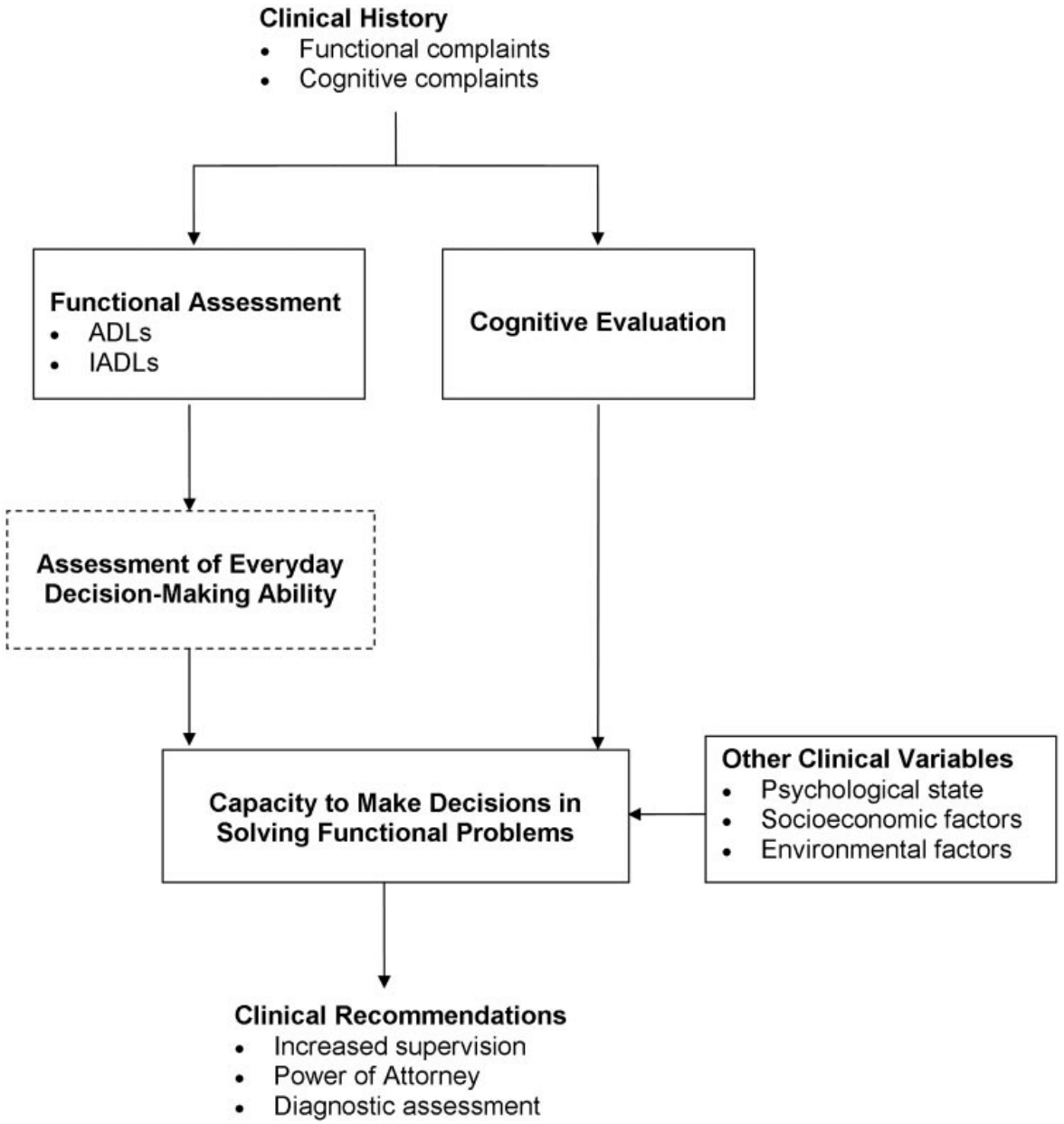
- Client's awareness of the relationship – is the person aware who is initiating the sexual contact? Does the person believe that the other person is a spouse and thus acquiesces it is she/he cognizant of the other's identity & intent? Can the person state what level of sexual intimacy would be comfortable?
- Client's ability to avoid exploitation – is the behavior consistent with formerly held beliefs and values? Does the person have the capacity to say no to uninvited sexual contact?
- Client's awareness of potential risks- does the person realize that the relationship could be time limited? Can the person describe how he/she will react when the relationship ends?

Lichtenberg,P.A et al, Gerentologist, 30, 117-120

Oregon Surrogate Statute in a Medical Emergency

GUARDIAN
SPOUSE
ADULT ACCEPTABLE TO THOSE LISTED ABOVE
MAJORITY OF AVAILABLE ADULT CHILDREN
PARENTS
MAJORITY OF AVAILABLE ADULT SIBLINGS
FRIEND OR OTHER RELATIVE
PHYSICIAN

Model for Assessing Capacity to make decisions



Lai JM et al, AmJ Geriatric Psychiatry. 2007;15(2):101-111

REFERENCES

Soniat, Barbara & Monica Melady Micklos. Empowering Social Workers for Practice. NASW Press, 2011

Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologist. American Bar Association Commission on Law and Aging 2008.

Kim S et al. Psychiatric Serv 2002:53:1322-4

Chow GV, et al. CURVES: a mnemonic for determining medical decision-making capacity and providing emergency treatment in the acute setting. Chest. 2010;137:421-7

REFERENCES

Appelbaum P. Assessment of Patient's Competence to Consent to Treatment. N Engl J Med 2007;357:1834-40.

Naik AD et al. Assessing capacity in suspected cases of self neglect. Geriatrics 2008 Feb:63(2):24-31.

Moye J. Assessment of Decision-Making Capacity in Older Adults: An Emerging Area of Practice and Research. J Gerontology 2007,Vol.62B, No 1, P3-P11

Lai JM etal. Assessing the capacity to make everyday decisions. Am J Geriatric Psychiatry 15:2, Feb. 2007

Karlawish J. Measuring Decision-Making Capacity in Cognitively Impaired Individuals. Neurosignals 2008:16:91-98

Naik AD et al. Assessing safe & independent living in Vulnerable older adults: Perspectives of professionals who conduct home assessments. www.jabfm.org

REFERENCES

- Capacity for Sexual Consent in Dementia in Long –Term Care, March 2016 The Society for Post-Acute and Long-Term Care Medicine