

Who Says I Can't Make that Decision

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Learning Objectives

when you complete this workshop you will be able to:

- Understand the principles underlying an incapability assessment
- Articulate the steps involved in an incapability assessment
- Identify when an informal assessment becomes a formal incapability assessment
- Identify various domains of an incapability assessment

Terminology and Definitions

Domain:

- Refers to the type of decision, grouped in law

Vulnerability Is:

- *relative*: a person is more or less vulnerable
- *relational*: a person is always vulnerable to something
- *not a disability issue*: may or may not be vulnerable
- *a social condition*: diverse factors apply
- *not an inherent quality*: not a flaw, arises out of characteristics or circumstances
- *not a static concept*: circumstances can change

Terminology and Definitions

Valid consent to health care:

- The HCP must seek valid consent and document
- Consent is valid if it is:
 - Informed, voluntary, given by a capable adult
- Informed consent requires the adult to understand:
 - The condition for which the treatment or service is proposed
 - The nature of the proposed treatment or service
 - The risks and benefits of the treatment or service
 - Alternatives available

The Context of an Incapability Assessment

- Legislation
- Domain and types of assessments
- Who assesses for what?
- Some practice implications

Domains of Decision Making and Corresponding Legislation

Domain

- financial and legal decisions
- health care decisions
- personal care decisions
- psychiatric treatment decisions
- protection from adult abuse, neglect or self-neglect
- residential care/facility placement decisions

Legislation

- *Power of Attorney Act*
- *Patients Property Act and the Adult Guardianship Act Part 2*
- *Public Guardian and Trustee Act*
- *Health Care (Consent) and Care Facility (Admission) Act*
- *Representation Agreement Act*
- *Mental Health Act*
- *Adult Guardianship Act Part 3*

Who Assesses for What?

The Health Care Provider: a person who, under a prescribed Act, is licensed, certified or registered to provide health care and is authorized by legislation to be involved in the following matters

- Functional and Medical Assessment: Patients Property Act
 - AGA Part 2.1 (not in force)
- Pension trusteeship – physician only
- Consent to health care : HCCCFA Act
- Adult Abuse and Neglect investigations: AGA Part 3
- Consent to facility admission: Part 3 of HCCCFA Act (not in force)

HCP Practice Context

1. A focus on inter-professional team-based assessments of incapability.
2. A shift away from generally applied assessments of incapability to a focused, least intrusive approach that will support client decision making.
3. Focus on incapability assessments for specific domains requiring supported or substitute decision making.
4. Reduction of unnecessary incapability assessments
5. Awareness of the need for consent for a number of purposes and sharing of assessment results.

An Incapability assessment is:

- about a particular **DECISION**
- within a particular **DOMAIN**
- at a particular **POINT IN TIME**
- within a **SOCIAL CONTEXT**

Principles to Guide Practice

1. An adult is considered **CAPABLE** unless determined otherwise
 - Be aware of assumptions based on cognitive impairment, age, physical disability, diagnosis, cultural beliefs, religious beliefs, gender, or “risky decision making”
 - Do not make assumptions about **incapability** based on the way a person communicates
 - Practice with the assumption that someone is capable
2. Follow a path of least intrusion
 - Seek ways to improving capacity and/ or
 - Seek ways to reduce vulnerability

Principles to Guide Practice

3. An incapability assessment is unnecessary if there are alternate ways of adequately meeting the adult's needs
4. Incapability assessments are undertaken only if the assessment will serve the interest of the adult
5. An adult has the right to be informed of the intent to conduct an incapability assessment unless knowledge of this would cause harm

Principles Continued:

6. An incapability assessment is concerned solely with an adults decision making ability in relation to the particular domain in question (i.e., financial and legal affairs, personal and/ or health care or Support and Assistance (AGA)
7. A *Certificate of Incapability* is considered only as a last resort.
8. An incapability assessment is:
 - a **PROCESS**, conducted by a team in consultation with the adult and those who support the adult
 - conducted fairly and demonstrate respect for the adult and the adults privacy, self-esteem and well being
9. A finding of capability/incapability is NOT based solely ¹³ on the results of cognitive assessment tool/s and scores

Incapability Assessment Guide: a Resource for Clinicians



Microsoft Word
Template

- Handout
- Illustrates the different types of Incapability Assessments from informal to formal
- Step one and two in activities in relative order
- Is meant to guide practice not restrict practice
- Use in conjunction with the Decision Making Options Tool
- CHS Guideline for Health Care Disciplines Designated to Perform Incapability Assessments

The Six Activities involved when considering an Incapability Assessment

1. Determine if an incapability assessment is necessary.
2. Engage the person being assessed in the process.
3. Consider social context and ethical principles.
4. Educate the person about the decision, and support decision-making capability.
5. Assessment.
6. Take actions based on the results of the assessment.

Adapted from Molloy, D., Darzins, P., & Strang, D., (1999). *Capacity to Decide*. Troy, Ontario: New Grange Press

1. Determine if an incapability assessment is necessary.

- An adult is at some notable risk of harm
- A person is known or suspected to have impaired decision making
- There is a decision at hand
- All attempts have been made to be 'least intrusive' and reduce vulnerability

1. Determine if a Capacity Assessment is Necessary

- It is important that we do not make assumptions about a person's capability based on our perceptions of “eccentric” or “difficult” behaviour.
- ask the question – Is this behaviour typical for this person or is it new?
- Is it a temporary condition?
- Is there a legally-appointed substitute decision maker?

2. Engage the Person Being Assessed in the Process

Inform the client:

- That their capability has been called into question and that they, or others, are at risk
- That an incapability assessment will proceed, and it is in their best interests to become involved to give every chance to prove capability
- Of the steps in the process and who will be involved
- if the result of the assessment is that they have capability, they will continue to make decisions, If not a substitute decision maker may make decisions (while taking prior wishes into account)

3. Consider social context and ethical principles.

Remember assessing for Incapability significantly impacts a person's self determination and choice



3. Social Context and Ethical Principles

- People in marginalized groups have a substantially higher risk of being classified as impaired
- Consider systemic or individual trauma
- Consider Indigenous context
- Be aware of power imbalance
- Consider the impact of client fear, anxiety or coercion
- Understand a person's previously expressed attitudes, opinions, values, preferences and decisions BEFORE evaluating his/her capability

4. Educate the person about the decision, and support decision-making capability

- Ask clients/pts how they have made decisions in the past, and what they need in order to help them make the decision
- Ask clients/pts who they like to consult with when making decisions
- Take time to explain the options with risks and benefits and communicate in a way that is best for the client
- Treat health concerns prior to assessment

5. Incapability Assessment

- Putting the pieces together



Incapability Assessment

Important Do's:

1. Establish a health care inter-professional assessment team and determine a lead
2. Gather collateral information, e.g. medical, psychosocial, contextual assessments and screens
3. Access resources that best assess the domain in question
4. Use a variety of assessment methods including interviewing and standardized tools
5. Use accessible language; consider literacy; translators, communication devices
6. Determine when the client/pt is at their best and what environment they feel most comfortable

Incapability Assessment

Three distinct parts to the assessment process including a medical exam

1. Clinical Interviewing
2. Incapability assessment tools:
 - Cognitive Assessment
 - Executive function
 - Functional assessments
3. Risk Assessment

Clinical Interviewing

There are four decision-making abilities that patients require to be able to demonstrate capability:

1. Ability to understand relevant information
2. Ability to apply that information to themselves and appreciate the situation and its consequences
3. Ability to reason
4. Ability to communicate and express a choice

Clinical Interviewing

Three step incapability test:

1. Does the adult understand the care/services/choice being offered?
2. Does the adult understand why the care/service/choice is being offered?
3. Does the adult understand the consequences if the care/service/choice is not accepted?

Cognitive Assessment Tools

- Ask: why am I testing and do I have consent?
- Has there recently been an equivalent test completed?
- Cognitive tests are not always culturally relevant
- Cognitive tests may have limitations depending on the domain in question
- Clinician bias may have impact on how cognitive test results are perceived
- A poor score on a cognitive assessment is not a an **indication** of incapability
- Be qualified to administer the test – Seniors' education modules

Executive and Functional Assessments

- Executive functioning screens involve getting the client involved in completing the task e.g.,
 - Planning
 - Active problem solving
 - Anticipation of an intended action
 - Initiation of activity
 - Ability to carry out a decision
 - Inhibition of inappropriate behaviour
 - Capacity to monitor the effectiveness of one's behaviour
- Functional screens can be done by clinical observation of the client completing a task or by using standardized measures

6. Take actions based on the results of the assessment.

- An incapability assessment does not necessitate a particular intervention.
- The team must look for least intrusive options to support a vulnerable and incapable adult
 - e.g. services, pension trusteeship
- Incapable of what?
- A determination of incapability is neither global nor permanent
- A determination of incapability does not mean the person cannot be involved in future decisions
- Clients have a right to re-assessment



Mr. Pino

Case Study

- 85 year old single widower who is estranged from his family and lives alone in a large home in the downtown core area.
- Significant alcohol use issues, cocaine and other stimulant use and a pattern of frequent hospitalization, increasing over the last two years.
- Medical status becoming increasingly complex and becoming progressively more cognitively and functionally impaired with mobility issues and personal care needs increasing.
- Does not follow through with medical care and tends to discharge himself against medical advice before a full work up is possible.
- Referral to HCC after each hospital discharge but Mr. Pino did not engage and also there were safety concerns for staff due to aggressive guests in home
- Police and bylaw officers reports of regular complaints from neighbors regarding deterioration of property and aggressive guests coming and going from his home and his deteriorating home and property.

Case Study continued

- Over time it has become clear to community team that he has substantial assets (house, investments and mysterious overseas income).
- Client admitted to hospital again and ER reports indicates suspicious bruises over his body, in addition to significant signs of dehydration and malnutrition.
- One family member has emerged from out of province suggesting Mr. Pino must be placed in care from hospital.
- In hospital, Mr. Pino's delirium is treated with apparent success and he is insisting on returning home immediately without any supports. The team's impression is that Mr. Pino does not understand the rationale for a continued hospital stay and the need? to sort through his "complex" medical status.

Case Study exercise

Group Discussion

Is an incapability assessment appropriate for this gentleman

1. What are the domains
2. What are the decisions that need to be made
3. What type of assessment would be appropriate
4. Who would be involved in the assessment

*refer to the **Assessment for Incapability**

Process Guide handout



Summary

- Foundational knowledge that provides an overview of the important components of incapability assessments for an inter-professional audience
- Review of the various types of Incapability assessments and who conducts them
- Important principles when assessing for incapability
- Review of resources available to health care providers
- Understanding there is a need for further education to meet specific competencies for identified groups of clinicians
- Additional advance level modules to come...

Resources / Guidelines

- Care For Elders, BC Incapability Assessment Pre Reading and Learning Modules, UBC Dept of Family Practice, Dr. M. Donnelly, 2012
- Exploring Capability in the Context of Adult Abuse Investigations, Kayla Melchior, MSW Project, 2009
- Incapability Assessments: A Review of Assessment and Screening Tools, Final Report, D. O'Conner PHD, 2009
- Island Health Seniors Program, CHS Guideline for Clinicians in Health Care Disciplines Designated to Perform an Incapability Assessments
- No Longer Your Decision: Ombudsperson of BC 2013
- Decision Making Options Tool, Island Health Incapability Assessment Working Group, 2012
- Quick Facts: Capacity Assessment, Ontario Primary Care, 2008
- Together to Reduce Elder Abuse, MOH BC Strategy, 2013
- Vulnerable Adults and Capability Issues in B.C, Provincial Strategy Document, BC Collaborative, 2009
- Island Health Incapability Working Group; Sandie Somers, Seniors and Spiritual health





Thank You