

# Evaluating Older Adults with Diminished Capacity: A Clinical Model

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# Introduction

Ohio law allows for expert opinions from medical and behavioral health experts about decisional capacity of older adults, especially useful in complex or murky cases!

# Examples of situation-specific capacities

- A. Donative capacity—gift giving
- B. Execute a contract
- C. Consent to medical interventions
- D. Execute a durable p.o.a.
- E. Testamentary capacity
- F. Marry
- G. Sue and be sued
- H. Stand trial

# State law reform

- A. Focus is on the functioning of the individual.
- B. A mental condition or physical frailty are no longer sufficient elements to establish the need for a surrogate decision-maker.

# State Law Reform

Emphasis on functional definitions of competence; i.e., the degree the disorder causes problems in daily functioning.

# Gold Standard

Multi-dimensional approach in  
formal assessment

(ABA Commission on Law and  
Aging and the American  
Psychological Association, 2005)

# Clinical Models of Capacity

- A. Medical Condition
- B. Cognition
- C. Everyday functioning
- D. Values and preferences
- E. Risk and Level of Supervision
- F. Means to enhance capacity

# Quality clinical evaluations include:

## Contextual factors:

1. personal history
2. cognitive status of the client
3. physical demands
4. resources
5. risks of the situation
6. personal values

# Cognitive Functioning

Key elements:

The ability to receive, evaluate information, and communicate a decision to others.

# Signs of possible diminished capacity

1. Disorientation—e.g., getting lost while driving; time
2. Verbal recall/short term memory deficits—e.g., excessive repetition of questions and statements
3. Problems of communication, comprehension
4. Executive functioning deficits—e.g., inability to cook, handle finances, or tendency to engage in impulsive, out of character behavior
5. Lack of mental flexibility

# Emotional/Behavioral Signs of Possible Incapacity

1. Display of wide range of emotions in an interview
2. Delusional thinking
3. Visual hallucinations/illusions
4. Poor grooming and hygiene, especially a decline from the usual.

# Mitigating Factors

1. Recent stressful life event
2. Reversible medical conditions
3. Hearing and vision loss
4. Individual differences in education, culture, religious traditions

# Common Reasons for Expert Consultation

## Pre-empting future litigation:

- ◆ Potential Will contest
- ◆ Pre-nuptial agreement
- ◆ Other business contract
- ◆ Family conflicts among adult children

# Expert Evaluators

Geriatricians

Geropsychologists

Geriatric psychiatrists

Neurologists

Multi-disciplinary teams

According to the ABA and APA the most critical variable is the amount of experience of the professional.

# Current Practice Standards

1. Detailed clinical interview
2. Measures of performance in specific domains
3. Performance based assessment of cognitive abilities
4. Behavioral descriptions from collateral sources

# Clinical case: Charlene

Reason for referral

Medical History

Psychiatric history

Background information

# Collateral Information

## Behavioral Competency Inventory<sup>®</sup>

### ADAPTIVE BEHAVIORS

1. Self-Care Skills
2. Instrumental Activities of Daily Living
3. Memory/Orientation
4. Social Interactions
5. Compensates for Incapacities

### MALADAPTIVE OR CHALLENGING BEHAVIORS

6. Behavioral Excesses
7. Behavioral Deficits

# Cognitive Test Results

1. MMSE (Folstein Mini Mental State Exam )
2. Clock Drawing
3. COGNISTAT (Neurobehavioral Cognitive Status Exam) or DRS-II
4. Vocabulary (helps estimate premorbid intellectual functioning)

# Cognitive Test Results

5. Memory functioning
6. Expressive Language
7. Judgment/everyday problem-solving

# Mood and Personality Functioning

1. Geriatric Depression Scale
2. Beck Anxiety inventory
3. Cornell Scale for Depression in Dementia
4. Patient Health Questionnaire (PHQ-9)

# Overall Impressions:

Factors to take into account:

Pre-morbid history

Support system

Patient's values

Reversible medical conditions

# Recommendations

1. Continued oversight by APS and financial guardian
2. Question need for continued guardianship of person
3. Follow-up mental health care
4. Encouragement to be more physically active
5. Repeat cognitive evaluation in 12-24 months or sooner if new problems arise.

# References

American Bar Association Commission on Law and Aging - American Psychological Association (2005). *Assessment of older adults with diminished capacity: a handbook for lawyers*. Washington, DC: American Psychological Association.

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