



# Capacity Evaluations for Vulnerable Populations

Amy S. Friday, Ph.D.

Licensed Clinical Psychologist / Geropsychologist

OPAL Institute, Oregon Passionate Aging and Living

[www.opalinstitute.com](http://www.opalinstitute.com)

503-308-4251

# Aging Experiences

---

- Normal / Healthy Aging
  - Mild Cognitive Impairment (MCI)
  - Dementia
- 
- Varying Levels of Cognitive Ability

# Balance

---

- Promotion of Autonomy

- Protection From Harm

If protection is warranted, least restrictive alternative.

# Capacity Types & Issues

---

- Decisional Capacity – make overall decisions
- Executional Capacity – carry out actions (e.g., manage hands-on finances)
- Capacity SPECIFIC to certain domains
- Capacity SPECIFIC to a certain point in time

# Capacity Domains

---

- Finances
- Testamentary and Other Legal Decisions
- Independent Living
- Medical Decisions
- Sexual Relations
- Driving

# Assumption of Independence

---

- A reason is needed to question incapacity in a specific area
- Advanced age ≠ automatic incapacity
- Physical disability ≠ automatic incapacity
- Diagnosis (e.g., dementia) ≠ automatic incapacity
- Differing values/preferences ≠ automatic incapacity

# Standardized Inquiry & Documentation

---

- Why?
  - Standardization helps reduce bias
  - A standardized process keeps you thinking of all relevant pieces
  - Documentation – not just busywork!
  - It helps you think through the situation
  - It reminds you why you made decisions and helps justify them
  - It reduces risk

# Standardized Inquiry & Documentation Example

---

- Reason for concern and specific capacity in question
- Specific areas of risk for the client
- Concerns regarding undue influence
- Client's values, desires, history
- Relevant parties
- Consultation, if utilized
- Least restrictive alternative thought process



# Potential Relevant Parties

---

- Person of Interest
- Medical Providers
- Children/Other Family
- Significant Others
- Living Facility/Administration (rules)
- Friends
- Employees/Caregivers
- Social Services
- Attorneys
- Law Enforcement
- Court System

# Complicated Situations

---

- Occurs with confusion, lack of clarity, conflict, differing views/opinions
- Often with mild to moderate symptoms/impairment
- Seek consultation from professionals to guide decisions and actions
  - Medical Providers
  - Attorneys
  - Evaluators/Psychologists (Geropsychologist, Neuropsychologist)

# Legal Standards – State of Oregon

---

- Depends on the type of transaction
- Certain areas of knowledge/understanding
- Example: Testamentary Capacity
  - Understanding of the concept of a will
  - Knowledge of nature/extent of property
  - Knowledge of natural objects of bounty
  - Aware of scope/reach of provisions of the will

# Qualified Evaluators

---

- General competencies in the assessment of older adults
- Knowledge of syndromes of aging
- Selection of appropriate age/education/cultural tests and norms
- Adaptation of assessment approach as needed
- For legal situations, knowledge of legal standards, ability to testify, willingness to testify (if needed)

# Basic Brain Functioning

---

- Basic brain ability to:
  - Understand a situation
  - Comprehend choices and consequences
  - Maintain consistent reasoning/choices
  - Express choices
  - Withstand persuasive argument/opinion
- Others may not agree on content of choices, but this does not imply compromised brain functioning

# Components of a Capacity Evaluation

---

- Stated area of capacity for evaluation
- Clinical interview
- Cognitive assessment (basic brain functions adequate to support decision making)
- Functional assessment (hands-on, specific tests for various domains)
- Emotional/psychiatric assessment

# Qualities of a Thorough Capacity Evaluation

---

- More than one day (consistency over time)
- Written report/documentation
- Question of need to possibly testify or work with legal/court system - qualifications

# Review

---

- Have a process
  - Standardized
  - Written down
  - Available for review and for client/family education
- Document all cases
- Seek consultation (have pre-identified experts)



# Red Flags

---

- Signs an individual may not have capacity in a certain domain
  - Severe or fluctuating cognitive dysfunction
  - Severe fluctuating emotional dysfunction
  - Power displays between people (e.g., control, emotional distress)

# Example: Financial Capacity

---

- 88 year-old Caucasian female
- **Reason for concern** – memory problems, confusion regarding assets, diagnosis of mild cognitive impairment
- **Specific capacity of concern** – ability to manage finances
- **Area of risk** – possible financial exploitation

# Example: Financial Capacity (cont.)

---

- **Concerns regarding undue influence**
  - client dependent on son for driving and medication management
  - client relatively isolated at home
  - client regularly giving son sums of money

# Example: Financial Capacity (cont.)

---

- **Values/desires/history**

- Client historically managed her own finances without problem
- Client gave daughter money 7 years ago in time of need (before any cognitive problems were observed)
- Client has refused to give son money in previous years
- Client expresses deep love for son and sadness that he is struggling

# Example: Financial Capacity (cont.)

---

- **Relevant parties** – client, son, daughter, PCP, APS, retirement community staff, friends
- **Consultation** – PCP; APS report; referral to specialist for evaluation

# Example: Financial Capacity (cont.)

---

- **Evaluation Results –**
  - MCI amnesic type
  - Confusion/memory problems regarding assets
  - Clear and consistent reasoning regarding financial decisions and support of family over time
- **Least restrictive alternative – discussion**

# Resources

---

- Assessment of Older Adults with Diminished Capacity – A Handbook for Psychologists (2008), American Psychological Association
- Assessment of Older Adults with Diminished Capacity – A Handbook for Lawyers (2005)  
(pdf available online with helpful outlines/flowcharts, forms at <https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf>)

# Resources (cont.)

---

- Judicial Determination of Capacity of Older Adults in Guardianship Proceedings: A Handbook for Judges (2006)
- Sexuality and Aging – Clinical Perspectives (Jennifer Hillman, Springer)



# Resources (cont.)

---

- American Psychological Association
- Oregon Psychological Association
- Department of Motor Vehicles (by state)
- Occupational Therapy Driving Evaluations (e.g., Providence St. Vincent)
- Elder Law Attorneys