Capacity Evaluations for Vulnerable Populations

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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 amnestic 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
Resources (cont.)

- 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