

Decisional Capacity

Learning Objectives-

- ✓ Define decisional capacity
- ✓ Identify patients at risk for impaired decisional capacity
- ✓ Know how to assess decisional capacity

Example Case-

A 49-year-old man with ESRD, hypertension and diabetes is admitted to the medicine service with a necrotic left foot with maggots in the wound. He presented 5 months earlier with a non-healing foot ulcer; numerous attempts were made to do vascular studies in preparation for revascularization or amputation, but he either directly refused or ate right before the procedure. He was discharged with PO antibiotics at that time. He then went to live with family in another state; the ulcer progressed and he was admitted to a hospital there and told he needed bilateral LE amputations. He refused amputation multiple times and traveled to Seattle to present to the HMC ER complaining of pain in his legs as well as odor and discoloration of his foot.

Vascular is consulted for amputation. You order NPO after midnight for surgery the next day, but when you come in you read the following note from the Vascular intern:

“ASSESSMENT / PLAN: 49 yo M with ESRD on HD and dry gangrene on left foot. He refuses consent for a left leg open guillotine amputation x 2, saying "in a couple of days." I explained to the patient the risk that he is taking if he doesn't have the surgery. He appears to understand.”

You go to examine the patient. His mental status exam is notable for a flat affect. When you ask him a question, he will often respond by closing his eyes and turning away from you. He carries no psychiatric diagnosis in our records, but when you ask his sister she says “he’s never been right in the head” and thinks he was diagnosed with schizophrenia at some point in the past.

What is decisional capacity?

- Decisional capacity is the ability to consent to or refuse care. It is closely related to competence, which can only be determined in a court of law.¹

What percentage of medical inpatients lack decisional capacity?

- Clinicians probably overestimate patient's decisional capacity.
- A study in the Lancet in 2004 assessed 302 consecutive medical inpatients with a formal assessment tool.
 - At least 40% lacked decisional capacity.
 - They also asked the senior resident on the team and the patient's relative and correlation between those opinions and the results of formal assessment was poor.

What are some risk factors for impaired decisional capacity?

- Increasing **age** and **cognitive impairment** are associated with lack of decisional capacity.
- Surprisingly, however, psychiatric illness does not correlate with lack of decisional capacity.²
- Other studies have shown that patients with **schizophrenia** are more likely to lack decision-making 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 decision making capacity³

Do you need to assess this patient's decisional capacity? Which patients need formal assessment?

- Yes, you need to assess this patient's decisional capacity.
- In this case, I attempted to do so myself but because the patient was difficult to interview, there was a suspicion of past psychiatric history, and the stakes were high, we also consulted Psychiatry.
- Anytime you are obtaining informed consent you should be assessing decisional capacity; in practice, though we don't do it formally unless the patient has evidence of impairment.
- We are also probably more likely to formally assess capacity when the patient doesn't agree with us.

How do you assess decisional capacity? What elements are involved?

- There are four elements related to decisional capacity first described by Appelbaum and Grisso in a landmark article in the NEJM in 1988:³
 - a. The ability to communicate a choice.
 - b. The ability to understand the relevant information
 - c. The ability to appreciate a situation and its consequences
 - d. The ability to reason rationally.
- In practice, you should first assess whether your patient is delirious, as this assessment should not occur if the patient is experiencing delirium. If at all possible, you should look for and treat causes of delirium before assessing decisional capacity.

Table 1. Legally Relevant Criteria for Decision-Making Capacity and Approaches to Assessment of the Patient.

Criterion	Patient's Task	Physician's Assessment Approach	Questions for Clinical Assessment*	Comments
Communicate a choice	Clearly indicate preferred treatment option	Ask patient to indicate a treatment choice	Have you decided whether to follow your doctor's [or my] recommendation for treatment? Can you tell me what that decision is? [If no decision] What is making it hard for you to decide?	Frequent reversals of choice because of psychiatric or neurologic conditions may indicate lack of capacity
Understand the relevant information	Grasp the fundamental meaning of information communicated by physician	Encourage patient to paraphrase disclosed information regarding medical condition and treatment	Please tell me in your own words what your doctor [or I] told you about: The problem with your health now The recommended treatment The possible benefits and risks (or discomforts) of the treatment Any alternative treatments and their risks and benefits The risks and benefits of no treatment	Information to be understood includes nature of patient's condition, nature and purpose of proposed treatment, possible benefits and risks of that treatment, and alternative approaches (including no treatment) and their benefits and risks
Appreciate the situation and its consequences	Acknowledge medical condition and likely consequences of treatment options	Ask patient to describe views of medical condition, proposed treatment, and likely outcomes	What do you believe is wrong with your health now? Do you believe that you need some kind of treatment? What is treatment likely to do for you? What makes you believe it will have that effect? What do you believe will happen if you are not treated? Why do you think your doctor has [or I have] recommended this treatment?	Courts have recognized that patients who do not acknowledge their illnesses (often referred to as "lack of insight") cannot make valid decisions about treatment Delusions or pathologic levels of distortion or denial are the most common causes of impairment
Reason about treatment options	Engage in a rational process of manipulating the relevant information	Ask patient to compare treatment options and consequences and to offer reasons for selection of option	How did you decide to accept or reject the recommended treatment? What makes [chosen option] better than [alternative option]?	This criterion focuses on the process by which a decision is reached, not the outcome of the patient's choice, since patients have the right to make "unreasonable" choices

* Questions are adapted from Grisso and Appelbaum.³¹ Patients' responses to these questions need not be verbal.

Table 1: Appelbaum PS. *N Engl J Med* 2007;357:1834-40

- Then, you should have a conversation with your patient in which you present information related to the specific choice and assess whether they possess the four abilities mentioned above. (Appelbaum's table is helpful).
- It is important to ask the patient to repeat information back to you in their own words.
- Note that patients with dementia can retain elements of conversation that make us assume they are understanding us when that may not be the case, so it is particularly helpful if patients can actually paraphrase information rather than just giving yes or no answers.⁴

Once you have decided that a patient lacks decisional capacity for a particular decision, does he necessarily lack it for all decisions?

- Decisional capacity is decision-specific.
- A patient may be competent to choose a DPOA or decide where he will live, but not to make a complicated decision about the best kind of surgery.

If the patient lacks decisional capacity, what do you do next?

- If the patient lacks capacity, you then turn to the hierarchy of decision makers for the state of Washington:⁵
 1. Legal guardian with health care decision-making authority
 2. Individual given durable power of attorney for health care decisions
 3. Spouse
 4. Adult children of patient (all in agreement)
 5. Parents of patient
 6. Adult siblings of patient (all in agreement)
- Remember that even if a patient lacks decisional capacity you still want to discuss medical decisions with them.
- You should try to get *assent* from a patient even if someone else is going to get *consent*.
- Even if someone cannot legally refuse a procedure, everything goes more smoothly if they understand what you are doing and agree

Case Follow-Up-

The team attempted to engage the patient in a conversation to assess his decisional capacity several times. He was very difficult to engage and at one point stated “there’s nothing wrong with my leg”, despite the fact that he had sought care for leg pain and odor. For the team, this demonstrated a lack of understanding and appreciation. Psychiatry agreed that he did not possess decisional capacity neither to consent to surgery nor to appoint a DPOA. He had no legal guardian, DPOA, living spouse or children but had 9 living siblings. The surgery team attempted to contact each of the siblings, who assented to the surgery, even though he did not provide his own consent, and surgery was performed.

References:

1. Jonsen et al. *Clinical Ethics: A Practical Approach to Ethical Decisions in Clinical Medicine*, 6th edition. Viewed 11 August 2007.
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2. Raymont V, Bingley W, et. al. Prevalence of mental incapacity in medical inpatients and associated risk factors: cross-sectional study. *Lancet* 2004;364:1421-7.
3. Appelbaum P. Assessment of Patient's Competence to Consent to Treatment. *N Engl J Med* 2007;357:1834-40.
4. Brauner DJ and Merel SE, How a Model Based on Linguistic Theory Can Improve the Assessment of Decision-Making Capacity for Persons with Dementia. *Journal of Clinical Ethics* 2006: 17 (2) 139-148.
5. <http://depts.washington.edu/bioethx/topics/consent.html>