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# EVALUATION OF CAPACITY

# An “Incapacitated Person” is:

- ⦿ An adult individual who,
- ⦿ because of a physical or mental condition,
- ⦿ is substantially unable to
  - provide food, clothing or shelter for himself or herself,
  - to care for the individual’s own physical health,
  - or to manage the individual’s own financial affairs

# ELEMENTS OF CAPACITY

- The consistent ability to communicate a choice
- The capacity to demonstrate an understanding of relevant medical information, including risks and benefits
- The capacity to appreciate the current situation and its consequences
- The ability to manipulate information in a rational manner

# COMMUNICATING CHOICE

- ⦿ Affected by impairment of consciousness, thought d/o, disruption in short-term memory, or a degree of ambivalence so extreme that it produces repeated, rapid alterations of choice
- ⦿ Test for stability of the choice by asking the patient what they wish in regard to a procedure or treatment and repeating the question later
- ⦿ Repeated reversals of intent, especially if linked to a psychiatric d/o, may suggest substantial impairment

# UNDERSTANDING RELEVANT INFORMATION

- ⦿ Requires memory for words, phrases, ideas, and sequences of information
- ⦿ Comprehension of the fundamental meaning of information
- ⦿ Understand causal relations and the likelihood of various outcomes
- ⦿ Deficits in attention, intelligence, and memory may detract from these abilities

# APPRECIATING THE SITUATION AND ITS CONSEQUENCES

- Acknowledging illness, evaluating its effect and the effect of the treatment options, and acknowledging the risk and benefits
- When these abilities are deficient, it is usually the result of pathologic distortion or denial on the basis of cognitive or affective impairment, or a delusional perception of the nature of the patient's condition, the probable outcome, or the motivations of those caring for the patient.

# MANIPULATING INFORMATION RATIONALLY

- ⦿ Involves the ability to reach conclusions that are logically consistent with the starting premises
- ⦿ Requires weighing the risks and benefits of multiple options
- ⦿ Factors that impinge on this weighing process include psychotic thought disorder, delirium and dementia, extreme phobia or panic, anxiety, euphoria, depression, and anger

# THE CAPACITY EXAMINATION

- ⦿ Clearly identify the question (Does the patient have capacity to ... live independently?... handle personal affairs, make medical decisions, etc)
- ⦿ Detailed description of how the patient demonstrates, or fails to demonstrate, the 4 elements of capacity (provide examples)
  - consistent communication of a choice
  - understanding of medical situation, R/B, alternatives
  - understanding of current situation and consequences
  - rational decision making

# THE CAPACITY EXAMINATION (cont)

- Mental status exam focusing on sensorium, orientation, attention, concentration, short-term memory, thought content and process, perception, judgment, and insight
- Concise differential diagnosis
- Statement explaining your opinion of patient's capacity

# STATEMENT OF CAPACITY

- In my opinion at this time the patient appears to have the capacity to make informed medical decisions, including refusal of recommended treatment. The patient displays an adequate understanding of his medical condition, the risks/benefits of proposed treatment, and the risks of refusing treatment-- including death. Therefore, the patient has a right to make a decision different from what the primary team recommends and accepts full responsibility for any consequences of this treatment refusal decision.

# STATEMENT OF INCAPACITY

- In my opinion at this time the patient does not appear to have the capacity to make informed medical decisions/refuse treatment due to impaired cognition. The patient does not understand his current medical condition, the risks/benefits of treatment nor risks of refusing treatment. Advise seeking next-of-kin to act as surrogate decision-maker; if none, suggest SW file for guardianship (consult Chief of Staff regarding medical decision making in the interim)

# THE CAPACITY EXAMINATION (cont)

- Include expected results of psychiatric/medical treatment (note if the patient is likely to regain capacity as with delirium; also note if the patient is likely to progressively worsen as with dementia)

# TIPS FOR CAPACITY EXAMS

- ⦿ Identify the patient's choice
- ⦿ What is the patient's rationale for making that choice?
- ⦿ What are the likely consequences of exercising the choice?
- ⦿ Can the patient weigh the pros and cons of various alternatives?

# TIPS FOR CAPACITY EXAMS

- ⦿ What is the patient's understanding of the medical problem?
- ⦿ What is the patient's understanding of the medical team's recommendations and rationale?
- ⦿ What consequences does the patient foresee from the treatment proposed?
- ⦿ What consequences does the patient foresee from not receiving treatment?

# TIPS FOR CAPACITY EXAMS

- If you don't know "the answer," get another opinion from a colleague
- If the answer is still unclear, file for court hearing so that a judge decides
- Convene the ethics committee of the hospital
- Obtain advice of in-house counsel

# TIPS FOR CAPACITY EXAMS

- Recognize value judgments and biases you have (philosophies on autonomy, beneficence, paternalism, civil liberties, and social protection)

# TIPS FOR CAPACITY EXAMS

- ① Use a “sliding scale”--higher threshold for more risky treatments and less “reasonable” decisions
- ① When you are unsure if the medical team has adequately explained the conditions and treatments proposed, watch them do so and then conduct the capacity assessment with the medical team present

# TIPS FOR CAPACITY EXAMS

- If a patient is refusing treatment, make sure it is not due to a potentially transient factor such as fatigue, pain, GI upset, medication effect, or an unpleasant event that just occurred (come back to do the evaluation later, if possible)
- Consider psychodynamic reasons for treatment refusal. Intervention may restore cooperation with treatment.

# TIPS FOR CAPACITY EXAMS

- ⦿ Address other spurious indicators of incapacity such as conflict between patient and medical team leading to the patient making “crazy” decisions, or a patient who stopped medications leading to impaired thought processes
- ⦿ Ask a family member or friend to assist with the evaluation