
Capacity/Consent for Financial, Housing and Medical Decisions

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Objectives

- Review capacity to consent for medical decisions and housing using consent act
 - Review financial decision making
 - Review relevant legislation for decision making in housing, medical decisions and finances
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Case 1

- 64 year old women with complex medical history-CAD, DM, obesity. Admitted with ankle fracture, AKI and electrolyte abnormalities. Delirious on admission.
 - Ortho writes note that patient has consented to surgery verbally
 - Day of surgery: yelling to stop the surgery
 - Consult: patient not understanding surgery and not capable to consent
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Case 2

- 80 year old male known to Geriatrics
 - Brought into hospital for wandering and poor memory
 - Pleasant, no insight, MoCA 15/30. Assisted with IADLs, poor hygiene but can do most ADLs
 - Wants to go home
 - No POA or Rep agreement
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Health Care Consent

- A person may become incapable at a point in his or her life due to illness, disability or accident
 - Capability fluctuates and is specific to decision at hand
 - If adult becomes incapable, another person can become a substitute decision maker who acts on the wishes and values of incapable adults
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Legislation

- In BC, consent for health care is governed by the Health Care(Consent) and Care Facility(Admission) Act
- This Act outlines:
 - Patients rights
 - Required elements for informed consent
 - Exceptions to the consent requirement
 - The process for health care consent if a patient is determined incapable of giving or refusing consent

The General Rules

- 1. Adults can only be given health care with their consent
 - 2. Consent must be informed
 - 3. Adults are presumed to be capable of giving consent until the contrary is demonstrated
 - 4. Adult must be approached first about health care
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Exceptions to consent requirement

- 1. When it is necessary to act without delay to preserve the adult's life, to prevent serious physical or mental harm or to alleviate severe pain and the adult is incapable to give or refuse consent and there is no authorized decision maker immediately available
 - 2. Involuntary psychiatric treatment under Mental Health Act
 - 3. Preliminary exam such as triage
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Substitute decision makers

- 1. An incapable adult may have a guardian(called a Committee of Person) appointed by the courts to make a decision
 - 2. A capable adult can name a substitute decision-maker(s) in Advance Care Planning document such as a Representation Agreement
 - 3. A health care provider may appoint a temporary substitute decision maker (TSDM) if neither 1 or 2 exist
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Substitute decision maker

- 4. The PGT may be appointed as to make decisions by court order



SDM does not apply:

- Psychiatric treatment of involuntary patient under the Mental Health Act(although may still be required to make decisions regarding non-mental health treatment)
 - Non therapeutic sterilization
 - Treatment for certain communicable diseases(as directed by a Medical Health Officer)
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Hierarchy for SDM

- Committee of the Person
 - Guardian 'speaking for the adult'
 - Representation Agreement
 - Adult 'speaking' through chosen representative
 - Advance Directive
 - Adult 'speaking' through a document
 - Temporary Substitute Decision Maker(TSDM)
 - Adult 'speaking' through family member or friend
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Case 1 – medical consent

- Delirium cleared
 - Psych consulted again-patient understands treatment, risks/benefits and how it applies to her
 - No longer requires SDM
 - Consent obtained
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Principles of capacity

- Decisional capacity-ability to understand decisions we make
 - The legal definition of capacity depends on each type of decision made
 - Finding incapability in one area does not mean incapability in another
 - Incapable of finances may still be capable of health care
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Principles of capability

- Competency (legal) versus Capability (clinical opinion)
 - Medical opinion
 - Physicians don't "deem". Only a judge can
 - **Can be any physician.** Decision making is best assessed by clinician who knows the patient and decision best.
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Domain specific

- What is the decision?
Housing, surgery, chemotherapy, rehab, will, POA
 - Capability is not determined
 - Because don't agree with clinicians
 - Because "difficult" person/family
 - By committal status ("certification")
 - By a score on a MOCA, MMSE
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Assessment to consent

- Whether the adult demonstrates an understanding of the information provided about the health care
 - And
 - That this information applies to the adult's situation
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No Such thing as “GLOBAL CAPACITY”

- Financial

- Will, POA, General finances

- Medical decisions

- Surgery, medication, dialysis, endoscope, etc

- Personal>>>>Domains

- Shelter/housing- admission to complex care
 - Nutrition
 - Clothing
 - Hygiene/safety
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Capability assessments

Common multistep process

- Ability to receive, assimilate, integrate relevant information
 - Evaluate benefits and risks
 - Implications of the decision
 - Able to carry out the decision
 - Understand how-information applies to them
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Conducting Capability assessments

- Baseline
 - Who knows him best
 - Change versus no change
 - Multiple sources
 - Risks
 - To patient eg. Falling, non adherence to pills
 - To others eg. Burning pots, flooding apt
 - May be different consequence or meaning
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Conducting Capability assessments

- Has the patient been informed of the decision/situation?
 - Informed of the options?
 - Patients preferences/values?
 - Who can help with decisions?
 - Representative agreement?
 - Committee/Guardian?
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Functional Assessment

- OT/PT
 - ADL/IADLs
 - Risk assessment- wandering, med management, falling, weight loss
 - Are there services to overcome risks?
 - Unplug stove
 - Meal delivery
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Risk Assessment

- Capable people do choose to live at risk
 - Tolerable risk
 - Intolerable risk
 - New/ unusual to the patient
 - Harm to others?
 - Harm to self?
 - Actual (happening)
 - Potential (may happen)
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Factors affecting risk

- Available human and physical supports
 - Willingness to accept new supports
 - Patients values/beliefs
 - Patients tolerance to risk
 - Caregiver values/beliefs
 - Caregiver tolerance to risk
 - Aggressive spouse
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Case 2

- Treated for syphilis and is medically stable
 - No adequate housing plan
 - Wants to find his motorhome and drive to Alberta
 - Plan is for LTC and patient was assessed as incapable
 - He wants a second opinion as he does not agree
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Documentation when using Health Care consent And Care Facility Act

- TSDM must be consulted and documented both who they are and what they consented to
 - If health care changes or patient may be able to consent, need to reaffirm ability to consent and TSDM discussion
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Care facility act second opinion

- Second opinion is done by another health care professional
 - No considered incapable unless second assessor agrees
 - If second assessment determines that patient is capable, then consent must be given by patient(not a SDM)
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Mental Health Act

Allows us to admit and treat people with serious mental health issues that are at risk to themselves or others. People under this act are treated involuntarily for their mental health disorders only.

Mental Health Act

This does not cover medical disorders/treatments or housing

The facilities it includes are “designated facilities” which are usually hospitals

Mental Health Act

- **Fit criteria for certification**
 - Mental illness with serious impairment
 - Requires psychiatric treatment
 - Danger to self/others or risk of deterioration
 - Cannot be done voluntarily
 - Any licensed physician
 - 2 certificates plus consent form 5 and notification of rights/families
 - Consent covers psychiatric treatments only
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Mental Health Act - Extended Leave

- **Extended leave-discharged from designated facility under the MHAct (Form 20)**
 - High level of severity in their illness
 - Requirement of high level of support for compliance
 - History of repeated hospitalizations/nonadherence
 - History of behaviours that risk to others/self because of non adherence
 - Needs an accepting physician in the community
 - Reviewed regularly by treating physician
 - Can be discontinued by physician at any time
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Case 3

- 83 year old admitted with moderate to severe dementia
 - Lives alone in rental apartment, daughter has been buying groceries, helping with meals, taking to appointments
 - Has neglected to pay rent and other bills but has no insight into risks of not paying bills
 - There is no POA/Rep agreement
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Financial Capability

- Nature of their financial affairs
 - Assets
 - Income
 - Debt
 - Expenses
 - Actions needed to be made for reasonable effective management of their own finances
 - Consequences of making or not making decisions about his or her financial affairs
 - Concerns being expressed about the adults need for assistance in their current situation
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Financial Incapability

- POA with enduring clause
- Representation agreement

Office of the Public Guardian

- Will be referred to designated assessors who will do a functional component and physicians will do medical component
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Adult Guardianship Act

- Abuse, neglect, self neglect
 - Self neglect is failure of adult to take care of himself leading to serious harm physically or with assets or property.
 - Health authority-power to intervene and investigate vulnerable adults living at risk
 - Determine if adult needs a support and assistance plan
 - Plan can specify any services needed including health care, accommodation, legal, social or financial
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Adult Guardianship Act

- If adult does not accept plan, may ask Public Guardian to arrange assessment of whether the adult is incapable
 - Support and assistance order-court order authorizing provision of services to adult if adult incapable of accepting plan
 - Not required to be seen by psychiatrists. Done by care providers and do not need capacity assessment first.
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Consent Act

- Health care decisions
 - Identifies a substitute decision makers
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Care Facility Admission Act

- Part 3 of Consent Act
to guide consent to admissions to facilities
 - New requirements around assessments
those not capable of making decision to live
in a care facility
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Patients Property Act

- Used for appointing committee of person
 - Patient has 2 medical opinions declaring patient is not capable of managing estate and personal affairs (privately done)
 - Court decision
 - Committee acts as a guardian making all decisions including housing, estate, health care, etc
 - POA
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Representation Act

- Assign a representative to support decisions around finances, health care, personal care and includes housing
 - Not a guardian. Requires involving patient
 - Rep 7- diminished capacity (not capable of contract)
 - Covers some health care decisions, routine financial, legal
 - Rep 9 – legal document
 - Broader powers-health, person, includes housing
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Resources

- Guidelines for Conducting Assessments of Capacity, Ontario Ministry of the Attorney General
 - CMPA-Capacity to consent
 - Public Guardian of BC
 - Toolkit for Primary Care: Capacity Assessment (RGPs of Ontario)
 - Utility and Limits of the MMSE in Evaluating Consent Capacity in Alzheimer's Disease, Psychiatric Services (2002)
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Resources

- Ten Myths About Decision-Making Capacity, Journal of Am Med Dir Assoc(2000)
 - Capacity to make health care decisions: its importance on clinical practice, Psychological Medicine(1999)
 - Mental Capacity in Psychiatric patients, British Journal of Psychiatry(2007)
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