

Assessing Decision-Making Capacity in Older Persons: Skills for Elder Justice Professionals

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Overarching Goal

To assist elder justice professionals in identifying the factors that affect clients' decisional capacity and to know when and how to seek additional evaluation.

Learning Objectives

Part I

- Review and apply professional values used to guide service delivery to older adults
- Decisions: Balancing autonomy and protection
- Cognitive aging and decision-making capacity
- Factors that may influence functional abilities
- Decision-making: Consider risk and complexity

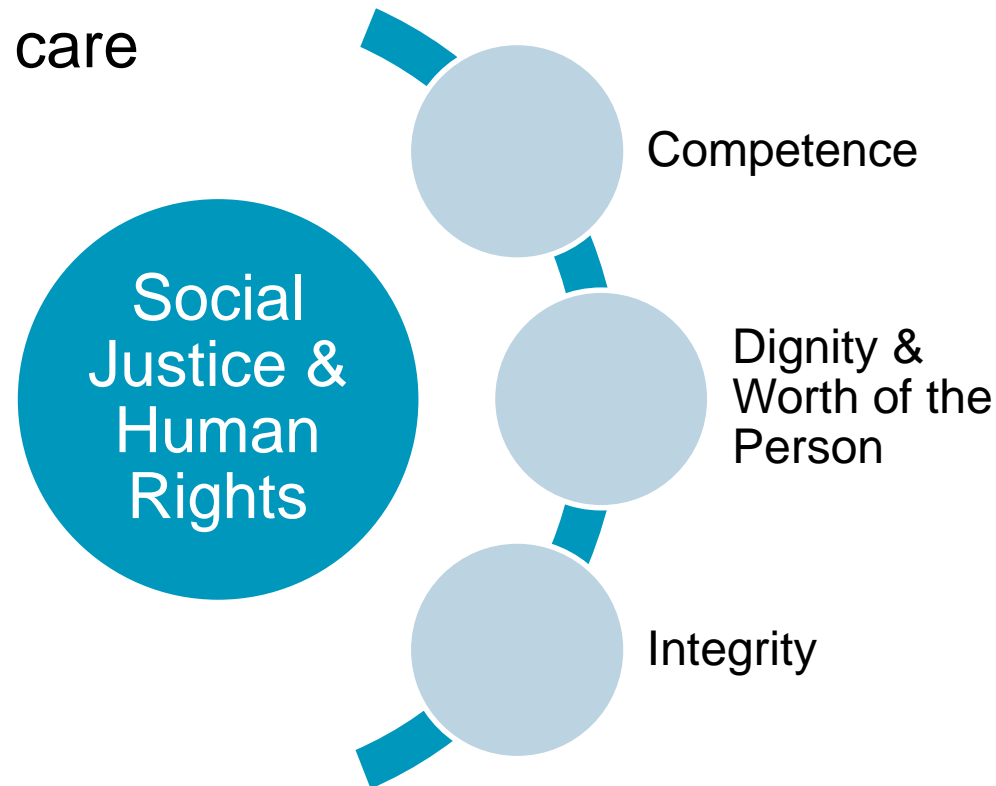


Basic Facts: Why we care...

- ✓ Estimates cite 5 million, or 1 in 10 older Americans are victims of elder abuse, neglect, or exploitation *each year*
- ✓ Experts believe that for every reported case of elder abuse or neglect, close to *24 cases* go unreported
- ✓ Decisional capacity of the suspected victim *should* impact the response professionals use to assist older persons and their families

Varied Professions, Similar Values

- To do no harm
- Provide quality care



Core Values

To ensure safety doesn't trump freedom... Wilber, 2000

- Striving to offer the least restrictive appropriate alternative
- Marshalling services to support aging in place whenever possible
- Centering decisions to the greatest extent possible around client preferences and expressed needs
- Drawing from the repertoire of available interventions to develop an individualized care plan
- Supporting informal caregivers
- Interprofessional communication to clinically integrate medical, social and legal services

Values in Service Delivery

Are core values operationalized in the context of **self-determination** and **person-environment fit**, balancing **respect for the client's personal freedom** with legitimate concerns about **personal safety**? Wilber et al., 2015

The American Geriatrics Society Expert Panel on **Person-Centered Care** states:

Person-centered care means that individuals' values and preferences are elicited and once expressed guide all aspects of their health care, supporting their realistic health and life goals.

Autonomy

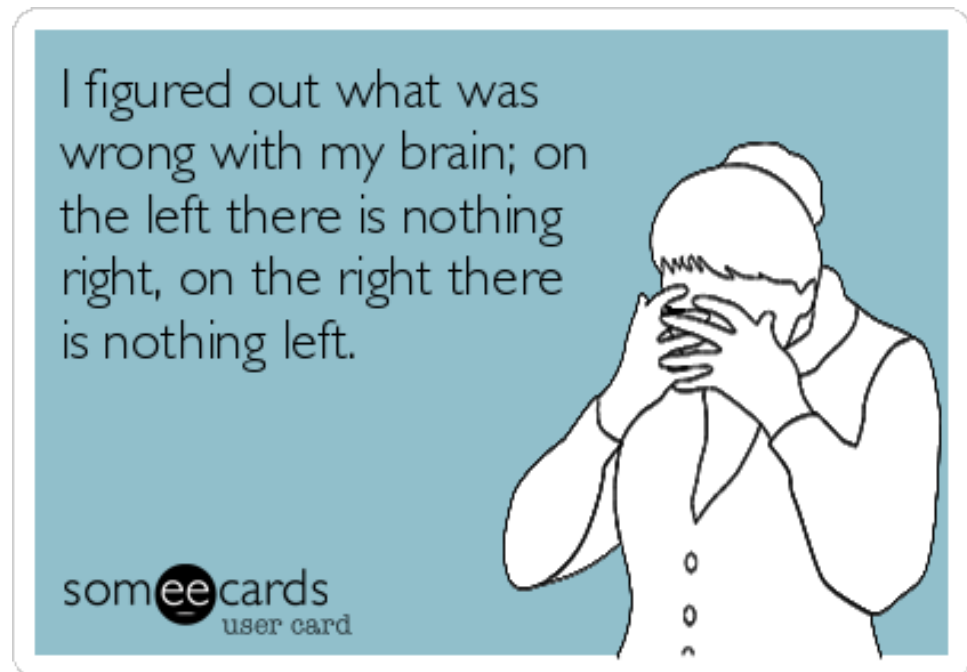
- ▶ Autonomy is the highest principle in legal, psychological and medical issues.
- ▶ “Autonomy” means the right to make one’s own decisions.

Kemp 2005

Cognitive Aging

Life course issue:

- Genetics
- Culture
- Education
- Medical comorbidities
- Acute illness
- Physical activity
- Other health behaviors



Reducing Risks for Cognitive Decline

1. Be physically active
2. Reduce and manage cardiovascular disease risk factors (HTN, DM, smoking)
3. Regularly discuss and review health conditions and medications that might influence cognitive health with a health care professional

Plus:

- Be socially and intellectually engaged, seeking opportunities to learn
- Get adequate sleep and receive treatment for sleep disorders as needed
- Take steps to avoid the risks of cognitive changes due to delirium if hospitalized

IOM 2015



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Global Council on Brain Health (GCBH)

- An independent collaborative of scientists, health professionals, scholars and policy experts from around the world working with brain health, related to human cognition
- GCBH convened by AARP, support from AgeUK, offers quality advice on what older adults can do to maintain and improve their brain health
- GCBH members meet to discuss issues areas that impact peoples' brain health as they age, with goals to provide evidence-based recommendations people can incorporate into their lives

Decisional Capacity



Decisional capacity...
is the ability to adequately
process information in order
to make a decision based on
that information.

Kemp 2005

Contributing Factors

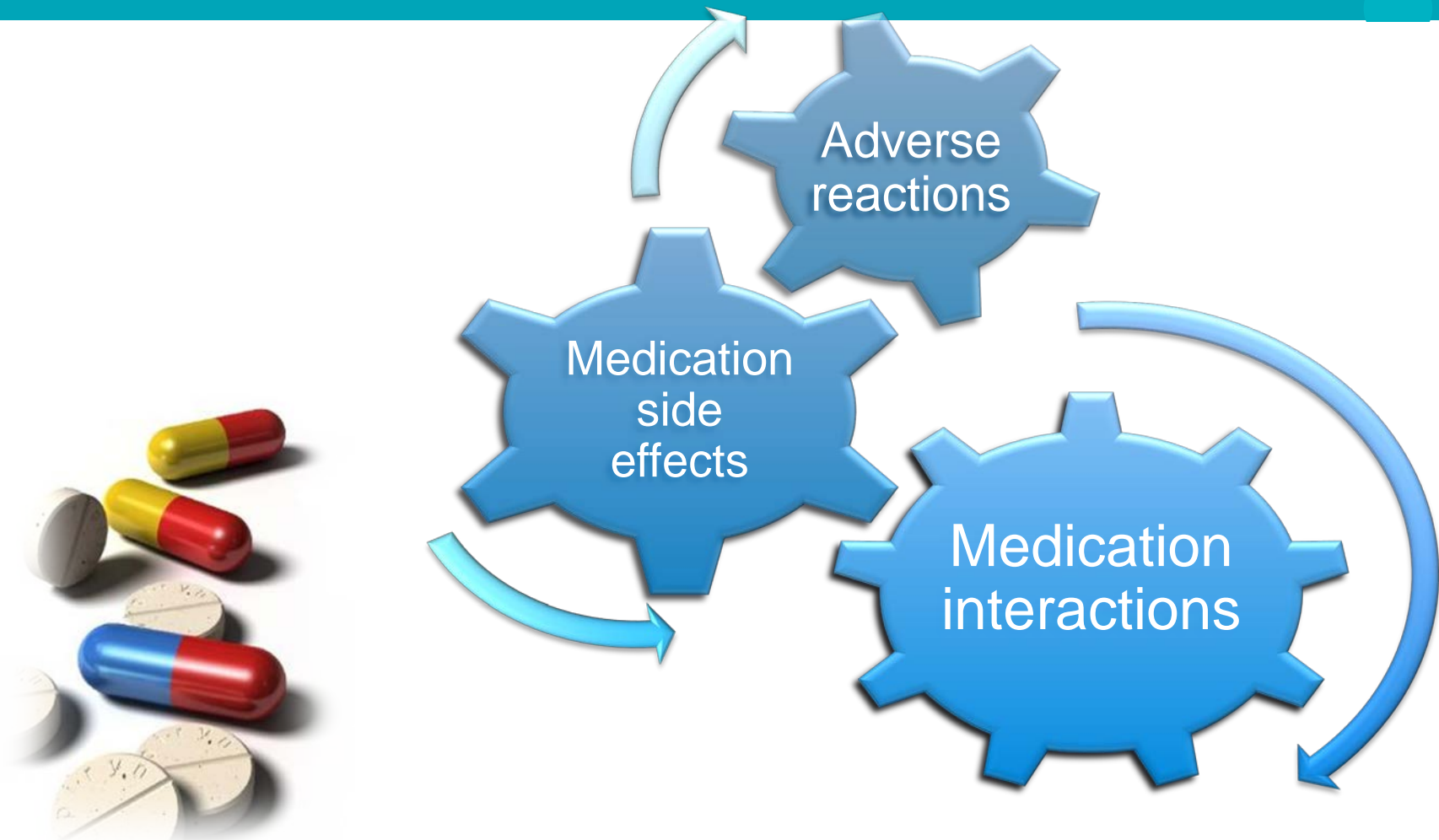


Medical Conditions

These medical conditions can impact cognition:

- Dehydration
- Congestive heart failure
- Chronic lung disease
- Urinary tract infection
- Diabetes
- Mini-stroke

Medication Issues



Advanced Biopsychosocial Assessment: Navigating the Grey Areas

The 3 D's



Dementia



Delirium



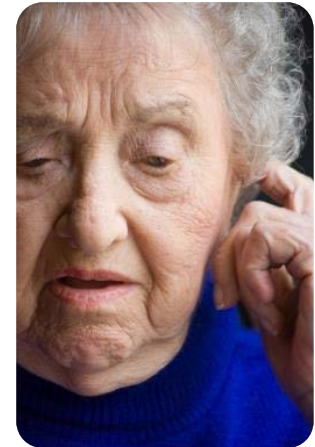
Depression

Dementia Defined

- Dementia: descriptive term for a collection of symptoms that can be caused by a number of disorders that affect the brain, includes a memory deficit *plus* a deficit in at least one other cognitive domain
- Common final behavioral pathway for many diseases and etiologies affecting the brain

Irreversible Dementia Conditions

- Alzheimer's Disease
- Vascular Dementia
- Parkinson's Disease
- Frontal-Temporal Dementia
- Dementia with Lewy Bodies
- Alcohol-related Dementia



Causes of Reversible Dementias

Drugs, dehydration, depression

Electrolyte imbalances, emotional disorders

Metabolic disorders

Endocrine disorders

Nutritional Deficiencies

Trauma, tumor

Infections (urinary tract)

Acute illness, complications of arteriosclerosis

Seizures, strokes, sensory deprivation

Delirium

- Disturbance in alertness, consciousness, perception, and thinking
- Sudden onset
- Caused by infection, dehydration, changes in chemical balance, head trauma, post surgical recovery
- Medical emergency
- Treatable and reversible

Depressive Symptoms

- Sleep Disturbance
- Loss of Energy/ Libido
- Change in Appetite/ Weight
- Psychomotor Retardation/ Agitation
- Poor Concentration/ Attention
- Anhedonia - Loss of Interest in Usual Activities
- Somatic Complaints
- Dysphoria - Flat Affect
- Sense of Hopelessness/ Worthlessness
- Suicidal Ideation

Yesavage & Brink

Many Variations on the Theme: Case Study

11/16 Monthly Service

Daily Balance

Date	Amount
	\$ 738.97
10/20	526.82
10/21	590.53
10/22	524.21
10/23	362.24
10/26	398.42
10/27	



Mental Health Experts in Assessing Capacity



Clinical Professionals Qualified to Evaluate Capacity

- Geriatricians, geriatric psychiatrists
- Neurologists
- Neuropsychologists
- Nurses
- Occupational therapists
- Physicians
- Psychiatrists
- Psychologists
- Licensed social workers

Source: American Bar Association & American Psychological Association 2005



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Types of Capacities

There are various types of “capacities” with different thresholds:

- Testamentary- change Will (PC§ 6100.5)
- Contractual-change contract, amend Trust
- Financial- manage finances
- Medical Decision Making- to manage medical care, medications
- Nominate a Conservator
- Donative

Types of Capacities cont.

One may have the requisite **testamentary capacity** to make a will but be **susceptible** and **unable to resist undue influence** of another.

Other vulnerabilities may be exploited:

- lack of financial knowledge
- keep older adult unaware
- increase family discord
- complete trust in individual

Legal Standard for Capacity

- Capacity is codified in state laws, eg., PC § 810
There shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.
- Application of the Due Process in Competence Determinations Act (DPCDA)

Legal Standard for Capacity

“Capacity” means a person’s ability to understand the nature and consequences of a decision and to make and communicate a decision, and includes in the case of proposed health care, the ability to understand its significant benefits, risks and alternatives. (CA PC section 4609)

Evaluating Capacity: Cognitive Areas Assessed

1. Sensory Acuity
2. Motor Activity and Speed of Processing
3. Attention and Concentration
4. Working memory
5. Short term/recent memory and learning
6. Long term memory
7. Executive Functioning
8. Understanding or Receptive Language
9. Communication or Expressive Language
10. Visual- Spatial Skills
11. Psychiatric- Mood/psychotic disorders

Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists. (2008).
American Bar Association/American Psychological Association.



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Areas of Function Assessed

I. ADLs (Activities of Daily Living)

Feeding, transfers, continence, toileting, dressing, bathing

II. IADLS (Instrumental Activities of Daily Living)

Shopping

Use telephone

Laundry

Preparing meals

Housekeeping

Handle medications/manage medical care

Transportation

Perform financial tasks and make judgments about one's finances and/or estate

Cognitive Changes & Capacity

Reductions in:

- Knowledge(semantic memory)
- Memory
- Executive functioning
- Calculation abilities

These symptoms—even in persons with Alzheimer’s disease—indicate a **much higher risk** of having poor decisional abilities.

Marson et al., (2008)

Decision-Making Capacity

- Capacity is not all-or-nothing, older adults often have capacity for some decisions and not others
- Rarely a fixed determination (exception comatose or completely non-communicative)
- Must be reevaluated for each decision and should be reassessed at various points in time
- Consider the complexity and seriousness of a decision in determining whether they have capacity

Steinberg, 2017

Capacity Tool: U-CARE

Steinberg, adapted from Grisso & Appelbaum, 1998

- Understanding of the relevant information (based on ability to explain it to the clinician)
- Consistency- responses are consistent over time, when questions are asked a different way and by different people
- Appreciation of the significance of information as it applies to the person's situation, likely consequences
- The ability to Reason with relevant information, logically weighing options and giving explanation for the choice
- Ability to Express a choice

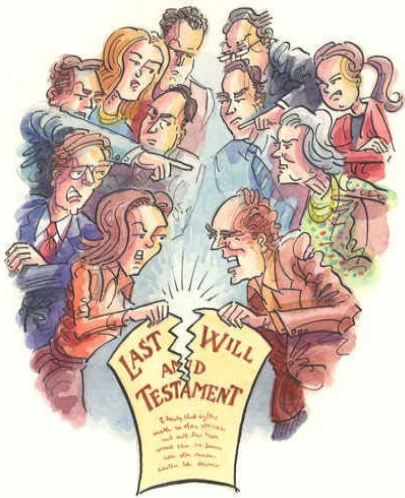
What is financial capacity...

- Financial Capacity represents the ability to independently manage one's financial affairs in a manner consistent with personal self-interest and values.
- It involves not only being able to **perform skills** (count coins, pay bills) but also includes **judgment skills** that optimize making decisions in one's best interest.

Marson & Hebert, 2008

Capacity Spectrum for Financial Management

Examples of *when* these issues arise:



- Transfers of property
- Changes in bank and investment accounts
- Creation of Wills, Trusts, Powers of Attorney
- Petitions for conservatorship

NCEA Research Brief

Financial Capacity & Exploitation

Elements of Financial Capacity

- **Declarative knowledge:** ability to describe facts, concepts, events related to financial activities
- **Procedural knowledge:** ability to carry out motor based, overlearned/practical financial skills and routines such as making change or writing a check
- **Judgement:** ability to make financial decisions consistent with self-interest

Moye & Marson, 2007

Questions



Learning Objectives

Part II

- Identify key questions and approaches used to screen client's decision-making capacity
- Review and train on 3 evidence-based screening assessments
- Identify implications for case planning as a result of determining concerns of impaired decision making abilities

Overarching Goal

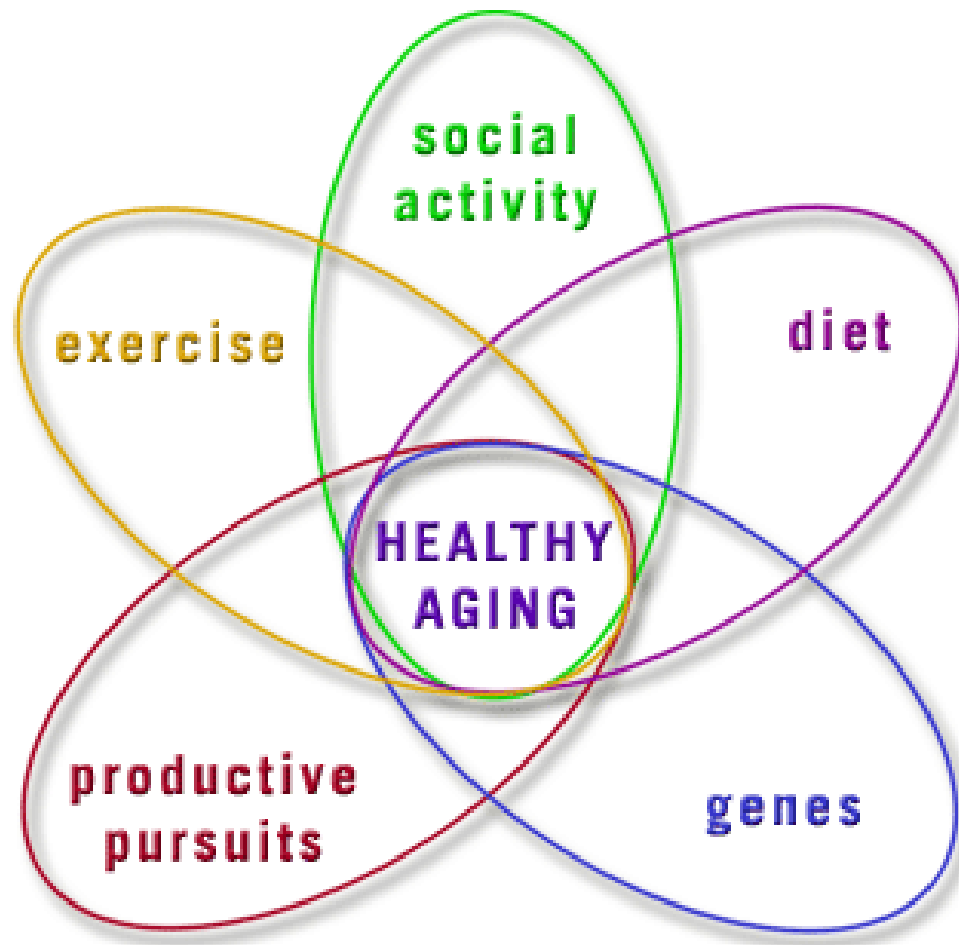
To assist elder justice professionals in identifying the factors that affect clients' decisional capacity and to know when and how to seek additional evaluation.

Core Values

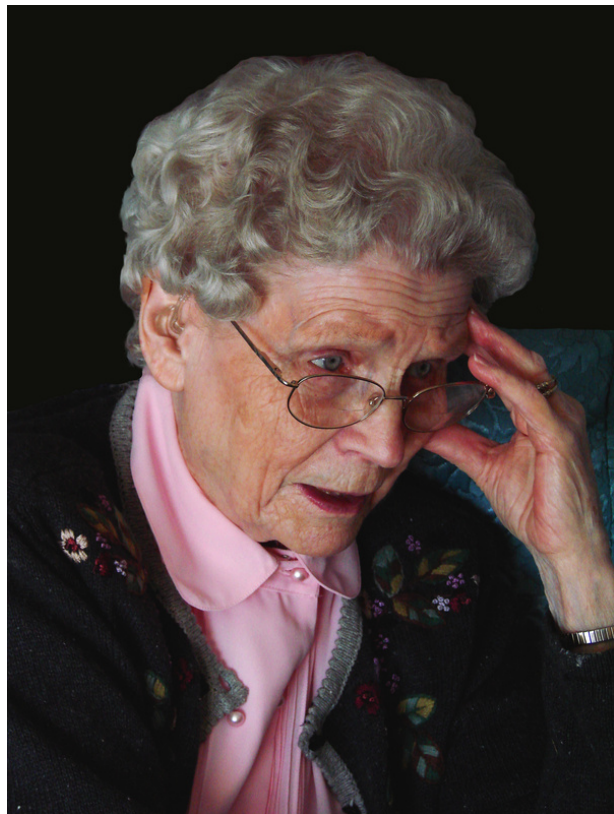
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Healthy Aging: Consider Strengths



Decisional Capacity



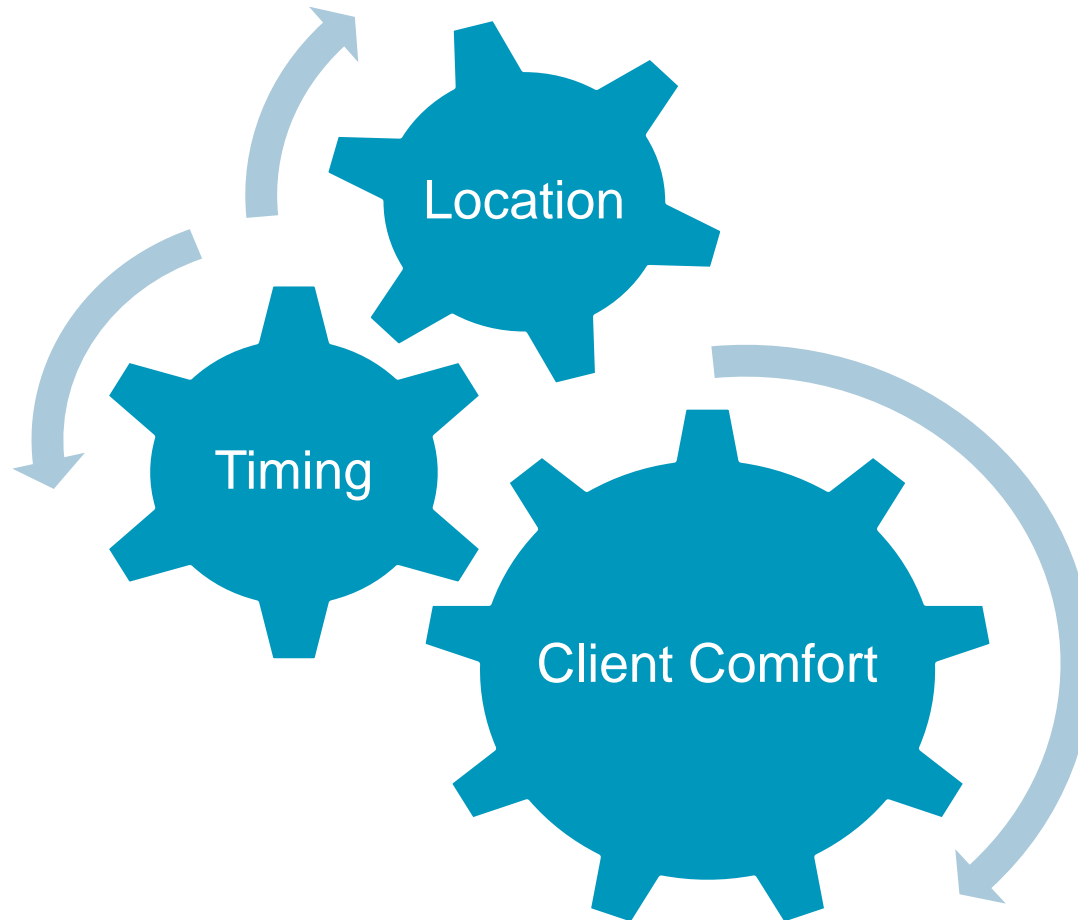
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Kemp 2005

Protocol for Functional Assessment

- Biopsychosocial Assessment, using objective screening tools when possible
- History: Suspected victim's vulnerabilities, Suspected perpetrator details, and Case facts/timeline
- Determining when another professional is needed to assess capacity at the time of alleged crime

Considerations



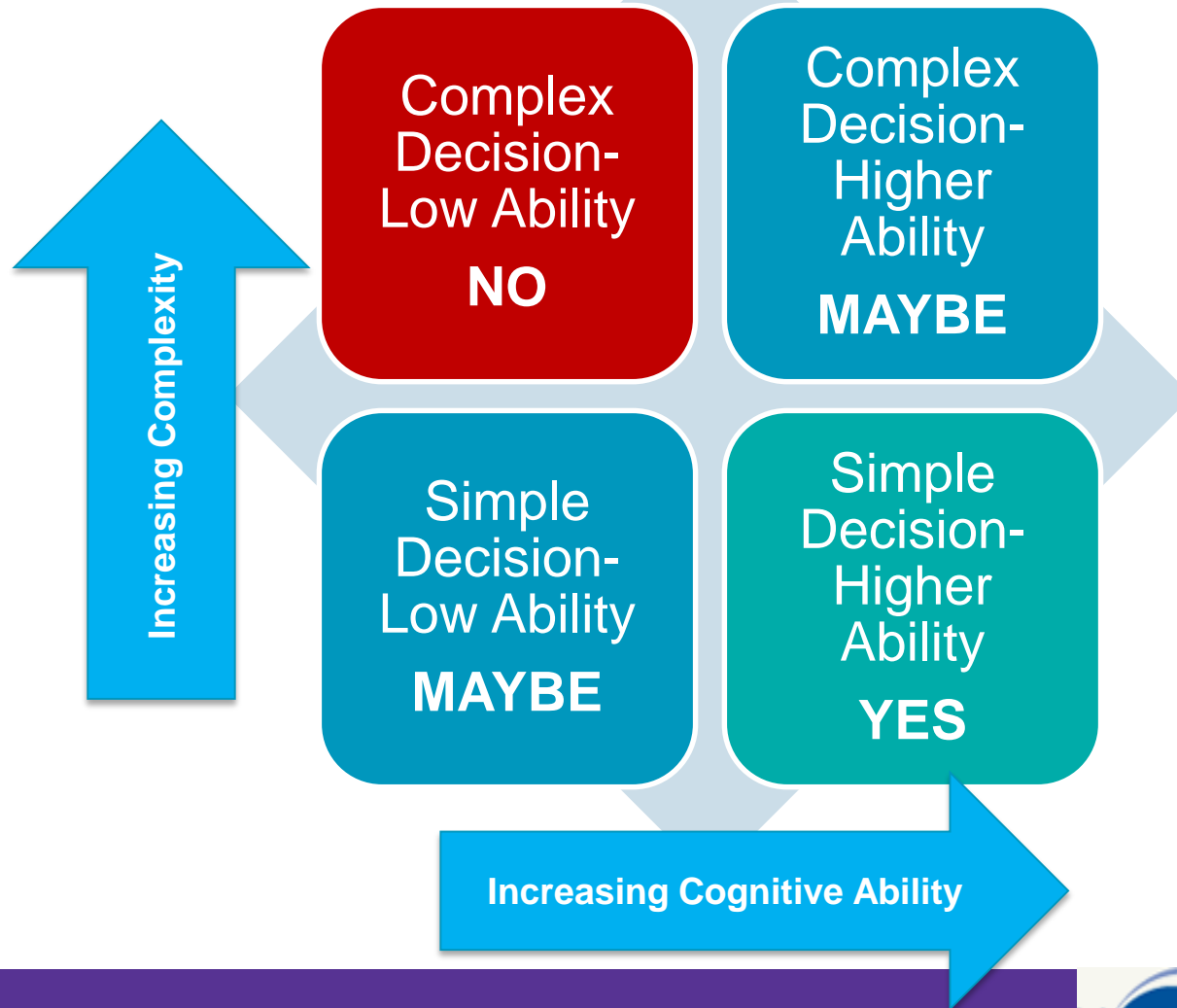
Quinn 2005

Capacity Tool: U-CARE

Steinberg, adapted from Grisso & Appelbaum, 1998

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Assessing Risk: Complexity & Abilities



Risk: Physical & Cognitive Abilities

Capacity to live independently?

	<u>Able to perform IADL?</u>		
		YES	NO
<u>Able to decide how to manage IADL impairment</u>	YES	living independently	dependent and ok
	NO	living independently	dependent and not OK

Mini-Cog

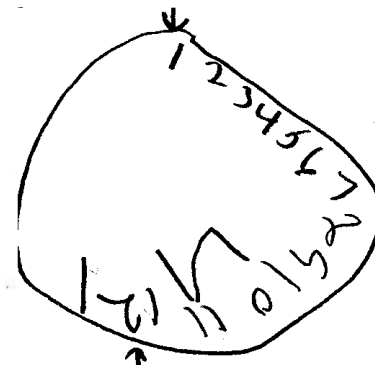
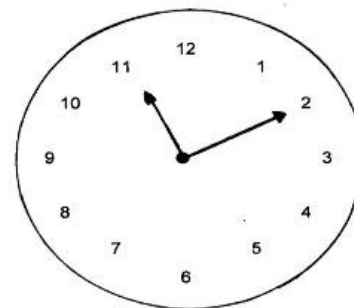
Advantages

- Free
- Less stressful
- Fast

Disadvantages

- Not as commonly used as MMSE

Copy this clock below.



MMSE: Mini Mental State Exam

Advantages

- Well-known
- Huge normative data with age and education norms
- Translations for all languages we need
- Correct administration directions printed
- Quick, easy

Disadvantages

- Copyright issues
- Low ceiling, misses mild cognitive impairment
- Often incorrectly administered and interpreted

MoCA: Montreal Cognitive Assessment

Advantages

- Free
- Translations in many languages
- More sensitive than MMSE
- Interest in tool increasing

Disadvantages

- Takes longer than MMSE
- More complicated to administer than MMSE
- Some directions not printed on form
- No clear age and education norms
- Relatively small normative data
- Some stimuli very small
- Outside providers less familiar

Wrap Up

- Reflections
- Questions
- Resources

Thank you!



Montreal Cognitive Assessment (MoCA)

Administration and Scoring Instructions

The Montreal Cognitive Assessment (MoCA) was designed as a rapid screening instrument for mild cognitive dysfunction. It assesses different cognitive domains: attention and concentration, executive functions, memory, language, visuoconstructional skills, conceptual thinking, calculations, and orientation. Time to administer the MoCA is approximately 10 minutes. The total possible score is 30 points; a score of 26 or above is considered normal.

1. Alternating Trail Making:

Administration: The examiner instructs the subject: *"Please draw a line, going from a number to a letter in ascending order. Begin here [point to (1)] and draw a line from 1 then to A then to 2 and so on. End here [point to (E)]."*

Scoring: Allocate one point if the subject successfully draws the following pattern: 1 -A- 2- B- 3- C- 4- D- 5- E, without drawing any lines that cross. Any error that is not immediately self-corrected earns a score of 0.

2. Visuoconstructional Skills (Cube):

Administration: The examiner gives the following instructions, pointing to the **cube**: *"Copy this drawing as accurately as you can, in the space below"*.

Scoring: One point is allocated for a correctly executed drawing.

- Drawing must be three-dimensional
- All lines are drawn
- No line is added
- Lines are relatively parallel and their length is similar (rectangular prisms are accepted)

A point is not assigned if any of the above-criteria are not met.

3. Visuoconstructional Skills (Clock):

Administration: Indicate the right third of the space and give the following instructions: *"Draw a clock. Put in all the numbers and set the time to 10 past 11"*.

Scoring: One point is allocated for each of the following three criteria:

- Contour (1 pt.): the clock face must be a circle with only minor distortion acceptable (e.g., slight imperfection on closing the circle);
- Numbers (1 pt.): all clock numbers must be present with no additional numbers; numbers must be in the correct order and placed in the approximate quadrants on the clock face; Roman numerals are acceptable; numbers can be placed outside the circle contour;
- Hands (1 pt.): there must be two hands jointly indicating the correct time; the hour hand must be clearly shorter than the minute hand; hands must be centred within the clock face with their junction close to the clock centre.

A point is not assigned for a given element if any of the above-criteria are not met.

4. Naming:

Administration: Beginning on the left, point to each figure and say: *“Tell me the name of this animal”*.

Scoring: One point each is given for the following responses: (1) lion (2) rhinoceros or rhino (3) camel or dromedary.

5. Memory:

Administration: The examiner reads a list of 5 words at a rate of one per second, giving the following instructions: *“This is a memory test. I am going to read a list of words that you will have to remember now and later on. Listen carefully. When I am through, tell me as many words as you can remember. It doesn’t matter in what order you say them”*. Mark a check in the allocated space for each word the subject produces on this first trial. When the subject indicates that (s)he has finished (has recalled all words), or can recall no more words, read the list a second time with the following instructions: *“I am going to read the same list for a second time. Try to remember and tell me as many words as you can, including words you said the first time.”* Put a check in the allocated space for each word the subject recalls after the second trial.

At the end of the second trial, inform the subject that (s)he will be asked to recall these words again by saying, *“I will ask you to recall those words again at the end of the test.”*

Scoring: No points are given for Trials One and Two.

6. Attention:

Forward Digit Span: Administration: Give the following instruction: *“I am going to say some numbers and when I am through, repeat them to me exactly as I said them”*. Read the five number sequence at a rate of one digit per second.

Backward Digit Span: Administration: Give the following instruction: *“Now I am going to say some more numbers, but when I am through you must repeat them to me in the backwards order.”* Read the three number sequence at a rate of one digit per second.

Scoring: Allocate one point for each sequence correctly repeated, (*N.B.:* the correct response for the backwards trial is 2-4-7).

Vigilance: Administration: The examiner reads the list of letters at a rate of one per second, after giving the following instruction: *“I am going to read a sequence of letters. Every time I say the letter A, tap your hand once. If I say a different letter, do not tap your hand”*.

Scoring: Give one point if there is zero to one errors (an error is a tap on a wrong letter or a failure to tap on letter A).

Serial 7s: Administration: The examiner gives the following instruction: “Now, I will ask you to count by subtracting seven from 100, and then, keep subtracting seven from your answer until I tell you to stop.” Give this instruction twice if necessary.

Scoring: This item is scored out of 3 points. Give no (0) points for no correct subtractions, 1 point for one correction subtraction, 2 points for two-to-three correct subtractions, and 3 points if the participant successfully makes four or five correct subtractions. Count each correct subtraction of 7 beginning at 100. Each subtraction is evaluated independently; that is, if the participant responds with an incorrect number but continues to correctly subtract 7 from it, give a point for each correct subtraction. For example, a participant may respond “92 – 85 – 78 – 71 – 64” where the “92” is incorrect, but all subsequent numbers are subtracted correctly. This is one error and the item would be given a score of 3.

7. Sentence repetition:

Administration: The examiner gives the following instructions: “I am going to read you a sentence. Repeat it after me, exactly as I say it [pause]: **I only know that John is the one to help today.**” Following the response, say: “Now I am going to read you another sentence. Repeat it after me, exactly as I say it [pause]: **The cat always hid under the couch when dogs were in the room.**”

Scoring: Allocate 1 point for each sentence correctly repeated. Repetition must be exact. Be alert for errors that are omissions (e.g., omitting “only”, “always”) and substitutions/additions (e.g., “John is the one who helped today;” substituting “hides” for “hid”, altering plurals, etc.).

8. Verbal fluency:

Administration: The examiner gives the following instruction: “Tell me as many words as you can think of that begin with a certain letter of the alphabet that I will tell you in a moment. You can say any kind of word you want, except for proper nouns (like Bob or Boston), numbers, or words that begin with the same sound but have a different suffix, for example, love, lover, loving. I will tell you to stop after one minute. Are you ready? [Pause] Now, tell me as many words as you can think of that begin with the letter F. [time for 60 sec]. Stop.”

Scoring: Allocate one point if the subject generates 11 words or more in 60 sec. Record the subject’s response in the bottom or side margins.

9. Abstraction:

Administration: The examiner asks the subject to explain what each pair of words has in common, starting with the example: “Tell me how an orange and a banana are alike”. If the subject answers in a concrete manner, then say only one additional time: “Tell me another way in which those items are alike”. If the subject does not give the appropriate response (*fruit*), say, “Yes, and they are also both fruit.” Do not give any additional instructions or clarification. After the practice trial, say: “Now, tell me how a train and a bicycle are alike”. Following the response, administer the second trial, saying: “Now tell me how a ruler and a watch are alike”. Do not give any additional instructions or prompts.

Scoring: Only the last two item pairs are scored. Give 1 point to each item pair correctly answered. The following responses are acceptable:

Train-bicycle = means of transportation, means of travelling, you take trips in both;

Ruler-watch = measuring instruments, used to measure.

The following responses are **not** acceptable: Train-bicycle = they have wheels; Ruler-watch = they have numbers.

10. **Delayed recall:**

Administration: The examiner gives the following instruction: “I read some words to you earlier, which I asked you to remember. Tell me as many of those words as you can remember.” Make a check mark (✓) for each of the words correctly recalled spontaneously without any cues, in the allocated space.

Scoring: Allocate 1 point for each word recalled freely **without any cues.**

Optional:

Following the delayed free recall trial, prompt the subject with the semantic category cue provided below for any word not recalled. Make a check mark (✓) in the allocated space if the subject remembered the word with the help of a category or multiple-choice cue. Prompt all non-recalled words in this manner. If the subject does not recall the word after the category cue, give him/her a multiple choice trial, using the following example instruction, “Which of the following words do you think it was, NOSE, FACE, or HAND?”

Use the following category and/or multiple-choice cues for each word, when appropriate:

FACE: category cue: part of the body

multiple choice: nose, face, hand

VELVET: category cue: type of fabric

multiple choice: denim, cotton, velvet

CHURCH: category cue: type of building

multiple choice: church, school, hospital

DAISY: category cue: type of flower

multiple choice: rose, daisy, tulip

RED: category cue: a colour

multiple choice: red, blue, green

Scoring: No points are allocated for words recalled with a cue. A cue is used for clinical information purposes only and can give the test interpreter additional information about the type of memory disorder. For memory deficits due to retrieval failures, performance can be improved with a cue. For memory deficits due to encoding failures, performance does not improve with a cue.

11. **Orientation:**

Administration: The examiner gives the following instructions: “Tell me the date today”. If the subject does not give a complete answer, then prompt accordingly by saying: “Tell me the [year, month, exact date, and day of the week].” Then say: “Now, tell me the name of this place, and which city it is in.”

Scoring: Give one point for each item correctly answered. The subject must tell the exact date and the exact place (name of hospital, clinic, office). No points are allocated if subject makes an error of one day for the day and date.

TOTAL SCORE: Sum all subscores listed on the right-hand side. Add one point for an individual who has 12 years or fewer of formal education, for a possible maximum of 30 points. A final total score of 26 and above is considered normal.