

Decisional Capacity in the Traumatically Injured

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Objectives

- ▶ Introduction : Competency in TBI
- ▶ Ethical Principles in Capacity Assessment
- ▶ Medical Decision Making in TBI
- ▶ Clinical Method for Assessing Capacity

Capacity

- ▶ "Loss of capacity is ubiquitous in the TBI population. The cognitive, social, emotional, and behavioral changes that result from a TBI often have immediate, devastating impact on medical, financial, and other decisional capacities, and these impairments can persist long after acute hospitalization."
Marson, 2005

What is Capacity?

- ▶ A threshold requirement imposed by society for an individual to retain decision making power in a particular activity or set of activities
- ▶ Able to understand relevant information and reasonably appreciate foreseeable consequences

Types of Capacities

- ▶ Treatment capacity–medical decisions
- ▶ Financial capacity–financial decisions
- ▶ Driving capacity–operate a vehicle
- ▶ Research capacity–participate in research
- ▶ Capacity to live independantly–global
- ▶ Testamentary capacity–making a will

Capacity in TBI

- ▶ Moderate to severe injuries: loss of capacity usually lingers longer requiring repeated assessment
- ▶ Mild injuries: usually temporary while in posttraumatic amnesia then resolves completely
- ▶ Exceptions

Medical Decision-Making Capacity

- ▶ Very prevalent issue in TBI
- ▶ Patient/family must participate in a series of medical decisions
- ▶ Acute and outpatient

- ▶ Primary Issues
 - Life sustaining treatments
 - Refusing procedures
 - Leaving against medical advice
 - Withdrawal of support

Other capacities

- ▶ As patients with TBI recover, they may wish to resume decision making in areas such as:
 - Managing finances
 - Making a will, healthcare directive
 - Driving

Major Ethical principles

- ▶ Beneficence
- ▶ Nonmalfesance
- ▶ Autonomy
- ▶ Veracity
- ▶ Justice

Autonomy vs. Protection

- ▶ To what extent should we support a person's autonomy to act independently?
- ▶ To what extent should we protect an impaired person from the risk/dangers caused by their failing capacities (find her incapable and restrict autonomy)?
- ▶ The tension that exists between autonomy and protection informs most capacity assessments

California Law

- ▶ **Medical probate:** Underlying medical condition necessitating conservatorship or public guardian (must meet criteria for dementia)
- ▶ **Lanterman–Petris Short Act (LPS)**
Conservatorship: Impairment must prevent the individual from being able to provide themselves with food, shelter, and clothing **AND** primarily due to a *psychiatric* disorder (schizophrenia).
Note: The city and county of SF rarely approves conservatorship for so called 'chronic inebriates'

Emergent situations

- ▶ Justifiable Paternalism: Medical team overrides the patient's autonomy to treat emergent needs.
 - Often common in the beginning of treatment
 - The individual must possess the ability to protect their own welfare even if they choose not to do so
 - Argued to be ethically acceptable in emergent situations. Importance recedes in nonemergent situations and over time (Ex. Seizures)
 - Should still take into account the patient's values and wishes
 - Hinges on the level of harm or benefit not the likelihood of harm: Burden falls on the treating provider to demonstrate that the risk of not taking the preferred action is excessive

Capacity can be intermittent

- ▶ Capacity can fluctuate over time
 - Schizophrenia
 - Alzheimers (particularly in beginning and with medical illness)
 - TBI

Capacity can be recovered

- ▶ TBI is a paradigmatic condition for the reacquisition of capacity
- ▶ Decisional capacity is frequently lost immediately following moderate to severe TBI
- ▶ Diagnosis \Rightarrow capacity

Decisional Capacity Research

- ▶ Marson et al. 2005–Moderate to severe TBI patients had significant impairments compared to controls in:
 - Understanding the nature of their situation
 - Appreciating the consequences of their choices
- ▶ A group by time interaction occurred related to understanding the nature of their situation with increased capability at 6 months

Decisional Capacity Research

- ▶ Schindler et al, 1995– Patients with primary frontal lobe pathology
 - Patients were able to articulate well reasoned plan for care and retain this plan over time
 - Patients were not able to complete their intentioned self care tasks
- ▶ Decisional capacity can be impaired in patients with frontal lobe/executive dysfunction despite intact language, memory, perception, and absence of apraxia and agnosia.

Decisional Capacity Research

- ▶ Cognitive impairments associated with capacity (Dreer et al, 2008):
 - Verbal memory and semantic fluency were related to understanding their circumstances
 - Attention and verbal memory predicted reasoning
 - At 6 months–executive function, verbal processing speed, verbal memory and working memory predicted reasoning and appreciation

Decisional Capacity Research

- ▶ Hoskin et al, 2005: Impulse control, planning, flexibility of thinking and working memory and financial capacity (63% of the variance).
- ▶ Bonatti et al, 2008: TBI patients underestimate risk.
- ▶ Kahn et al, 2009; Raymont et al. 2004: Non-psychiatric medical professionals tend to be overly optimistic regarding who has capacity (76% –87% correct hit rate).

Cognitive impairment does not constitute incapacity

- › What does a MMSE score of 22 tell you about the person's ability to make decisions about their medical care?
- › Relevant issue but not determinative (Kahn et al, 2009)

Must examine cognitive AND functional abilities to constitute capacity

Standards Related to Medical Decisional Capacity

- › Understanding the nature of their condition
- › Appreciating the consequences of their choices
- › Able to weigh the risks of their choices
- › Articulate a rationale for their choice
- › Able to retain this information over time

Primary cognitive abilities related to Decisional Capacity

- › Verbal memory
- › Executive functioning
- › Attention and concentration

Functional Abilities Related to Decisional Capacity

- ▶ The patient should be able to have the ability to follow through on their intentions
 - If they plan to use an ATM to financially support themselves then can they actually use an ATM?
 - Can they buy food?
 - Can they remember to take medications?
 - Can they safely navigate in the community?
 - According to OT, PT, ST, and Nursing does the patient have an appropriate awareness of their physical functioning

Assessment Issues

- ▶ Multidisciplinary and family collaterals
- ▶ Chart review
- ▶ Clinical interview
- ▶ Medical decision making vignette
- ▶ Cognitive and emotional testing
- ▶ Functional tasks

Clinical Method for the Assessment of Capacity

- ▶ Identify the context of the capacity matter?
 - What is the context for the medical decision?
 - What are the proposed treatments and risk levels?
 - Who is involved?
 - What are the respective parties views?

Clinical method for the Assessment of Capacity

- Assessment through an apriori framework
- Review chart, talk to collaterals, interview patient
- Vignette
- Administer cognitive testing
 - Orientation
 - Verbal memory
 - Reasoning
 - Attention and concentration
 - Judgement
 - Other executive functioning

Clinical method for the Assessment of Capacity

- Ecological tasks—Usually referral question guided
 - ATM task
 - Medication task
 - Pathfinding
 - Food purchasing task
 - Checkbook task
 - Doctor appointment task

Additive but does not take the place of a comprehensive evaluation

Method for the Assessment of Capacity

- Can Mr. Smith articulate the nature of why he is in the hospital?
 - Can he communicate in some form?

Method for the Assessment of Capacity

- ▶ Can Mr. Smith provide some information about his situation and provide reasons for his decision?
 - Does he spontaneously produce reasons?
 - What do the doctors recommend? What are his options?
 - Does he know how he supports himself financially? Does he know his address? Does he know how he will get food, clothing, to doctors appointments, ect? What medications are you taking? What kind of health problems do you have? Any surgeries since you were in the hospital? Is his plan realistic?

Method for the Assessment of Capacity

- ▶ Does Mr. Smith understand the risks and benefits of his choice?
 - Query how he conceptualizes the situation
 - Query his factual knowledge of the situation
 - What steps must he take to prepare for his choice?
 - Describe the path you would take to get home from the hospital, to the clinic, etc? What did the doctors say would happen if you just quit taking your salt tabs, keppra, etc?

Method for the Assessment of Capacity

- ▶ Can Mr. Smith retain this information over time? Do his choices change?
- ▶ Consider other relevant information
 - NP testing
 - Mental status
 - Diagnosis
 - Labs
 - Psychosocial factors
 - Functional abilities
 - Clinical interview
 - Barriers

Method for the Assessment of Capacity

- › Feedback to the patient
- › Feedback to the team
- › Legal issues
- › Consults
- › Reassessment

Thank you!!!

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