

# Performing capacity evaluations: What's expected from your consult

## Core components of a capacity evaluation are understanding, free choice, and reliability

One of the most common reasons medical colleagues seek consultation with a psychiatrist is to address the question of capacity. Indeed, this referral question often is posed as, “Is the patient competent?”

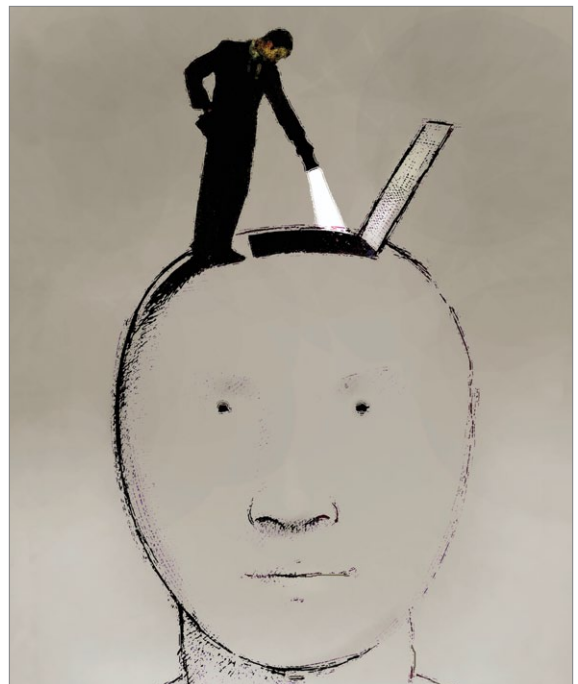
This referral question is incomplete and incorrectly phrased. The question should include the domain in which capacity is being questioned—for example, “Is the patient competent to refuse surgery?” Specifically identifying the area in which competency is questioned is necessary because a person might be competent in one area and incompetent in another (*Box 1, page 42*).

The question of competency should be modified as follows: “Does the patient have *capacity* to refuse surgery?” Competency is the degree of mental soundness necessary to make decisions about a specific issue or to carry out a specific act. Capacity is a person’s ability to make an informed decision. A determination of competency is a judicial finding made by the court. A physician can opine about a patient’s capacity, but cannot determine competency.

Adults are presumed to have capacity unless determined otherwise by the court. A person who lacks capacity to make an informed decision or give consent might need to be referred for a competency hearing or have a guardian appointed. Psychiatrists often are called on to provide an opinion to the court regarding a person’s capacity. Psychiatrists are particularly skilled at assessing a person’s mental status and gauging its potential for interfering with specific areas of functioning, but, in fact, any physician can make a determination of capacity.<sup>1</sup>

In this article, I:

- outline the components of a capacity evaluation
- describe the tools used in the determination of capacity



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#### Disclosure

Dr. Sorrentino reports no financial relationship with any company whose products are mentioned in this article or with manufacturers of competing products.



## Capacity evaluations

### Clinical Point

The patient should show an understanding of the situation as it relates to his condition and the consequences of his decisions



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### Box 1

## Competency and capacity— not the same

**Capacity:** A person's ability to make an informed decision; a physician can determine capacity.

**Competency:** The degree of mental soundness necessary to 1) make a decision about a specific issue or 2) carry out a specific act; a judicial finding made by the court, not by a physician.

- review the typical features of patients and psychiatrists who perform capacity evaluations.

## What constitutes a capacity evaluation?

The components of a capacity evaluation are comprehension, free choice, and reliability.

**Comprehension** refers to a patient's factual understanding of his (her) medical condition—for example, including the risks and benefits of treatment and reasonable alternatives. The patient should show an understanding of 1) the situation as it relates to his condition, and 2) the consequences of his decisions. He also should demonstrate a rational manipulation of the information presented, applying a coherent and logical thought process to analyze possible courses of action.<sup>2</sup>

To determine if the patient has the requisite knowledge regarding his condition, the physician must be familiar with the patient's clinical status. This might require consultation with the treating physician. Communication is a key component of capacity evaluations. Barriers to good communication can lead to the evaluating physician's perception that the patient lacks capacity. If a patient does not understand his condition or the proposed treatments, the psychiatrist should educate him. It might be useful to arrange a meeting with the treating physician to facilitate communication.

**Free choice.** The patient's decision to accept or reject a proposed treatment should be

voluntary and free of coercion. In assessing a patient's capacity, the psychiatrist should determine whether choices have been rendered impossible because of unrealistic fears or expectations about treatment, or because of impaired mental processes.

**Reliability** refers to a patient's ability to provide a consistent choice over time. A patient who vacillates or is inconsistent does not have capacity to make decisions.

## Features of patients referred for evaluation, and their evaluators

The most common reason for a capacity evaluation is a patient's refusal of medical treatment. Between 3% and 25% of requests for psychiatric consultation in hospital settings involve questions about patients' competence to make a treatment-related decision.<sup>3</sup> Approximately 25% of adult medicine inpatients lack capacity for medical decision-making.<sup>4</sup>

**Decision-making capacity is a functional evaluation.** Decision-making capacity does not relate specifically to a person's psychiatric diagnosis. In other words, the presence of a mental disorder does not render a person incapable of making decisions. However, people with Alzheimer's disease or dementia have a high rate of impaired capacity for making treatment decisions.

Schizophrenia has been found to have the highest rate of impaired decision-making among psychiatric disorders; depression is second and bipolar disorder, third. The strongest predictor of incapacity in psychiatric patients is lack of insight.<sup>5</sup> Positive symptoms, negative symptoms, severity of symptoms, involuntary admission, lack of insight, and treatment refusal were strong predictors of incapacity in a sample of psychiatric patients.<sup>6</sup>

**The neuronal basis of decision-making is unknown.** Studies have implicated functioning of the medial and lateral prefrontal cortex as an important correlate of decision-making capacity.<sup>7</sup> As a result of these findings, a brain-based criterion could be added to the conceptual criteria of

capacity. The specific neuropsychological components necessary for decision-making capacity are unknown. Some studies suggest that poor executive functioning and limited learning ability correlate with impaired decision-making capacity.<sup>8</sup> Little is known about the relationship between emotion and capacity. Supady et al<sup>9</sup> demonstrated that higher cognitive empathy and good emotion recognition were associated with increased decision-making capacity and higher rates of refusal to give informed consent.

**Physician bias has been identified in capacity evaluations.** See *Box 2*.<sup>4,10-12</sup>

### Tools used in capacity evaluations

Most capacity evaluations are conducted by clinical interview (*Box 3, page 44*). The reliability of physicians' unstructured judgments of capacity has been poor.<sup>13</sup> In a study of 5 physicians who made a determination of capacity after watching a videotape of capacity assessments, the rate of agreement among the subjects was no better than that of chance.<sup>14</sup>

There is no specific, simple, quick test to assess capacity.

#### Box 2

### Physicians bring bias to capacity evaluations

A 1998 report of the National Bioethics Advisory Commission focused on the decision-making capacity of persons with a major mental disorder.<sup>10</sup> That report revealed a bias that assumes that almost everyone who has schizophrenia has impaired decision-making capacity.<sup>11</sup>

A survey of 395 psychiatrists and psychologists indicated that attributions of decision-making capacity in persons with mental disorders often were made in a nonspecific manner.<sup>12</sup>

Last, a study by Sessums and colleagues<sup>4</sup> revealed that physicians often fail to recognize incapacity among their patients, identifying it in only 42% of cases. Physicians were usually correct, however, when rendering a diagnosis of incapacity.

### Folstein Mini-Mental State Examination.

The MMSE has not been found to be predictive of decision-making capacity. It has been found to correlate with clinical judgments of incapacity, and may be used to identify patients at the high and low ends of the range of capacity, especially among older persons who exhibit cognitive impairment.<sup>15</sup> Patients who have severe dementia (MMSE score

### Clinical Point

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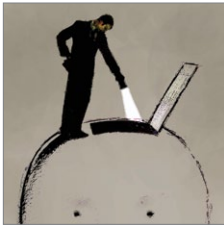
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## ADHD Perspectives: Explore the Latest in ADHD Treatment Strategies

Authored by:

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## Capacity evaluations

### Clinical Point

Patients who have severe dementia (MMSE score <16) have a high likelihood of being unable to consent to treatment

## Related Resources

- The MacArthur Treatment Competence Study. [www.macarthur.virginia.edu/treatment.html](http://www.macarthur.virginia.edu/treatment.html).
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### Box 3

## Judging capacity for specific competencies

Most physicians use a continuum of standards for capacity based on the risk imposed by a patient's decision. For example, a relatively lower standard of capacity is applied to a patient who refuses a low-risk, high-benefit treatment, such as a routine colonoscopy. A higher standard of capacity would be applied to a patient who has life-threatening bacteremia but refuses antibiotics. Examples of competency evaluations for which a physician determines the person's capacity are:

- Is the patient competent to refuse treatment?
- Is the person competent to consent to being a subject in research?
- Is the person competent to stand trial?
- Is the person competent to be executed?

<16) have a high likelihood of being unable to consent to treatment.<sup>16</sup>

**MacArthur Competence Assessment Tool-Treatment.** The MacCAT-T is a structured interviewing tool used to evaluate a patient's decision-making ability. It is the most commonly used screening tool to evaluate decision-making capacity. Advantages of the MacCAT-T include a higher inter-rater agreement and—unlike other assessment

instruments—its ability to incorporate information specific to a patient's decision-making situation.<sup>17</sup> The MacCAT-T requires training and experience to administer.

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## Bottom Line

Physicians make decisions about a patient's decision-making capacity. Courts determine competence by a formal judicial proceeding. The psychiatric consultant's role in capacity evaluations is to determine if the patient 1) possesses the requisite knowledge about the specific referral issue and 2) demonstrates a voluntary and reliable decision.