Capacity, Competency & Undue Influence: The Role of Neuropsychology

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First a Test of your Capacity

* 1. How do you put a giraffe into a refrigerator?
Open the refrigerator door, put in the giraffe and close the door.

This question tests whether you tend to do simple things in an overly complicated way.
How do you put an elephant into a refrigerator?
Wrong Answer

* Open the refrigerator door, put in the elephant and close the refrigerator.
Open the refrigerator, take out the giraffe, put in the elephant and close the door.

This tests your ability to think through the repercussions of your actions.
The Lion King is hosting an animal conference. All the animals attend except one. Which animal does not attend?
The Elephant.
The Elephant is in the refrigerator.

This tests your memory. OK, even if you did not answer the first three questions correctly, you still have one more chance to show your abilities.
There is a river you must cross. But it is inhabited by crocodiles.

How do you manage it?
You swim across. All the Crocodiles are attending the Animal Meeting.

This tests whether you learn quickly from your mistakes.
Mental Capacity

- What is the need?
- Who are the patients/clients?
- What’s being asked?
- Why are you being asked now?
- Capacity for what?
Undue Influence

- No consistent definition
- Coercion
- Mental Capacity and Undue Influence are intrinsically linked
Legal Competency vs. Mental Capacity

- What is your role as a neuropsychologist?
- What is your responsibility?
- Which patients are the most difficult?
- What is the Neurology of Mental Capacity?
Capacity

* The ability to understand information relevant to a decision and
* The ability to appreciate the reasonably foreseeable consequences of a decision (or lack of a decision)
Barriers to assessing Capacity

* Barriers to communication
  * Aphasia
  * Hearing impairment
  * Visual impairment
  * Non-native speaker
Frequent Conditions that prevent capacity

- Dementia Types and MCI
- Stroke
- Psychiatric Conditions
- Others (MS, CJD, PD, HD, NPH)
- Others (CD, PSNP, Wilson’s)
Normal Aging

* What is that?
  * Depression
  * Social Functioning
    * more cautious
    * more rigid
    * reduction in social interaction
    * social, financial, physical isolation
History and Progression
  acute, stepwise, linear, novel first
Differential

* Systemic Illness
  * Metabolic
    * Transient Hepatic Encephalopathy
    * Parathyroid Disorders
    * Hypothyroidism
    * Hyponatremia
    * Hypoglycemia
    * Wilson’s Disease
Continued

* Systemic Illnesses
  * Cushing’s Syndrome
  * Pan hypopituitarism
  * B-12 Deficiency
  * Poisons and Toxins
  * Syphilis
Medications

* Anticholinergics
* Antianxiety Agents
* Antidepressants
* Antipsychotics
* Antihypertensives
* Corticosteroids
Medications

* Narcotics
* Cardiac Medications
* Bronchodilators
* GI Meds
* Dopaminergic Eyedrops
75 y.o. male pt with chronic htn presents with symptoms of mental status change

- He is on a diuretic, methyldopa, and propanolol for bp control
- His wife has been recently hospitalized for a hip fracture
Mild left hemiparesis with mental slowness, impaired memory, poor reasoning, and a depressed affect

Is it? Depression v. inactivity v. aging v. medication v. reversible metabolic derangement v. structural cerebral disease v. TIA’s
Neurology of Mental Capacity

* Assumes a relatively stable state
* Assumes the capacity to assess
* Use of repeated measures
* Operational vs. Generalized deficits
Neuropsychological Assessment

- Selection of tests
- Sampling of major domains
- Contamination issues
- Serial Testing
A Clinical Capacity Interview

- Useful if there is not access to formal neuropsychological consultation or assessment
- Useful in the uncooperative patient
7 Major Areas

* Ability to describe illness
* Comprehension of course of illness
* Comprehension of treatment
* Understanding of consequences of treatment
* Understanding of risks and benefits of treatment
7 Major Areas (continued)

* Decision-making process regarding treatment
* Context of personal belief system in decision to refuse recommended treatment for a life-threatening illness or significantly disabling condition
Medical Condition Sample Questions

* What problems are you having right now?
* What problem is bothering you the most?
* Why are you in the hospital (or seeing me know?)
* Do you have ____________?
Proposed Treatment Questions

* What is the treatment for your problem?
* What else can be done to help you?
* Can you have [proposed treatment]?
Alternatives Questions

- Are there any other treatments?
- What other options do you have?
- Can you have alternative treatment?
Questions if concerned about Depression affecting Decisions

* Can you help me understand why you’ve decided to refuse treatment?
* Do you feel you’re being punished?
* Do you think you are a bad person?
* Do you have any hope for the future?
* Do you deserve to be treated?
Questions if concerns about Psychosis affecting Decisions

* Can you help me understand why you have refused treatment?
* Do you think anyone is trying to hurt you?
* Do you trust your Doctor/Nurse?
Undue Influence

* Relationship to Testamentary Capacity
* Need to consider more than just the person being influenced
* Where there is smoke there is fire
A benefactor by means of coercive behaviors unduly influences the decisions of a donor AND the result of that coercion benefits the influencer who is creating the environment for Undue Influence
Review of the literature

- Relationship Risk Factors
- Social or Environmental Risk Factors
- Neuropsychological Risk Factors
Characteristics of the Influenced

- Special confidential relationship
- Neuropsychological impairment
- Co-existing medical/psychological impairment
Characteristics of Influencers

- Interfering with health care decisions
- Reinforcing patients mistrust
- Unusual close contact
- Coercion
- Taking gifts out of proportion
- “Mineral Rights Euphoria”
- Predatory Behavior
Discussion and Questions
Thank You!
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