

BRIGHAM HEALTH



BRIGHAM AND
WOMEN'S HOSPITAL

Forensic Concepts in C/L Psychiatry: Assessing Decision- Making Capacity

Jhilam Biswas, M.D.



HARVARD MEDICAL SCHOOL
TEACHING HOSPITAL



Disclosures

- **I have no relevant financial or non-financial disclosures.**



When to think
about
capacity?



Overview

Definitions and Differences

Components of Capacity

When capacity is impaired- testing tools

Managing the more complicated questions of assessing medical decision making

What is informed consent

1

Describing the intervention

2

Emphasizing the patient's role in decision making

3

Describing the risks and benefits of the intervention

4

Proposing the alternatives

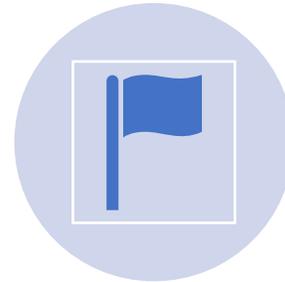
5

Making sure the individual has decisional **capacity**

Informed Consent



Generally, when all the elements of informed consent are delivered, the assumption is that the individual has the capacity to understand unless proven otherwise



Red Flags: Confused and Irrational thinking or Fluctuating wishes and alertness

Capacity... and Competency, what's the difference?



Capacity: the ability to make a medical decision that is in line with one's values: Assessed by a physician and can change more quickly with patient improvement



Competency: a legal decision about one's capacity to make decisions, most often in a legal context; i.e. Competency to Stand Trial and assessed by a judge

This is a more global decision



The rules for competency can change from jurisdiction to jurisdiction



Capacity... and Cognition and Function, what's the difference?

- **Cognitive Function** describes various brain functions and is linked to specific activities required for independent living. (e.g., medication management). It's broader descriptions of impairment
- **Capacity** addresses **cognition** around the *specific question* at hand- this is not an overall assessment of cognitive impairment.

You may have heard of this paper

Vol. 319 No. 25

PATIENTS' CAPACITIES TO CONSENT TO TREATMENT — APPELBAUM AND GRISSO

1635

SPECIAL ARTICLE

ASSESSING PATIENTS' CAPACITIES TO CONSENT TO TREATMENT

PAUL S. APPELBAUM, M.D., AND THOMAS GRISSO, PH.D.

Abstract The right of patients to accept or refuse recommended treatment requires careful reassessment when their decision-making capacities are called into question. Patients must be informed appropriately about treatment decisions and be given an opportunity to demonstrate their highest level of mental functioning. The legal standards for competence include the four related skills of communicating a choice, understanding relevant information, appreciating the current situation and its

COMPETENT patients have the right to decide whether to accept or reject proposed medical care. Patients thought to be incompetent are denied this right, and others make their decisions for them. Competence is a legal concept; it can be formally determined only through legal proceedings. However, in practice physicians must make some assessment of their patients' decision-making capacity before accepting patients' decisions about medical care as valid, and they must raise the question of incompetence if substantial deficits in decision making are apparent.¹

Ordinarily, the assessment of a patient's decision-

consequences, and manipulating information rationally.

Since competence is a legal concept and can be formally determined only in court, the clinical examiner's proper role is to gather relevant information and decide whether an adjudication of incompetence is required. Treatment for impairment of mental functioning can sometimes restore patients' capacities, making it unnecessary to deprive them of their decision-making powers. (N Engl J Med 1988; 319:1635-8.)

we review current concepts of competence and approaches to its assessment.

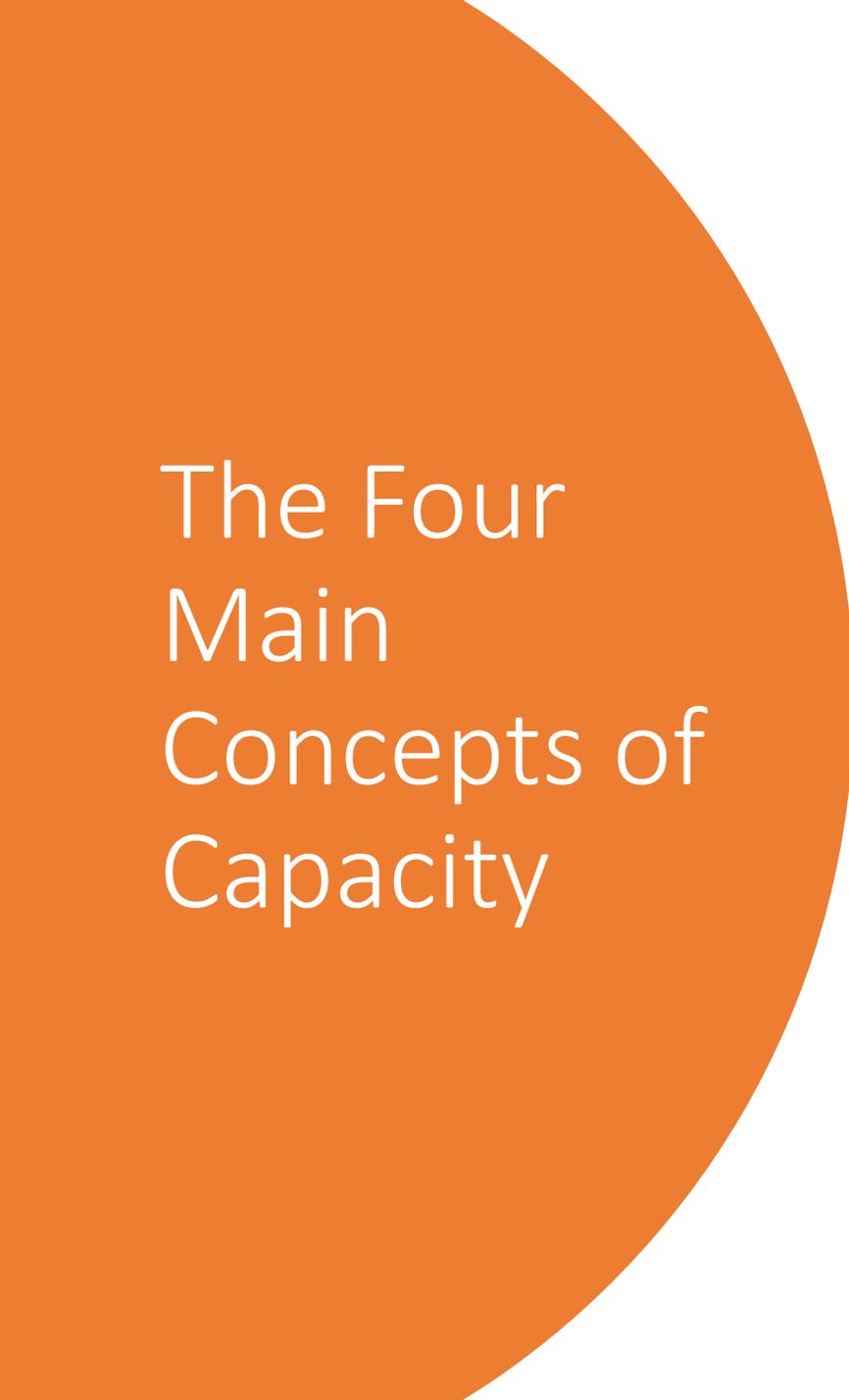
CONCEPTS OF COMPETENCE

The legal standards for determining a person's competence to make decisions vary in wording from jurisdiction to jurisdiction. Scholars have found it convenient, therefore, to classify these standards according to categories. The majority of commentators suggest that the legal standards fall into one or more of four categories.^{1,6-11}

Communicating Choices



The NEW ENGLAND
JOURNAL of MEDICINE

A large orange circle on the left side of the slide, partially cut off by the edge.

The Four Main Concepts of Capacity

1. Communicating choices
 2. Understanding relevant information
 3. Appreciation of the situation and its consequences
 4. Manipulating information rationally
- 
- A decorative yellow dashed line in the bottom right corner, consisting of several short, curved segments.

Communicating Choices

- Consistency and maintaining the reason for the choice in a stable manner
- Having others that may carry out the decision understand the communication

Understanding Relevant Information

- This is a common aspect of competence described in legal contexts
- Understanding the meaning behind relevant words, phrases, ideas, and information about treatment
- Having the ability to recall this information
- Communicate information to patients in words that they can understand

Appreciating the Situation and Its Consequences

- Understanding the implications of a decision
- Acknowledging the presence of illness, the proposed effects of treatment, and its potential risks and benefits

Manipulating Information Rationally

- Comparing benefits and risks of medical decisions
- The process of making a decision by reaching logical and consistent conclusions with line of thought
- Patients should have recognizable reasons for making a certain decision (e.g., factors that are important)
- The physician or other healthcare staff should consider important factors/values the patient holds when making this determination

Ethical and Clinical Benefits of Capacity Assessment

- Offers a comprehensive understanding of the patient's preferences and values
 - Facilitates in-depth discussions about the risks and benefits of proposed interventions
 - Ensures medical providers are informed of the patient's condition through documented assessments
 - Helps address and reduce unconscious biases among caregivers
 - Encourages open dialogue, easing tension and fostering rapport between patient and care team
- 

CURBSIDE: Remembering the Core components broken down

Communicate

Understand

Risks and
Benefits

Situation

Impact

Decide

Explain



Has Capacity

Does not have capacity



Surrogate decision maker will make decisions as patient would have

Instruments Assessing Decisional Capacity

- Assessment of Capacity for Everyday Decisions (ACED)
- Capacity to Consent to Treatment Interview (CCTI)
- Informed Consent Survey
- Competency Assessment Interview
- The California Scale of Appreciation
- **MMSE and MoCA**
- **MacArthur Competency Assessment Tool** for Clinical Research and Treatment

MacArthur Competency Assessment Tool for Clinical Research and Treatment

- Structured interview about patients' capacity to make treatment decisions
- Individualized to the context of a patient's treatment
- 15-20 minute administration
- Quantitative portion evaluates the four decision-making abilities (understanding, expressing a choice, appreciation, and reasoning)
- Qualitative clinical interview
- Takes into account risks and benefits of the treatment

Managing Complicated Cases

Difficult Capacity Cases—The Experience of Liaison Psychiatrists. An Interview Study Across Three Jurisdictions

Nuala B. Kane^{1*}, Alex Ruck Keene¹, Gareth S. Owen¹ and Scott Y. H. Kim²

¹ Department of Psychological Medicine, Mental Health, Ethics and Law Research Group, Institute of Psychiatry, Psychology and Neuroscience, King's College London, London, United Kingdom, ² Department of Bioethics, Clinical Center, National Institutes of Health, Bethesda, MD, United States

Background: Assessment of capacity for treatment and discharge decisions is common in the general hospital. Liaison psychiatrists are often asked to support the treating medical or surgical team in difficult capacity assessments. However, empirical research on identification and resolution of difficult capacity cases is limited. Some studies have identified certain patient, decisional, and interpersonal factors which cause difficulty, but no study has explored how these issues are resolved in practice. Our study therefore aimed to describe how experienced liaison psychiatrists identify and resolve difficult capacity cases in a general hospital setting.

Methods: We carried out semi-structured interviews with 26 liaison psychiatrists from England, Scotland, and New Zealand, on their most difficult capacity cases. Thematic analysis was used to examine types of difficulty and how these were resolved

OPEN ACCESS

Edited by:

Manuel Trachsel,
University of Zurich, Switzerland

Reviewed by:

Peteris Darzins,
Monash University, Australia
Oliver Matthes,



July, 2022

Study Breakdown

- First study to explore solutions to resolve difficult capacity cases that referred to experienced C/L psychiatrists
- Semi-structured interview of 26 C/L psychiatrists in England, Scotland and New Zealand
- Results: Four major types of difficult cases
 - Difficulty determining whether decisions are driven by values or illness
 - Difficulty in applying ethical principles
 - Difficulty avoiding personal biases
 - Procedural difficulties



Is it an unusual decision or is it a hidden delusion or illness?

- Important to uncover context and history in these cases
- Collateral information
- Deeper understanding of cultural, religious or political practices

Is there a superficial “High Functioning” Mask?



- Patients with good verbal functioning, but lacking the ability follow through on statements.
- Often seen in alcohol-related brain damage and subcortical dementias with executive functioning impairments and impulsivity.



Is it depression
or is this
resigned
decision
understandable?



When Ethical principles are questioned in the capacity decision

- Protection of Welfare
- Autonomy
- Justice
- Non-discrimination



Procedural difficulties to capacity

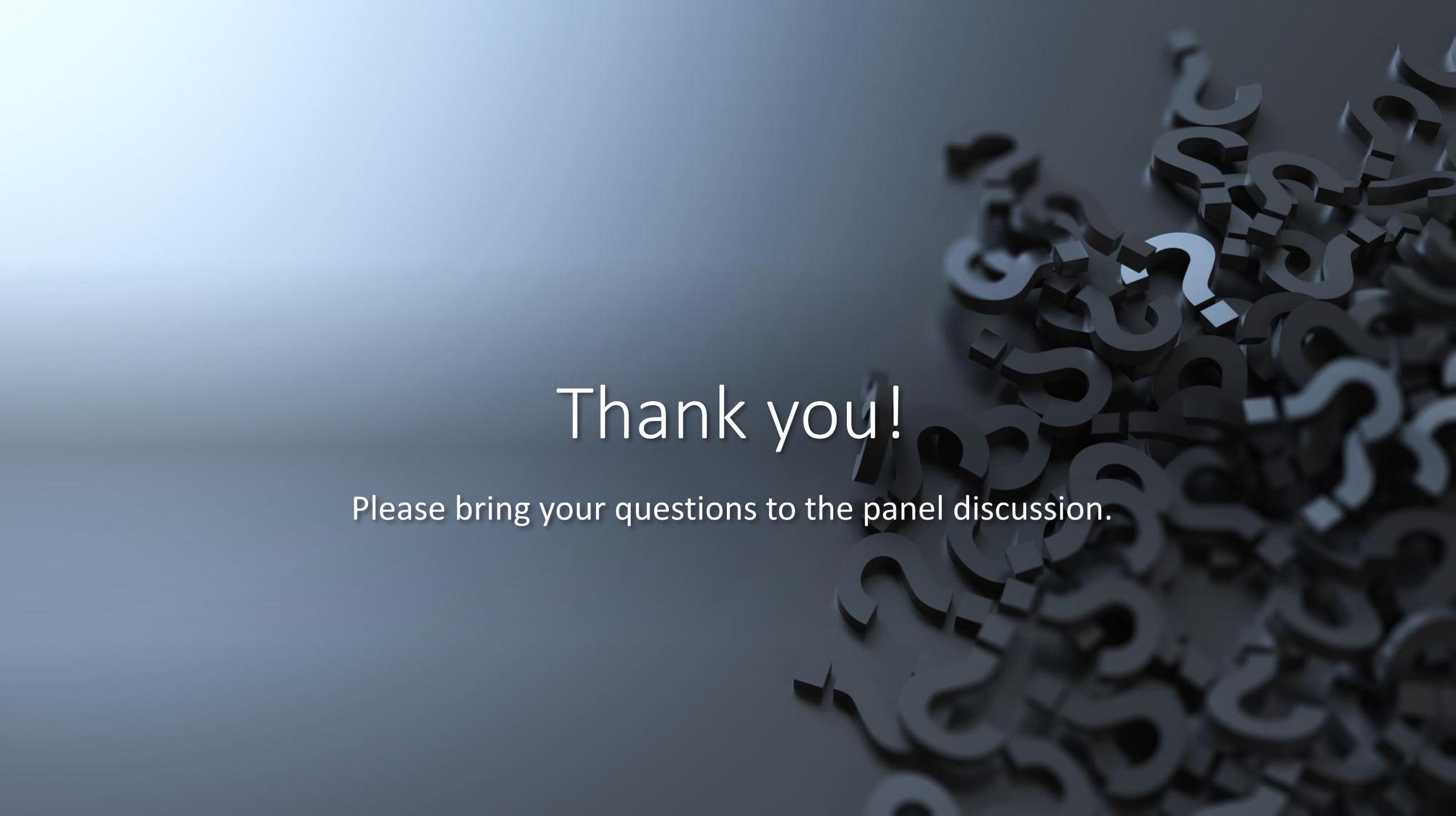
- Lack of engagement
- Lack of information to verify the facts
- Interpersonal conflicts between the patient and the team

Strategies to resolve cases

- When risks are high, employ a more thorough exam over multiple moments in time to gain understanding of patient consistency
- Repeat assessments and build rapport, help to make sure basic patient concerns are heard and addressed
- In conflicts between patients and the team, it's worth deploying negotiation and mediation skills (i.e. advocating for flexible and individualized treatment)
- Have people of various skill sets involved (i.e. The Ethics Board, Office of General Counsel)



Using intuition, clinical and ethical skills, and being self aware is important in assessment



Thank you!

Please bring your questions to the panel discussion.