



ECHO IDAHO: **Alzheimer's Disease and Related Dementias**

Dementia and Legal Matters: Navigating Advance Directives, DPOAs, and Decision- Making Capacity

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Learning Objectives

- Definition of Capacity
- Barriers to Evaluation
- Establishment of Capacity
- What do I do if there is no Capacity?

Case Presentation: Ms. W

- 84 y/o female presents with her daughter
- Medical history significant for:
 - DM type 2: non insulin dependent (last A1c: 7.4)
 - Atrial Fibrillation
 - Osteoporosis
 - Depression/Anxiety
 - Dementia?
- No prior surgeries

Case Presentation (Continued)

- Medications:
 - Metformin 500 mg BID
 - Apixaban 5 mg BID
 - Sertraline 50 mg daily
 - Alendronate 70 mg weekly
- Social:
 - Non-smoker
 - No alcohol use for many years
 - Lives alone, but near her daughter. Is a widow.

Case Presentation (Continued)

- She hates taking pills, wants to stop her apixaban
- What do we do next?

Capacity vs. Competence

- Capacity:
 - A medical term
 - Determined by the treating provider
 - Applies to decisions regarding medical care
 - Pertains to a specific medical situation at a specific time
- Competence:
 - A Legal term
 - Determined by the court system
 - Applies to global decision-making (finances, wills, property)

Valid Medical Consent

- There are 3 elements for valid consent to medical treatment:
 - Adequate information on proposed treatment including risks/benefits must be given
 - No coercion
 - The patient must have decision-making capacity

Decision-making Capacity

- Incapacity is underdiagnosed:
 - Only 42% of patients found to have incapacity on formal evaluation had been identified by their treating physician¹
 - Diagnosis of incapacity from treating provider is specific, but not sensitive
 - Lack of recognition vs. reluctance?

Barriers to Capacity Evaluation

- Why providers avoid capacity evaluation:
 - Lack of know-how
 - Fear of gravity of decision
 - Lack of time
 - Avoidance of conflict
 - Not thinking about it

Suspicion of Incapacity

- Capacity is assessed intuitively in every physician-patient interaction²
- Capacity may come into question if:²
 - Conversation does not proceed logically
 - There is a sudden change in mental status
 - Refusal of an obviously beneficial treatment
 - Agrees to risky procedure without consideration of risks/benefits
 - Patient falls into high-risk category

Decision-making Capacity

- Prevalence of incapacity¹:
 - Healthy older adults: 2.8%
 - Hospital inpatients: 26%
 - Nursing home residents: 44%
 - Diagnosis of Alzheimer dementia: 54%
 - Diagnosis of learning disability: 68%

Decision-making Capacity

- A patient with capacity must have the ability to:
 1. Understand the relevant information about proposed diagnostic tests or treatment
 2. Appreciate their situation (including their underlying values and current medical situation)
 3. Use reason to make a decision
 4. Communicate their choice

Adequate Explanation of Medical Facts

- The patient should be given adequate opportunity to learn the medical facts:
 - It isn't a test:
 - teach it and check for understanding. Do so multiple times if necessary.

Evaluation of Capacity

- “Directed Clinical Interview”¹
 - An informal evaluation
 - Asks questions directed at the elements of capacity
 - May provide adequate information to determine capacity

Directed Clinical Interview

1. Understanding of the situation and proposed options
 - What is your understanding of your condition?
 - What are the options for your situation?
 - What is your understanding of what will happen if nothing is done?

Apply to Case

- Do you know why you take apixaban?
- Are you aware of other options besides taking apixaban?
- Why do you think this medication was recommended for you?

Directed Clinical Interview

2. Appreciation of their situation (including their underlying values and current medical situation)
 - Tell me what you really believe about your medical condition.
 - Why do you think your doctor has recommended (specific treatment/ test) for you?
 - Do you think (specific treatment/test) is best for you? Why or why not?
 - What do you think will actually happen to you if you accept this treatment? If you don't accept it?

Apply to Case

- Do you think the apixaban is a good medication for you?
- What do you think will happen if you stop the apixaban?

Directed Clinical Interview

3. Use of reason to make a decision

- What factors/issues are most important to you in deciding about your treatment?
What are you thinking about as you consider your decision?
- How is the patient balancing the pluses and minuses of the treatments?
- Does the patient trust the medical team making recommendations?

Apply to Case

- As you have decided to stop the apixiban, what are the things that you have thought about?
 - Or simply
- Why have you decided to stop your apixiban?
 - If the answer is just “because I am taking too many pills”:
 - Are there any other reasons?
 - Or
 - Did you consider any of the risks?

Directed Clinical Interview

4. Ability to express a choice

- You have been given a lot of information about your condition. Have you decided what medical option is best for you right now?
- We have discussed several choices. What do you want to do?

Apply to Case

- After all this discussion, what would you like to do?

Capacity Determination

- Treating physician ultimately has to make decision regarding capacity
- If an informal evaluation is not sufficient
 - Formal evaluation
 - Psychiatric consultation

“Capacity Burden”

- The degree of capacity a patient must demonstrate varies depending on the gravity of the decision
 - The amount of time establishing capacity should be proportional
 - Contrast patients consenting for
 - Toenail removal
 - vs.
 - Aortic valve replacement

Capacity Assessment Tools

- Assessment Tools:
 - Aid to Capacity Evaluation (ACE)
 - Hopkins Competency Assessment Test (HCAT)
 - MacArthur Competence Assessment Tool for Treatment
- Cognitive Assessment
 - MMSE
 - MoCA
- Psychiatric Consultation:
 - Most useful for patients with psychiatric histories

And When the Patient is Found to Lack Capacity...

- Evaluate for communication barriers/reversible causes
 - Infection
 - Medication effects
 - Illicit drug use
 - Hypoxia
 - Metabolic derangements
 - Acute neurologic/psychiatric conditions
 - Critical illness
- Find an alternative source for decisions

Alternative Sources for Decision-Making

- Best case scenario
 - Applicable advanced directive already exists
 - Individual with power of attorney is designated and present
- Worst case scenario
 - No advanced directives or legally designated decision-makers exist
- Surrogate decision-makers
 - Closest living relative (priority varies by state)
 - Court-appointed health fiduciary
 - If no surrogate exists and/or there is no time to find one the physician can provide emergency care without consent

Establishment of Incompetence

- Legal Process
 - Elder Attorney
 - Idaho Commission on aging:
 - <https://aging.idaho.gov/>
 - Idaho Legal Aid line: (208) 233-0079

Key Points

- Evaluation of competence is within the scope of practice of essentially any medical professional
- 4 element of capacity- the patient must:
 1. Understand the relevant medical facts
 2. Appreciate how the fact apply to their situation
 3. Use reason to make a decision
 4. Communicate their choice

References

1. Sessums LL, Zembrzuska H, Jackson JL. Does this patient have medical decision-making capacity? *JAMA*. 2011; 306(4): 420-427.
2. Barstow C, Shahan B, Roberts M. Evaluating Medical Decision-Making Capacity in Practice. *Am Fam Physician*. 2018; 98(1): 40-46.