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The practice of obtaining informed consent for medical treatments or procedures requires that the practitioner determine if the patient has the capacity to make an informed decision. "Mental capacity is a multidimensional construct that is a central determinant of an individual's ability to make autonomous decisions."¹ Failure to assess decision-making capacity can result in consent for or refusal of treatment by a patient who is unable to understand and evaluate the information relevant to the proposed treatment or procedure. In these cases, the informed consent may be called into question when there is a negative outcome. The failure to obtain informed consent before providing treatment has been treated as medical malpractice in cases in which a negative outcome resulted from providing or withholding treatment.²

Recent research has shown that incapacity to make medical decisions is relatively common in patients and often not always recognized by practitioners.³ The study indicates that the prevalence of incapacity among healthy older adults was less than 3 percent, but the rate of incapacity increased substantially in patients who were ill.⁴ Approximately 25 percent of hospitalized patients lacked medical decision-making capacity, and physicians only identified this problem in 42 percent of cases.⁵

A common misconception is that "competence" and "capacity" mean the same thing. Competence or incompetence is only determined in a court of law and refers to a person's mental abilities and cognitive capabilities to execute a legally recognized act.⁶ All adults are presumed to be competent unless a court rules otherwise.⁷ Capacity, on the other hand, is defined as "an individual's ability to make an informed decision."⁸

Physicians informally evaluate the decision-making capacity of their patients whenever they offer new treatment choices by confirming that the patient understands his/her condition and the options for care.⁹ A patient who has been legally declared incompetent also lacks capacity, and decisions about treatment will be made either by the patient's surrogate decision-maker or, in some cases, by a court. However, for patients with certain conditions (e.g., mental illnesses, cognitive issues) and who have not been legally deemed incompetent, this evaluation may be more challenging for the practitioner.

All physicians can make a determination of incapacity but many are not confident in their ability to do so. In general, it is agreed that the standards of medical decision-making capacity require that the patient is able to:

1. Understand the information provided about the proposed treatment or procedure
2. Appreciate their current situation in relation to the treatment
3. Use adequate reasoning to decide on accepting or declining the proposed treatment
4. Clearly communicate their choice(s)¹⁰

There are generally two accepted approaches to determining medical decision-making capacity: conducting a directed interview and using a standardized tool. A variety of clinical tools for evaluating
capacity are available, but many have not been validated by adequate study. These clinical tools are
designed to provide a more objective determination of capacity than just an interview. The following two
standardized tools are mentioned frequently in the literature:

- **Aid to Capacity Evaluation (ACE)** is a short, clinically oriented evaluation that can be
  conducted and scored in less than 10 minutes. Available
- **MacArthur Competence Assessment Tool for Treatment (MacCAT-T)** is a lengthy tool designed for
  use when the patient's complex psychiatric or neurologic condition makes determination
  of capacity very difficult. It is considered to be one of the most effective tools, but it requires
  training to both administer the tool and interpret the results. The tool is free, but training materials
  must be purchased. Available at: [http://www.ppress.com/MacArthur-Competence-Assessment-
  Tool-for-Treatment-MACCAT-T_p_169.html](http://www.ppress.com/MacArthur-Competence-Assessment-
  Tool-for-Treatment-MACCAT-T_p_169.html)

In *American Family Physician*, Mark Tunzi describes four types of situations which indicate the need to
more thoroughly focus on assessing the patient's decision-making capacity:

- When a patient has an acute change in mental status due to any number of clinical changes, such
  as infection, metabolic changes, medication side effects, or acute neurological or psychiatric
  symptoms
- When a patient refuses recommended treatment, but is not able to give a rational reason for
  refusing
- When consent is given for a high-risk procedure or treatment too quickly before considering the
  risks against the benefits
- When a patient has a substantial risk factor for impaired decision-making, such as a psychiatric
  illness, or educational or cultural barriers to understanding the information presented

Tunzi further illustrates the challenge of determining medical decision-making capacity in the following
case illustration:

A 54-year-old woman with diabetes and schizophrenia has been hospitalized with
unstable angina, bilateral heel ulcers, urinary retention caused by an acute urinary
tract infection and anemia caused by a combination of gastritis and chronic renal
failure. One year ago, she was hospitalized with diabetic ketoacidosis after reporting
that "voices" told her to stop taking her insulin. Currently, she is improving but requires
a urinary catheter and must keep her legs elevated at rest. She says she is now able to
take care of herself and wants to return home. Does this patient have the capacity to
make this decision?

Tunzi suggests the use of a "directed clinical interview" in these types of situations to determine the
patient's decision-making capacity. The interview includes questions to determine the patient's ability to
meet the standards of medical decision-making above: understanding, appreciation, reasoning, and
communication. Tunzi's structured interview may be accessed in *Table 1 – Patient Abilities to be
Assessed in the Evaluation of Medical Decision-Making Capacity*. Available at:

By using this interview process, the provider was able to make the following determinations about the case
illustrated above:

- The patient reported that she was not now hearing voices.
- She was not exhibiting any other psychotic symptoms.
- She was stable on her psychiatric medications.
- She understood her medical situation.
- She appreciated the consequences of care options.
- She was able to analyze the information provided and was able to communicate a clear choice.

The provider determined that this patient had decision-making capacity. After demonstrating
understanding of her medical regimen, she returned home with provisions for home health nursing care.

Healthcare practitioners are faced with the need to determine the decision-making capacity of patients
whenever new treatments or procedures are recommended and consent is necessary. With relatively
healthy individuals, capacity does not typically come into question. But when faced with a patient whose
decision-making capacity is questionable due to mental or physical impairment, the practitioner must use
either a structured interview or established tools to determine whether the patient has capacity to make important informed consent decisions.

We hope you found this RisKey helpful. If you have questions or would like further resources on this topic, please contact your Coverys Risk Management consultant.

References

2. Ibid.
4. Ibid.
5. Ibid.
7. Ibid.
8. Ibid.
10. Sessums, LL.
11. Tunzi, M.
12. Ibid.
13. Ibid.
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