




The tests


Professor Carmelle Peisah

Capacity Australia




Medical & Dental Treatment Section 59ZB

- **A mentally incapacitated person is incapable of giving such consent if that person is incapable of understanding the general nature and effect of the treatment or special treatment.**



General principles for assessing for capacity to give consent for treatment


- **The “what” of the consent:**
 - **Does the person understand the general nature and effect of the proposed treatment:**
 - **what it is and what it involves;**
 - **risks and benefits of the treatment; and**
 - **alternatives to, or consequences of not having, the treatment; and**
 - **Has the person indicated consent?**
- **The ‘freedom’ of the consent:**
 - **Has all the relevant information been given to the person in a way they can understand?**
 - **Are they making the decision freely and voluntarily and not being unduly influenced?**
- **A person has a right to refuse treatment if they are doing so competently.**



General principles for assessing capacity to make a power of attorney include:

➤ The “what” of the appointment.

- Does the person understand when it is explained to them:
- that they are authorising someone to look after and assume complete authority of their financial affairs?
- the nature and extent of what they are authorising the attorney to do (the more extensive and complex a maker’s affairs are, the greater their understanding needs to be)
- the sort of things the attorney can do without further reference to them
- Do the makers understand that the attorney can do anything with their property which they themselves can do?
- that the authority will begin, or continue, when they are incapable of managing their financial affairs



General principles for assessing capacity to make a power of attorney (Cont'd)

➤ The “who” of the appointment:


- Why has the person been selected for appointment as an attorney?
- Has the person executed any Powers of Attorney previously? If so, how frequently have there been changes (i.e. revocations and new appointments)?
- Have they considered the trustworthiness and wisdom of the person they are appointing?
- Is this appointment in keeping with previous appointments (e.g. has someone else been consistently appointed as attorney in the past)?
- What is the history of the relationship between the person and the attorney and has there been any radical change in that relationship coinciding with the onset or course of dementia?

➤ The “freedom” of the appointment:

- Has all the relevant information been given to the person in a way they can understand?
- Is the person making the appointment freely and voluntarily, not being unduly influenced or “schooled” to make the appointment?

Assessing Fin Capacity: a myriad of options

- Sousa, LB, Simoes MR, Firmino H, Peisah C. (2014) Financial and testamentary capacity evaluations: procedures and assessment instruments underneath functional approach International Psychogeriatrics 26(2): 217-28.
- Several instruments or methodologies:
 - **Neuropsych assessment** – needs to cover several cognitive domains, but especially memory, attention, executive function, working memory, verbal abstraction, arithmetic
 - **Functional assessment scales** – IADL, Lawton and Brody, 1969; FIM, Keith et al, 1987; FAQ Pfeffer et al, 1982; Bristol Bucks et al, 1996; DAD, Gelinas et al, 1999; IADL-E, Mathuranath et al, 2005; ADCS-MCI – ADL Galasko et al, 1997)
 - **Performance –based functional assessment** – TEFA Cullum et al, 2001; DAFS, Loewenstein et al, 1989; EPCCE, Willis, 1994; KELS, Kohlman, 1992; SAILS; Mahurin et al, 1991; MAFS Cramer et al, 2004)
 - **Forensic Assessment instruments** - **FCI**, Marson et al, 2000; **FCAI** Kershaw and Webber, 2006; Black et al, 2007; **ILS** Loeb et al, 1996; **ACED** Lai & Karlawish, 2007; HCAI, Edelstein, 1999; DIG Anderer, 1997.

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- **Domain 1: Basic Monetary skills**
 - Naming coins/currency
 - Coin/currency relationships
 - Counting coins/currency
 - **Domain 2: Financial Conceptual knowledge**
 - Define financial concepts
 - Apply financial concepts
 - **Domain 3: Cash transactions**
 - 1-item grocery purchase
 - 3-item grocery purchase
 - Change /vending machine
 - Tipping
 - **Domain 4: Chequebook management**
 - Understand chequebook; Use chequebook/register



Cont'd - (FCI Marson et al, 2000)

- **Domain 5: Bank statement management**
 - Understand bank statement
 - Use bank statement
- **Domain 6: Financial judgment**
 - Detect mail fraud risk
 - Detect telephone fraud risk
- **Domain 7; Bill payment**
 - Understand bills
 - Prioritize bills
 - Prepare bills for mailing
- **Domain 8: Knowledge of personal assets/estate arrangements**
- **Domain 9: Investment decision making**

General principles for assessing capacity to manage financial affairs include:

- Do they know their assets?
- Can they read a bank statement?
- How do they access money? Can they use a chequebook or ATM card? Can they identify currency and its relative value?
- Do they understand what bills they have and any debts they have?
- Have they planned for the future?
- Are they vulnerable to financial abuse? Will they be disadvantaged in the conduct of their financial affairs if they do not have someone? Is there a risk their assets will be dissipated due to their lack of capacity?
- Can they afford food? Do they pay crucial bills such as rent, electricity, water, rates or a crucial accommodation bond?
- If they are unfamiliar with their financial affairs or have never managed their own affairs, have they made appropriate alternative arrangements for the management of their estate?



Important Principles

- ▶ **Least restrictive:-**
 - ▶ **Is there a working alternative or informal arrangement already in place (e.g. a family member looking after their affairs, an attorney under a power of attorney or an accountant)?**
- ▶ **Most autonomous solution (ie only interfere where there is need/risk):-**
 - ▶ **The adult does not have to manage financial tasks in the best possible way, but they must be able to manage them.**
- ▶ **Supported DM where possible:-**
 - ▶ **If you assess that the adult cannot manage all of their affairs consider whether there are parts of their finances that they can manage.**

Responsibility of health care professionals to know..

► What is financial abuse?

Illegal use, improper use or mismanagement of a person's money, financial resources, or property or assets without the person's knowledge or consent.



More specifically for the innocent.....

- **Stealing, taking or ‘borrowing’ a vulnerable person’s money, debit or credit cards, possessions or property without their knowledge or consent (with no intent to return/or pay back)**
- **Forging or forcing a vulnerable person’s signature through misrepresentation, including blank withdrawal forms**
- **Using a vulnerable person’s money for purposes other than what was wanted.**
- **Cashing a vulnerable person’s cheque without permission.**



And more.....

- **Deceiving, coercing or unduly influencing a vulnerable person to sign a will, deed, contract or power of attorney**
- **Pressuring, tricking or threatening a person to make changes to their will, power of attorney or other legal arrangements.**
- **Using a power of attorney in a way that is not in the interests of the donor or for direct personal gain (e.g. taking money from their account to pay for personal bills)**

Part IVB 590 In considering the merits of a guardianship application to determine whether or not to make a guardianship order, the Guardianship Board must be satisfied:-

(a) (i) that a mentally incapacitated person who is **mentally disordered**, is suffering from mental disorder of a nature or degree which warrants his reception into guardianship; or

(ii) that a mentally incapacitated person who is **mentally handicapped**, has a mental handicap of a nature or degree which warrants his reception into guardianship;

(b) that the mental disorder or mental handicap, as the case may be, **limits the mentally incapacitated person in making reasonable decisions in respect of all or a substantial proportion of the matters** which relate to his personal circumstances;

(c) that the particular **needs** of the mentally incapacitated person may only be met or attended to by his being received into guardianship under this Part and that no other less restrictive or intrusive means are available in the circumstances; and

(d) that in the **interests of the welfare** of the mentally incapacitated person or for the protection of other persons that the mentally incapacitated person should be received into guardianship



General principles for health practitioners assessing whether a person warrants reception into guardianship include:

- 1. Is the person a mentally incapacitated person? If so, what nature and degree of mental incapacity?**
- 2. Does this mental incapacity limit the person's ability to make reasonable decisions (i.e their capacity) in respect of all or a substantial proportion of the matters which relate to his or her personal circumstances?**
- 3. Is there a need for an order? What is the current situation regarding practicability of services, assistance and care being provided without the need for an order? Is there any risk? Why might an order be needed or what are the consequences of making or not making an order?**
- 4. Any other comments in the interests of the welfare of the mentally incapacitated person or for the protection of other persons.**