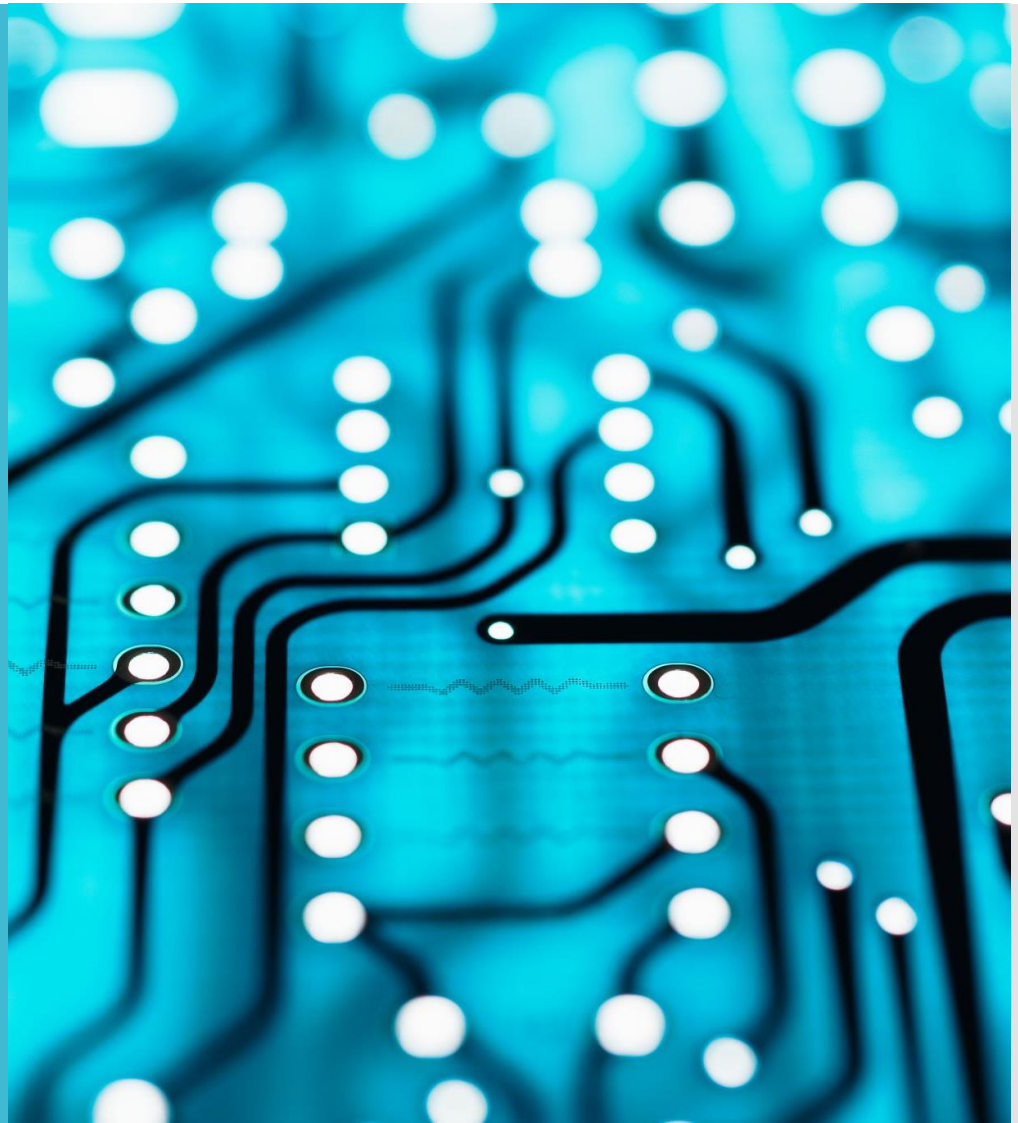


Capacity issues in older people

Dr Mark Fisher

July 2021



Overview

Case study

Capacity

Causes of Incapacity

Rates of Incapacity

How to do a Capacity Assessment

Documentation

Case Study

93-year-old Pakeha woman

Admitted to private hospital

EPOAs Activated by PH GP

Changed will

Angry about removal of property

Saw another solicitor

Wanted to change will

Request that GP undertake capacity assessment

Will drafted but not signed due to challenge

Will challenged in Court after death

Case Study

93 year old Pakeha woman

Admitted to private hospital

EPOAs Activated by PH GP ⚠️ Capacity ??

Changed will ⚠️ Capacity ??

Angry about removal of property

Saw another solicitor ?? Undue Influence ??

Wanted to change will

Request that GP do capacity assessment ⚠️ Capacity ??

Will drafted but not signed due to challenge

Will challenged in Court after death

Decision -Making Capacity

- Decision-making capacity is a person's ability to make their own decisions **based on their personal values**, and where possible to make meaningful choices. It goes to the heart of a person's autonomy and respect for self-determination.

- Douglass, 2016

The Four Elements



Understand the situation/problem and options



Retain that information



Use or weigh that information as part of the reasoning process for making the decision



Communicate the decision

Capacity defined (SACATA 2017)

§ 9 Capacity to make informed decisions

a person's capacity to make informed decisions about treatment for a severe substance addiction is severely impaired if the person is unable to—

(a) **understand** the information relevant to the decisions; or

(b) **retain** that information; or

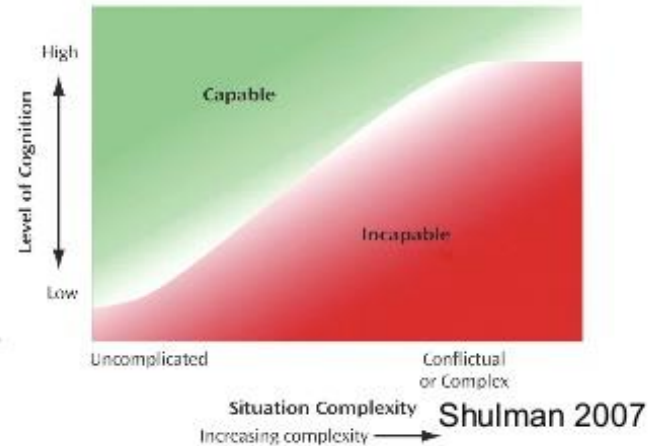
(c) **use or weigh** that information as part of the process of making the decisions; or

(d) **communicate** the decisions

The Threshold for Capacity

‘Sliding Scale’ approach

- More complicated decisions may require more cognitive power to meet the threshold of understanding and weighing.
- ‘greater’ or ‘better’ capacity?
- The stringency of test depends on the *seriousness* of the likely consequences of patients’ decision



The more serious the decision, the greater the cognitive capability required

Capacity to
what? Specific
Decisions

Medical treatment

Marriage or Civil Union

Will

EPOAs

Finances

Care and welfare decisions

Residential decisions

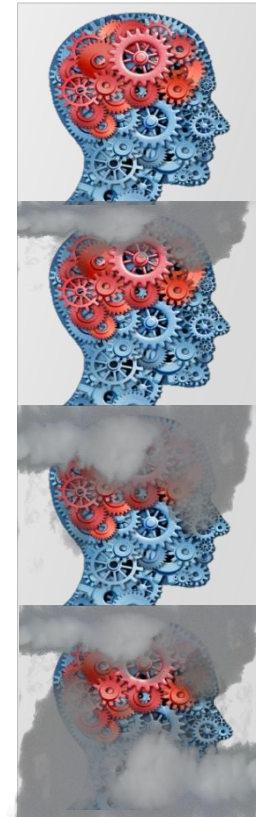
Spectrum of Cognitive Ability

Normal Cognition

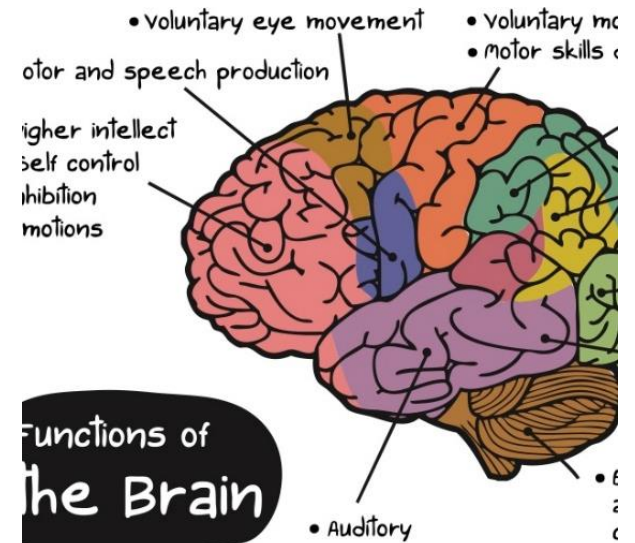
Mild Impairment

Moderate Impairment

Marked Impairment



Capacity depends on a person's cognitive skills



Causes of Impairment

Dementia

Delirium

Stroke

Neurological Disorders

Learning Disability

Major Mental Disorders

Substance Abuse



Rates of Incapacity

Hospital 35%

Psychiatric Hospital 45%

Community (healthy elderly) 3%

Rest Home 40%

Private Hospital 53%

Rates of Incapacity Willis 1996

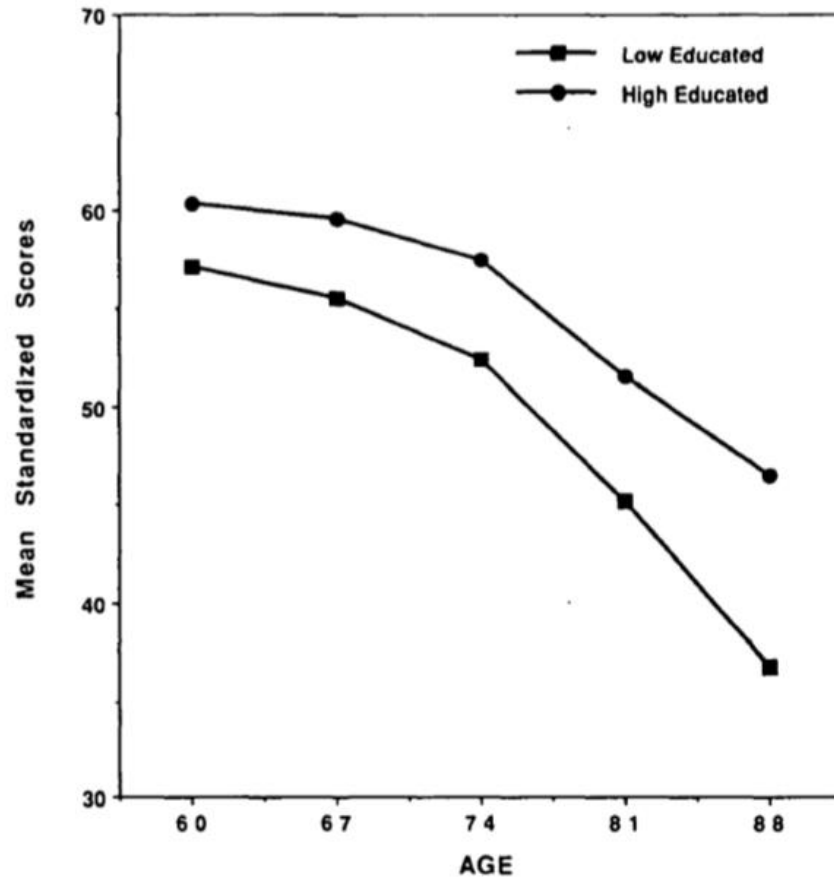


Figure 1. Seven-year longitudinal change in everyday cognitive tasks.



Red flags
for
incapacity

Known history or conditions

Observations in interview

Confusion or advanced age

Surprising instructions

Influence of others

Assessing Capacity

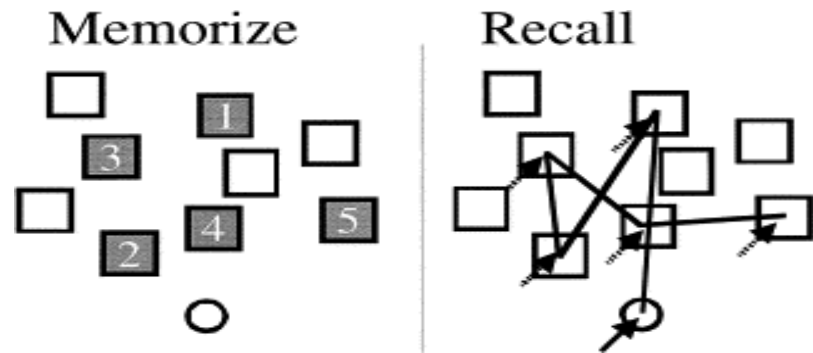
- Capacity Assessment is an easily understood and mastered skill
- It is not a dark art



Doing a Capacity Assessment

The Interview

- Explanations
- Getting the background information
- (Clinical History)
- (Cognitive Assessment)
- Talking about the decision



“Cognitive
Assessments”
for
Professionals

Ask questions with a known answer

Document “chatter”

Inquire about personal information

Probe about specific information

Cause for concern?

The Business End of the Interview

A careful and thorough review of the decision.... as if you have never seen the person before

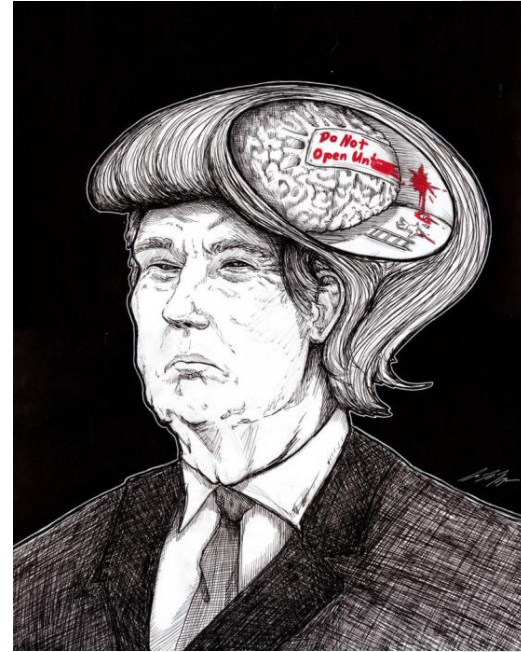
A robust and rigorous review of the gaps or illogicalities: checking, reminding, challenging....

To gain a clear understanding of how, what and why.

Talking about the Decision

1. Let the person talk

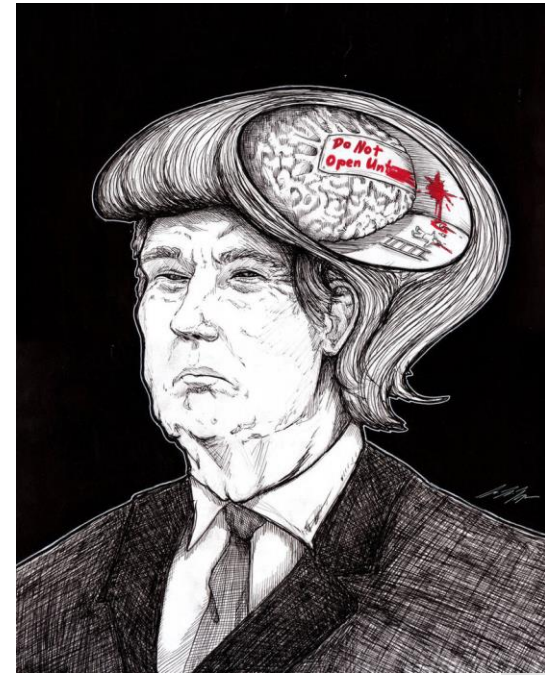
- Ask about the decision
- Naïve inquirer
- “In your own words”
- “From the beginning, leaving nothing out”
- Prompt with information if needed
- Can you follow the line of reasoning?
- Does it link back to their personal values?



Talking about the Decision

2. Examine the gaps

- More active interviewing
- Robust and rigorous
- Challenge the narrative
- Propose scenarios “what ifs”
- Provide evidence to the contrary
- See how they respond
- Can you follow the logic now?



Looking
for.....

Failure to understand or
appreciate the situation

Inability to retain the options
available

Poor reasoning through the
benefits and risks

Inability to communicate the
above, or a consistent decision

No or Mild Impairment

Marked Impairment

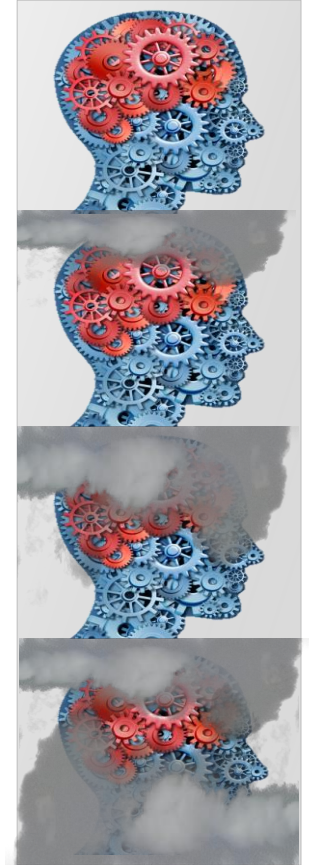


Proceed

Proceed

????????????

Decline



Moderate
Impairment



Referral
or
Review



Reporting the Opinion



The question asked, with reference to the decision



Relevant personal background information;



(Important medical or psychiatric history, mental state, and test results)



A summary of the capacity interview, demonstrating those areas of mental functioning that are intact and those impaired;



A statement of opinion, with reference to the above and the relevant legal test; and



(Recommendations where these are requested).

A Toolkit for Assessing Capacity



A Douglass, G Young and J McMillan



Questions

