

Competency

Assessing Decision Making

Capacity

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Source for this lecture

- A Guide to assessing Decision Making Capacity.
- Roger C. Jones, MD, Timothy Holden, MD
- Cleveland Clinic Journal of Medicine
- Vol 71, December 2004, p 971-5.



Summary

- Physicians need an efficient way to determine a pts decision making capacity
- This capacity must be assessed for each decision and not inferred on the basis of pts diagnosis.
- Documentation of the process used and decisions reached is necessary.



Case 1

- Pt admitted for sepsis
- Poor access for pressors and labs
- Pt is confused
- No family is available
- Can pt consent to line placement?



Case 2

- Elderly pt with Alzheimers and a MMSE score of 23 of 30 refuses elective Chole.
- Daughter/DPAHC requests surgery.
- Can the pt refuse?
- How can his competency be evaluated?



Case 3

- Pt admitted with acute pneumonia
- Also diagnosed with severe depression
 - Many answers are “I don’t know/I don’t care”
- Pt refuses treatment, stating “ I don’t care if I live or die”
- Does pt have decision making capacity?
- If not how do you proceed?



Consent

- Requirements:
 - Autonomy
 - Capacity to understand and communicate
 - Ability to reason
 - Recognized set of values or goals
- Agreement with the physician does not imply that pts capacity to give consent is intact!



Competency

- Legal designations determined by the courts.
- Decision making capacity is clinically determined by physician at the bedside.
- Adults are presumed competent unless legally judged to be incompetent.
- President's commission for the study of Ethical Problems in Medicine 1982.
 - Avoid Routine recourse to legal system.

GUARDIANSHIP OF AAAAA

CASE NO. 2005 CRD 00049

LETTERS OF GUARDIANSHIP

(R.C. 2111.02)

AAAAAA
AAAAA

is appointed Guardian of

an incompetent Min.

Guardian's powers are:

All powers conferred by the laws of Ohio and rules of this Court over its wards:

Person and Estate

Person Only

Estate Only

Limited to _____

These guardianship powers, until revoked, are for all:

Indefinite time period

Definite time period to _____

The above named Guardian has the power conferred by law to do and perform all the duties of Guardian as described. No expenditures shall be made without prior Court authorization.

01-19-2005

Date

Alice O. McCollum
Judge of Probate

NOTICE TO FINANCIAL INSTITUTIONS

Funds being held in the name of the within-named Ward shall not be released to Guardian without a Court order directing release of a specific fund and accounts thereof.

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of this Court. It constitutes the appointment and letters of authority of the named guardian, who is qualified and acting in such capacity.

(Seal)

ALICE O. McCOLLUM

Judge of Probate, Probate Judge

County Montgomery

Date 01-19-2005

Case

Letter of Guardianship
For an incompetent pt.

Wouldn't it be useful
To have some more info

Relationship of Guardian
Phone #
Address
Diagnosis resulting in
incompetency.





How to start the Guardianship process:

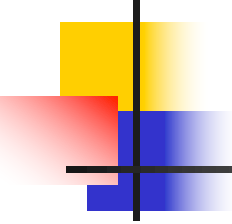
- Start with the “statement of Expert Evaluation” form.
- Can be completed by licensed physician or licensed Clinical Psychologist.
- Will be filed in Probate court along with an Application for Guardianship.

Statement of Expert Evaluation -

- **PROBATE COURT OF MONTGOMERY COUNTY,
OHIO**
- **DAVID D. BRANNON, JUDGE**
- **GUARDIANSHIP OF:**
- **CASE NO.:**
- **STATEMENT OF EXPERT EVALUATION**
- **[Sup.R. 66 & R.C. 2111.49]**
- Definition of Incompetent (R.C. 2111.01(D)):
"Incompetent' means any person who is so mentally impaired as a result of mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this State."
- The Statement of Expert Evaluation does not declare the individual competent or incompetent, but is evidence to be considered by the Court. The fee for completing this evaluation **WILL NOT** be paid by the Probate Court. Each evaluator should secure payment from the

Applicant/Guardian ■

- **Definitions.**
Completing the form does NOT declare a patient incompetent, but is evidence that they do not, nor will have Decision making capacity.

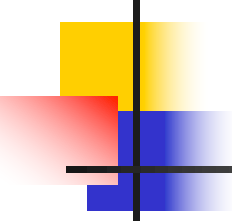
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-
- 1.This Statement of Expert Evaluation is to be filed with or attached to:
 - A.Guardianship Application: Completed by Licensed Physician or Licensed Clinical Psychologist prior to the filing and attached to the application.
 - B.Guardian's Report: Completed by Licensed Physician Licensed Clinical Psychologist Licensed Independent Social Worker Licensed Professional Clinical Counselor or Mental Retardation Team.
 - The evaluation or examination shall be completed within three months prior to the date of the Report. R.C. 2111.49.
 - C.Application for Emergency Guardian: of the person: a Licensed Physician shall complete the Supplement for Emergency Guardian, form 17.1A with specificity indicating the emergency, and why immediate action is required to prevent significant injury to the person. The Supplement shall be signed, dated, and attached as part of this completed Statement.
 - 2.Statement completed by:
 - Name & Title/Profession:
 - Business Address:
 - Business Telephone Number:
 - 3.Date(s) of evaluation:
 - Place(s) of evaluation:
 - Amount of time spent on evaluation:
 - Length of time the individual has been your patient:

- Give details of the patient's condition.
- Is immediate action required?

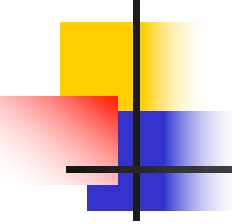
Statement of Expert Evaluation



- 4. Is the individual presently under medication? Yes No If yes, what is the medication, dosage, and purpose?
- Are there any signs of physical and/or mental impairments caused by the medications themselves?
- 5. Is the individual mentally impaired? Yes No If yes, indicate the diagnosis below:
 - Mental Retardation/Developmental Disabilities:
 - Profound Severe Moderate Mild
 - Mental Illness: Type and Severity:
 - Substance Abuse: Description:
 - Dementia: Description:
 - Other: Description:
- List medications and mental impairment.
- List severity.
- Describe functionality.

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-
- 6. During the examination did you notice an impairment of the individual's:
 - a) Orientation Yes No Unknown
 - b) Speech Yes No Unknown
 - c) Motor Behavior Yes No Unknown
 - d) Thought Process Yes No Unknown
 - e) Affect Yes No Unknown
 - f) Memory Yes No Unknown
 - g) Concentration and comprehension Yes No Unknown
 - h) Judgment Yes No Unknown
 - 7. Please describe any impairments identified in question six. (Continue comments on page 4).

- **Details of impaired areas of function.**

- 
- 8. Is the individual physically impaired? Yes No If yes: Describe:
 - 9. Are there any special characteristics of the individual which should be considered in evaluating the individual for guardianship? Yes No If yes: Explain:
 - 10. Are there any indications of abuse, neglect or exploitation of the individual? Yes No
 - If yes: Explain:
 - 11. Do you believe the individual is capable of caring for the individual's activities of daily living or making decisions concerning medical treatments, living arrangements and diet?
 Yes No If no: Explain:
 - 12. Do you believe the individual is capable of managing the individual's finances and property?
 Yes No If no: Explain:
 - 13. Prognosis:
 - A. Is the condition stabilized? Yes No
 - B. Is the condition reversible? Yes No
 - 14. In my opinion a guardianship should be:
 Established/Continued
 Denied/Terminated

- Is individual capable of caring for ADL's, or making decisions about medical treatments, living arrangements, and diet? Finances?
- Should Guardian be established?



Date: Signature of Evaluator: **GUARDIAN'S REPORT ADDENDUM**
(Not to be used with Initial Application)

It is my opinion, based upon a reasonable degree of medical or psychological certainty, that the mental capacity of this ward will not improve.

Date: _____

Signature – Licensed Physician/Clinical Psychologist

- Be sure to sign the form. This is your medical opinion, and will be used by the Probate Judge to determine Mental capacity. The Judge ultimately declares the patient incompetent.



Clinical Approach

- Urgency of the clinical situation determines how to proceed.
 - Urgent situation
 - Pt not able to communicate / no spokesperson
 - Assume that a reasonable person would not want to be denied life saving treatment.
 - “Implied Consent”



Clinical approach

- Nonemergent situation
 - What are the risks and benefits?
 - Low risk may not require much decision making capacity.
 - I'm here to draw your blood for a hct.
 - High risk may require significant deliberation.
 - Should a pt with lung cancer and severe CAD undergo pneumonectomy AND CABG for possible cure?



Algorithm for assessment

- Miller and Marin, Emergency Med Clinic North Am, 2000; 18: 233-241.
- Series of simple questions
- Doesn't take into account the level of risk or benefit of a treatment.



Algorithm

- 1. Do the history and physical confirm that the pt can communicate a choice?
 - Is their memory good?
 - Is judgment appropriate?
 - Can they maintain a conversation/follow your line of questioning?
 - Are their answers consistent?
 - If yes: proceed to question 2
 - If No: pt needs help with decision making.



Algorithm

- 2. Can the pt understand the essential elements of informed consent?
 - What is your present condition?
 - What treatment is being recommended?
 - What might happen to you if you agree to the treatment?
 - What might happen to you if you refuse the treatment?
 - What are the alternatives available?
- Test of pts understanding of the discussion.



Algorithm

- 3. Can the pt assign personal values to the risks and benefits of intervention?
 - Jehovah's witness refusal to accept transfusion reflects different set of values.



Algorithm

- 4. Can the pt manipulate the information rationally and logically?
 - Can you follow how the patient got to their decision?



Algorithm

- 5. Is the patients decision making capacity stable over time?
 - Repeat the question several minutes later/
after more discussion.



Algorithm

- Benefits of this approach:
 - Avoids the tendency to devalue capacity of chronically ill pts
 - Reduces reliance on surrogate decision makers when not necessary
 - Avoids judgment based on whether pt agrees with Doctor.



Algorithm

- Limitations:
 - Language barriers
 - Cultural barriers
 - African Americans tendency to not look at speaker, distrust of system leading to misinterpretation of options provided
 - Some of the assessment questions are subjective.



When surrogate must be consulted

- If the pt is incompetent as determined by the court
- If the pt's decision making capacity is in doubt
- If the pt is unable to understand options or is unable to decide.



Case 1

- Pt admitted for sepsis
- Poor access for pressors and labs
- Pt is confused
- No family is available
- Does pt have to consent to line placement?

- No, use implied consent.



Case 2

- Elderly pt with Alzheimers and a MMSE score of 23 of 30 refuses elective Chole.
- Daughter/DPAHC requests surgery.
- Can the pt refuse?
 - MMSE can miss cognitive deficits
- How can his competency be evaluated?
 - Psychiatry consult, ethics consult if needed.
 - In this case, daughter served as decision maker.



Case 3

- Pt admitted with acute pneumonia
- Also diagnosed with severe depression
 - Many answers are “I don’t know/I don’t care”
- Pt refuses treatment, stating “ I don’t care if I live or die”
- Does pt have decision making capacity?
 - Physician determined that pt does not, due to depression.
 - Treat depression and pneumonia.
 - Capacity may return once depression treated.



Summary

- Physicians must determine decision making capacity every day.
- Diagnosis does not imply impaired capacity, nor does good MMSE imply that pt has capacity.
- Agreement or disagreement with physicians recommendation does not imply capacity is intact or impaired.



Summary

- Differing pt values may result in conflict and raise questions about pt's capacity.
- Algorithm provides a simple method to determine D.M. capacity
- Competency is legal determination
- DMC is clinical determination.