



# *20 / 20 on Capacity*



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Understanding  
Decision-making  
Capacity

## **Disclosure:**

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**Relationships with commercial interests:** None

**Grants:** NAAFP Creation of a Customized Tool to Facilitate Confidence and Ease in Decision-Making Assessments Among Family Physicians (\$4917)

## **Disclosure:**

### **Travel and Accommodation:**

Geriatric Updates Conference, University of Calgary, 2013, 2014, 2015, 2016, 2017

ACFP ASA, Banff, 2014, 2015

Office of Public Guardian, Calgary, 2014, RedDeer 2016, Lethbridge 2017

FMF, Quebec City, 2014, Toronto 2015, Vancouver 2016

## Evaluations:

Accreditation – pre and post questionnaires as well as workshop evaluation must be completed

We are studying the questionnaires and evaluations

If you don't wish yours used let us know when you hand them in to receive your certificate

- Imagine all the decisions you make in one day:
  - Where are you going to live?
  - Who are you going to associate with?
  - What are you going to wear?
  - What are you going to do if you're sick?

**IMAGINE YOUR RIGHT TO MAKE ALL THESE DECISIONS WAS TAKEN AWAY**

## **Learning Objectives:**

By the end of this workshop you will learn about:

The guiding principles of decision-making capacity assessment (DMCA)

The DMCA process

An interdisciplinary approach

Capacity assessment worksheets

Your role in assessment of capacity

## Case Study

- Mrs. T is a 79 yr old woman
- Retired high school teacher
- Very educated and well read
- PMHx: diabetes, MI, CVA October 2000
- Referred to Occupational Therapy for further cognitive assessment because she was not managing well at home: medication non compliance, safety issues when cooking, difficulty managing finances
- Support system includes a caregiver who visits every day
- Does she have capacity to decide where and how she should live?

# Capacity Definition

The ability to understand the information that is relevant to making of a personal decision

and

the ability to appreciate the reasonable foreseeable consequences of the decision



## What is Capacity?

- Capacity is **not** a medical diagnosis
- Health care providers can provide a **clinical opinion** on capacity
- Competency is legal decision made by the Court, based on evidence

## **Guiding Principles/Least Intrusive, Least Restrictive**

- All adults presumed capable of making their own decisions until contrary demonstrated
- Taking away person's right to liberty and freedom is a very serious step
- Change of legal status is a last resort and there must be evidence that it is absolutely necessary
- The onus is on the assessor to demonstrate lack of capacity, not on the patient to demonstrate capacity

## Risk by Choice

- A risky decision is not necessarily an incompetent decision
  - Stockbrokers, soldiers, medical professionals and patients make them every day
- It is the process – or the lack of process – by which risky decisions are made that calls into question the capacity of a patient to make that decision

# Capacity Assessment

- Capacity assessment is a process for determining whether there is sufficient evidence to declare a person incapable of managing their affairs
- The emphasis is on the quality of the decision-making process, not the actual course of action in which a person engages or the decision made

# Common Pitfalls

- All or Nothing – the practitioner doesn't understand that capacity is not “all or nothing”, but specific to a decision
- Practitioner fails to ensure that patient has been given relevant information about proposed treatment before making a decision
- As long as patient agrees with practitioner's health care recommendations, practitioner fails to consider that patient may lack capacity for decisions

# Costs of Poorly Conducted Assessments

- Unnecessary, uncoordinated and multiple assessments by different disciplines is an assault on patient's human dignity
- Generates other costs and burdens by delaying services, taxing health care staff resources, and heightening mistrust between disciplines
- Erodes ethical and moral integrity of the organization and trust
- Generates further conflict, including possible complaints, ethics consults, litigation, etc.

## Development of the DMCA Model

- An Interdisciplinary Capacity Assessment Working Group was created in 2006 by Caritas (now Covenant Health)– reviewed literature, existing models, survey and interviews used to develop DMCA Model

## Spread of the DMCA Model

- 2007 – a Demonstration Project at 2 Covenant Health (CH) sites
- 2008 – Innovation funding: Implementation at CH Sites
- 2009 – Edmonton Zone implementation
- 2011 – Edmonton Zone implementation
- 2012 – AHS Grant Provincial Evaluation and Recommendations



## 2014 – Grants:

Spreading and Sustaining the Decision Making Capacity Assessment (DMCA) Model: Development and Evaluation of a DMCA Model Implementation and Sustainability Framework. Network of Excellence in Seniors' Health and Wellness Innovation Fund Application (\$200,000)

Creation of a Customized Tool to Facilitate Confidence and Ease in Decision-Making Capacity Assessments among Family Physicians: A Pilot Study. NAAFP funding. Department of Family Medicine, University of Alberta, Edmonton, AB (\$4917)

## Relevant Legislative Acts – Alberta Example

- Personal Directives Act
  - Allows adult Albertans to create a Personal Directive to name people (agent) to make decisions and describes areas in which they want decisions made for them
- Powers of Attorney Act
  - Allows adult Albertans to create an Enduring Power of Attorney to name people (attorney) to make decisions in financial matters for them
- Adult Guardianship and Trusteeship Act
  - Continuum of Decision–making
  - Legal process for granting powers of surrogate decision making

British Columbia	Representation Agreement Act	Powers of Attorney Act	Guardian Act	Trustee Act
Alberta	Personal Directives Act	Powers of Attorney Act	Adult Guardianship and Trusteeship Act	
Saskatchewan	Health Care Directives and Substitute Health Care Decision Makers Act	Powers of Attorney Act	Adult Guardianship and Co-decision-making Act	Trustee Act
Manitoba	Health Care Directives Act	Powers of Attorney Act	Adult Guardianship Act	Trustee Act

Ontario	Power of Attorney for Personal Care Act	Power of Attorney Act	Guardianship Act	Trustee Act
Quebec	Mandate in Case of Incapacity	Power of Attorney Act	Protective supervision of persons of full age	Protective supervision of persons of full age
New Brunswick	Powers of Attorney for Personal Care Act	Powers of Attorney Act	Infirm Persons Act	Public Trustee Act
Prince Edward Island	Health Care Directive Act	Power of Attorney Act	Guardianship Act	Trustee Act
Nova Scotia	Personal Directives Act	Power of Attorney Act	Adult Guardianship Act	Trustee Act

Newfoundland	Advance Health Care Directives Act	Enduring Powers of Attorney Act	Guardianship of the Person Act	Guardianship of the Estate Act
Yukon	Advance Directives Act	Powers of Attorney Act Must be set up by a lawyer	Adult Protection and Decision Making Act	Trustee Act
Northwest Territories	Personal Directives Act	Powers of Attorney Act	Guardianship and Trusteeship Act	
Nunavut	Substitute Decisions Act	Powers of Attorney Act	Guardianship and Trusteeship Act	

# Personal Directive Act

- Schedules
- A process for determining incapacity
- Expanded scope of Service Providers in healthcare such as Registered Nurses, Psychiatric Nurses, SW, OT to act as the second signature
- Allow for re-assessment of capacity or determination of regained capacity
- Complaints process via OPG (similarly under AGTA)

# Overview of PDA

- **Standardized Declaration of Incapacity:**  
schedules: 2 and 3
- **Process for determining if an adult has regained the ability to make personal decisions**  
schedules: 4, 5 and 6

# Declaration of Incapacity: Schedule 2 and 3 Process of Capacity Assessment

**The assessor forms an opinion about the ability of the maker to:**

- Understand the information that is needed to make a decision
- Retain information that is relevant to making a decision
- Identify and appreciate the consequences of making or not making a decision
- Communicate his/her decision about specific personal matters (checked off in the schedule)

***Specific to the decision at hand.***



## **Designated Capacity Assessors**

A service provider in healthcare can only act as a DCA (after training) when dealing with the AGTA

If they are working with the PDA then they must do so as a service provider and can only provide the second signature

## Is there a legal decision maker?

### Personal Directive?

- Invoked in the domain of health care?
- Does it outline the patient's wishes?

### Appointed Guardian under the AGTA?

- Authority in the area of health care?

Conversations should continue to include the patient as well as the legal decision-maker

Conversations should be held with family & friends who are familiar with the adults wishes and should continue to include the patient

A formal decision-making capacity assessment should **not** be initiated **solely** to assess capacity

Formal capacity assessment may need to be considered if there exists potential harm or conflict for the patient (i.e. specific pending treatment decisions/health care issues)

## Goals of Capacity Assessment Process

- Concentration on more front-end screening and pre-assessment (problem-solving)
- Development of a well-defined and standard process
- Definition of team members' roles
- Documentation and organization of information collected
- Education and mentoring

# Decision-Making Capacity Process

## Screening:

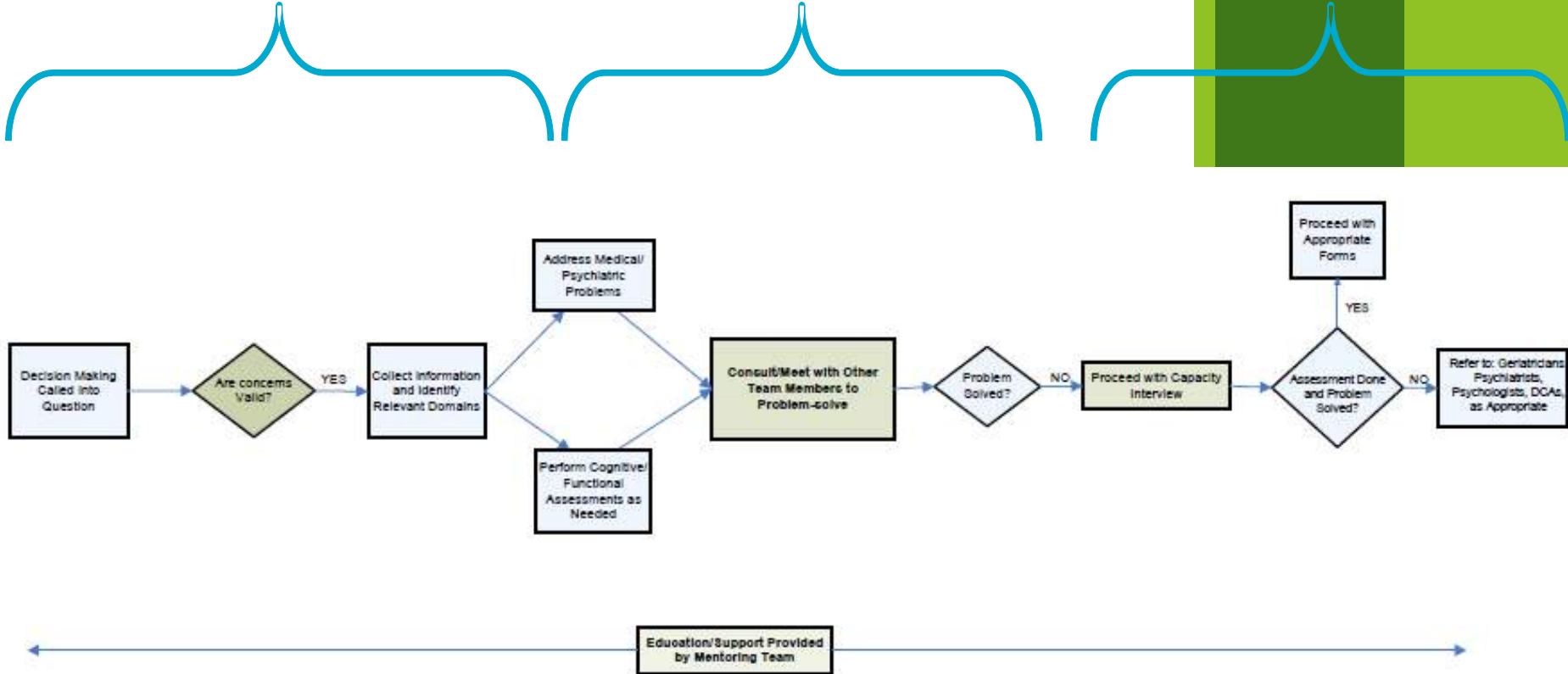
Identify Triggers for Questioning Capacity, Domains and Risks

## Problem Solving:

Use Team Approach - Cognitive/Functional Tests, Options to Reduce Risk

## Capacity Assessment:

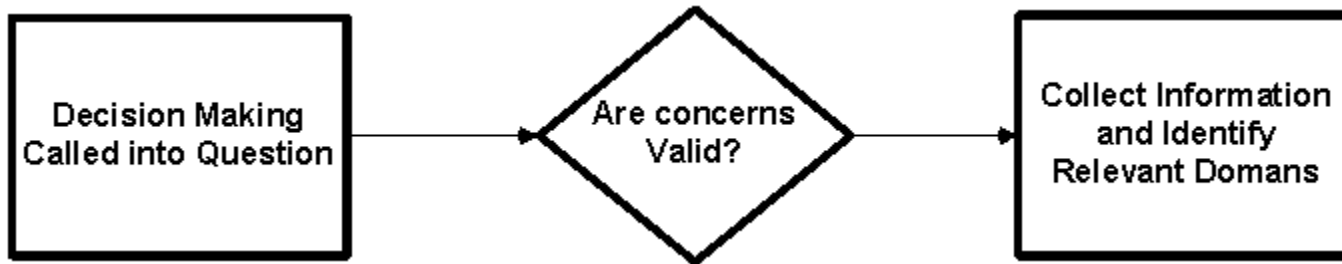
Proceed when Risks *not* resolved by Less Intrusive or Restrictive Means



# Early Assessment:

## Initial Assessment: Reasons for Assessment, Domains and Risks

# Validating Reasons and Identifying Domains



# Valid Reasons for Assessment

A formal capacity assessment may be necessary if the reason for assessment meets the following criteria:

1. An event or circumstance which potentially places a patient, or others, at risk that
2. **seems to be caused by impaired decision-making** which
3. Necessitates investigation, problem-solving (and possibly action) on the part of a health care professional



# Characteristics of Valid Reasons for Ax

1. **Substantive risk** to patient and/or others
2. Demonstrated or likely **behaviour**
3. There is **conflict** about the decision

# I Found a Reason for Assessment: Now what?

## SKILL TESTING QUESTION

When you find a reason for assessment that seems to be caused by impaired decision-making, do you:

Get a MMSE, sign that guardianship medical and place the patient in LTC!

Gather collateral information, identify the affected domains, and attempt to problem-solve the issues.

- Treat acute medical issues, especially those affecting cognition
- Involve the interdisciplinary team for functional assessments; initiate the Capacity Assessment Process Worksheet
- The worksheet is meant to be an interdisciplinary tool; engage all relevant team members in completing it.
- Thoroughly identify risks and investigate risk reduction measures
- Focus on problem-solving the patient's issues without resorting to capacity assessment

## Reasons for Ax: Information Gathering

- Gather a holistic history of previous functioning. This will help to:
  - Place the patient's current level of functioning in a broader context (e.g., gradual or acute change in function).
  - Rule out alternative causes for the reason.
  - Assist with problem-solving by identifying what has changed, what solutions have already been tried, etc.

# Reasons for Ax: Information Gathering

- A detailed picture requires multiple sources of information, such as:
  - Netcare
  - Families
  - Homecare / Supportive Living / CCC
  - Resident managers
  - Community Pharmacists
  - Family Physician

## **Challenges with collateral history in the pre-capacity assessment**

- Isolated patient
- Family conflict or disagreement on cognition/function
- Undue influence in financial matters

## **Collecting Information S. 103 AGTA**

A capacity assessor may access personal information for purposes of conducting assessment from a

- Public body (under FOIP)
- Custodian (under HIA)
- Organization (under Personal Information Protection Act)

If the capacity assessor believes access to financial information is required the applicant may apply to the court for an order directing the public body, custodian or organization to disclose the information

## Identifying Domains

- Decisions can be categorized into functional “Domains”
- Domains help guide your information gathering.
- Incapacity in one domain does not necessarily signify incapacity in other domains
- Each domain must be assessed separately

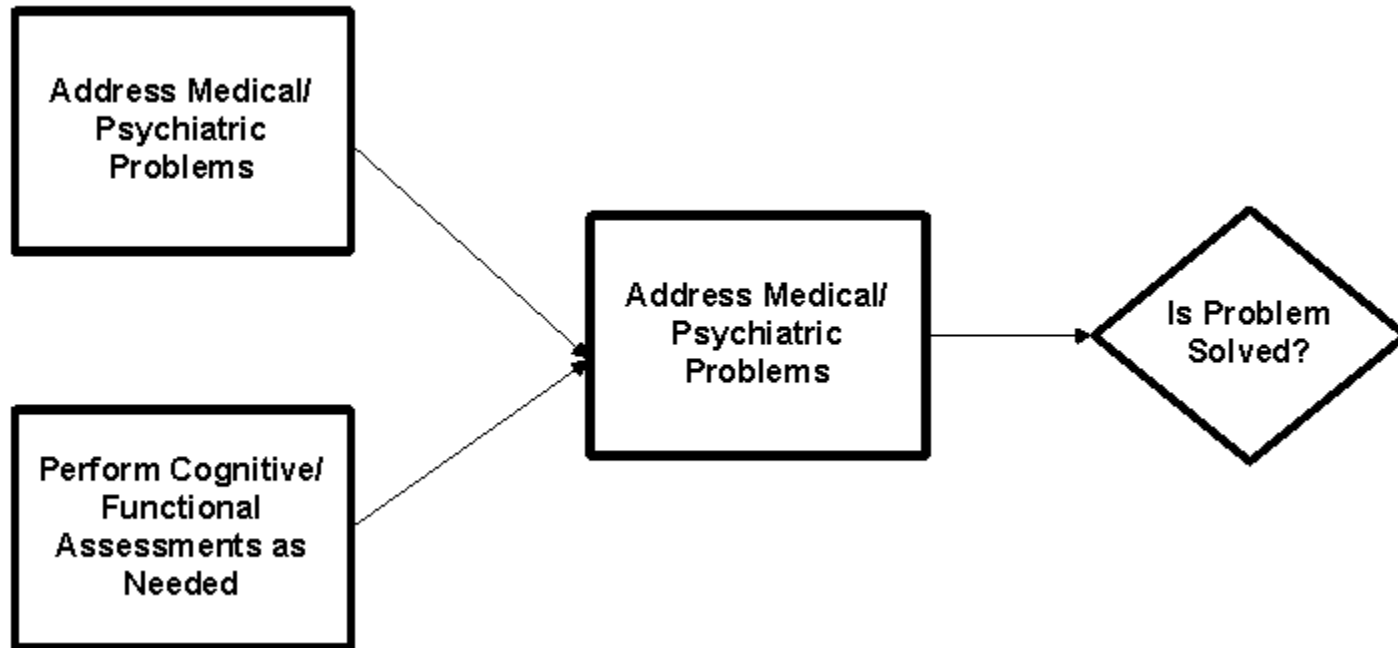


# Identifying Domains

Domains of Decision-Making	
Health care	Participation in social activities
Accommodation	Participation in educational activities
With whom to live & associate	Participation in employment activities
Legal matters	Financial and Estate

# **Assessment in Depth: Problem Solving Using Cognitive and Functional Testing**

# Care Map – Assessments and problem solving



- Standardized form that ensures teams follow the Capacity Assessment Process.
- Allows teams to gather and document relevant information regarding
  - risk-factors,
  - areas of decision-making that are in question,
  - Attempts at problem solving/intervention, including education, formal/informal supports
- Assists in determining if a formal capacity interview is needed.

## Assess Risk

- Investigate and document risky and unsafe situations prior to admission
- Determine how long the risks have existed
- Explore ways to reduce risk that might resolve the issue without resorting to formal capacity assessment
- Assess the severity of the risk: the higher the risk to the patient or others, the stricter the standards

## A Word on Problem-solving

- Be creative !!
- Involve patients and families in problem-solving
- Seek perspectives from other team members
- Consider formal resources
- Mobilize informal resources
- Issue may be resolved by problem solving without formal capacity assessment

# Functional Assessment

- Determine person's ability to perform activities:
  - Basic ADLs (self-care)
  - Instrumental ADLs (home management, finances, med. management, etc.)
- Information about current and premorbid level of function gathered from:
  - Patient
  - Family members/caregivers
  - Team members

# Functional Assessment

- Target situations relevant to independent living
- Require ability to problem solve, demonstrate one's knowledge, or perform a task.
  - Direct observation
  - Standardized testing.



# Cognition

- Cognition: ability to process, store, retrieve, and manipulate information
- Attention, orientation, and memory are the basic processes upon which are built the higher cognitive functions
- Higher cognitive functions:
  - Knowledge
  - Ability to manipulate old knowledge (calculations)
  - Social awareness
  - Judgment
  - Abstract thinking.

## Executive Function

- Higher level cognitive processes which mediate goal-directed activity and assist our ability to execute tasks.
- It includes:
  - Reasoning/ make decisions, adapting the course of action or manipulating information as required.
  - Prioritize tasks/initiate/stop tasks
  - Behavioral planning
  - Problem-solving skills
  - Ability to function effectively in the environment

# Delirium

- Rule out alternative causes for the reason.
- Definition:
  - A temporary disordered mental state, characterized by acute and sudden onset of cognitive impairment, disorientation, disturbances in attention, decline in level of consciousness or perceptual disturbance.
  - Important to know a persons baseline level of function, cognitive status, and physical health

- Delirium Self-Study Module, Capital Health Intranet

# Cognitive Testing

- Types of tests used:
  - MMSE
  - MOCA
  - NCSE/Cognistat
  - EXIT/FAB
  - Kitchen Task Assessment
  - CCT
  - Psychological Testing

# Testing Limitations

- Level of consciousness
- Education
- Cultural background
- Language
- Vision
- Hearing
- Comorbidities (aphasia, delirium, depression)

## Back to our Case Study

- Home visit completed. Mrs. T was unable to remember the details of the appointment, so the appointment was made with her caregiver
- SMMSE score 30/30
- Level of function demonstrated, and collateral history given by the caregiver and home care was inconsistent with the score on the SMMSE

## Case Study

- MoCA: Score 20/30
- EXIT: 13/50
- Functional Assessment:
  - Kitchen Assessment – serious safety concerns
  - Money Management – inaccurate when counting \$
  - Medication Management – Unable to remember to take pills. Unable to manage diabetes

# Case Study: Assessment Findings

- Consider level of assistance required
  - Is another family member/caregiver able to assist the patient?
  - Can services be initiated to assist the patient in performing these tasks while remaining in their current residence?



# Case Study

- Recommendations:
  - Unplug stove. Use microwavable meals or arrange hot meals from Meals on Wheels
  - Have caregiver assist with bill paying, and supervise monetary transactions
  - Bubble pack medications and monitor use. Home Care to assist
  - Continue with the assistance of the caregiver for grocery shopping, transportation
  - Recognize the caregiver's support outside the sphere of function, for example, general health management and monitoring, emotional support and friendly interaction

## Interpret With Caution

- Testing is not always equivalent to a persons function
- Decisions cannot be made on the score alone.

# Cognitive Assessment

- There is no cognitive test that will determine capacity
- Assessment of a person's cognition is not necessarily equivalent to their abilities
- Not solely used to determine one's capacity for decision making.

## Summary

- If solution is acceptable to patient and family/caregivers addressing specific issues → proceed with plan
- If solution is unacceptable → may need to proceed to capacity interview.

# Reasons to Proceed to Formal Capacity Interview: Datagroup # 09948

- No adequate solutions from problem-solving
- Risk to patient / others too high
- Other, less intrusive methods, have failed
- Appointment of legal decision-maker may solve the problem
- Problem persists or becomes worse
- Remember: a determination of incapacity may do nothing to fix the problem

## **Complex situations unlikely to benefit from CA:**

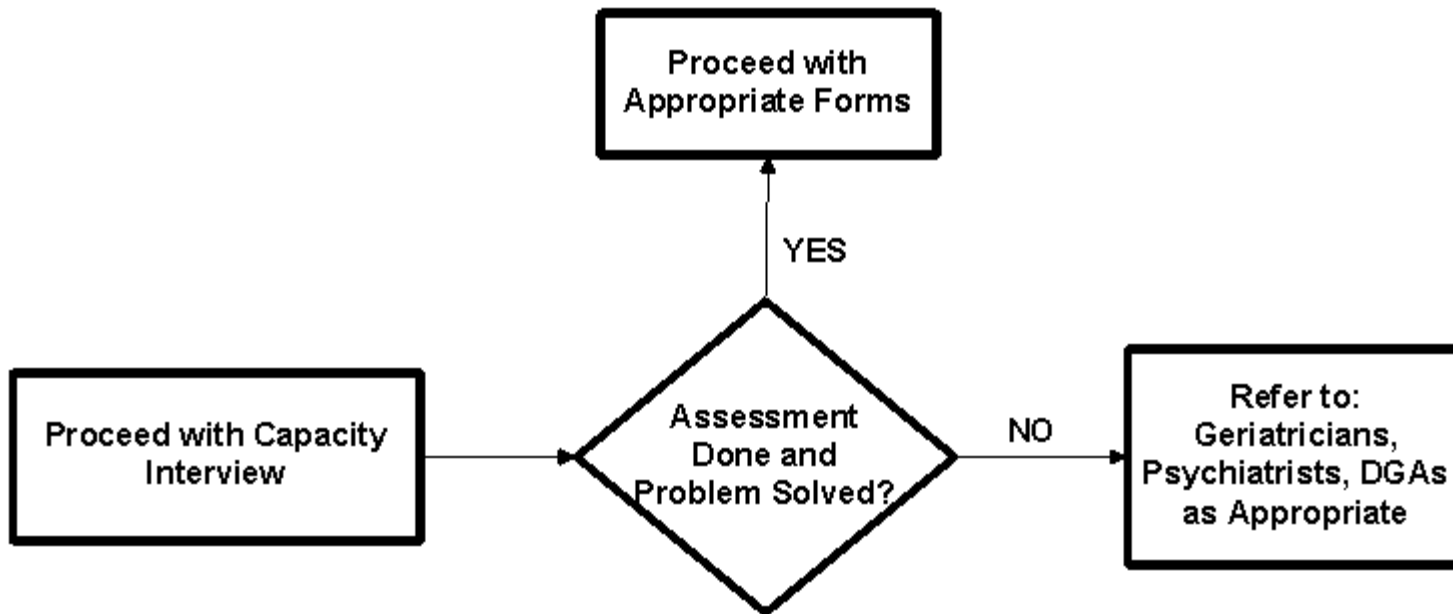
Driving

Refusal to take medications

Where agent/guardian will respect patient's wishes  
e.g. to stay home at risk

Longstanding choices that pose risk, e.g. ETOH,  
Drugs – will depend on development of cognitive  
impairment

# Care Map – Capacity Interview



# Anatomy of a Competent Decision

- The decision-maker is aware of the choices that are available.
- The decision-maker understands the reasonably foreseeable effects or consequences of each choice.
- The decision-maker makes a choice after weighing the relative benefits and disadvantages of the choices available.



# The Gold Standard

## ❖ Inquiry

- **Understanding:** adequate factual knowledge base and understanding of options
- **Appreciation:** adequate appraisal of outcome and justification of choices



Affix patient label within this box

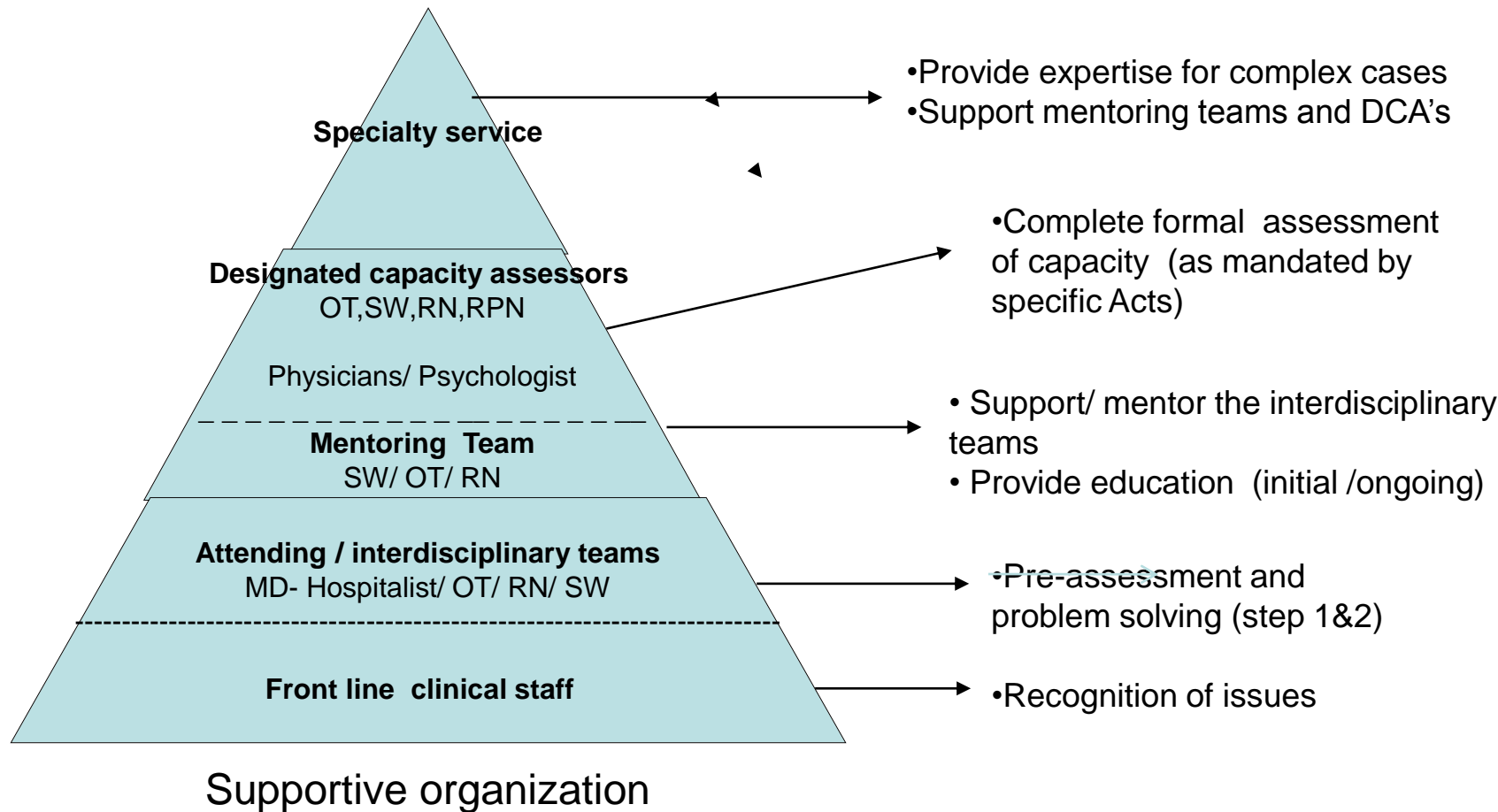
## Capacity Interview Worksheet

<p>Has the adult given consent to conduct the assessment?</p> <p><input type="checkbox"/> No, complete this information</p> <p><input type="checkbox"/> Yes</p>	<p>Is it in the best interest of the adult to conduct the assessment?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p> <hr/> <p>Has the adult refused to participate in the assessment?</p> <p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p>
<p>Comments _____</p> <p>_____</p> <p>_____</p> <p>_____</p>	

Identify the domain(s) in which the adult's capacity is to be assessed:

<input type="checkbox"/> Healthcare	<input type="checkbox"/> Accommodation	<input type="checkbox"/> Choice of associates
<input type="checkbox"/> Social/leisure activities	<input type="checkbox"/> Education/vocational training	<input type="checkbox"/> Employment
<input type="checkbox"/> Other (specify) _____		
_____		





## What is Capacity?

It's all about making decisions!

Having capacity means you can understand information important for making a decision and can appreciate the consequences of that decision.

When making a decision, can an adult:

- take in key information,
- think about the pros and cons, and
- make a decision, based on his/her values

For more information, please contact the social worker caring for the adult.

For more information on the Legal Acts:

**Personal Directive:**

Office of the Public Guardian  
<http://www.seniors.alberta.ca/opg/PersonalDirectives/>

**Adult Guardianship:**

Office of the Public Guardian  
<http://www.seniors.alberta.ca/opg/Guardianship/>

**Power of Attorney and Trusteeship:**

Office of the Public Trustee  
[http://justice.alberta.ca/programs\\_services/public\\_trustee/Pages/default.aspx](http://justice.alberta.ca/programs_services/public_trustee/Pages/default.aspx)



## Capacity Assessment

Understanding  
Decision-making  
Capacity



## Liability

The *Personal Directives Act* state that

...an agent or a service provider is not liable for what they do or omit to do,

....as long as they are acting in good faith and in accordance with the Act.

## ***Liability protection for capacity assessors*** **AGTA**

*s. 109 – no action lies against the Minister, the PG, a capacity assessor, review officer, investigator, complaints officer or any person acting under them for anything done or omitted to be done in good faith in exercising powers or authority or carrying out duties, responsibilities or functions under the AGTA*

## **Fees guideline for DCA (physicians not bound)**

s. 9 AGTR - fees for court applications for single appointments and section 96 assessments:  
up to \$500

For court applications for dual (G and T) appointments: up to \$700

Court, on application, may set a higher fee based on complexity of assessment, but not when Minister pays for assessment



03.04N Comprehensive evaluation including completion of forms to determine capacity as defined by the Personal Directives Act (PDA) (RSA 2007 s9(2)(a)) 182.59

Note: 1. Benefit includes witnessing the agents' or service providers' assessment.

2. May be claimed to determine lack of capacity or to determine that capacity has been regained.

## **System considerations: isolated work environments**

- Physicians and health care professionals working in isolation or in rural environments would benefit from peer support and collaboration – e.g. virtual communities of practice
- This is both desired by physicians and HCPs and would facilitate ongoing sustainability
- While the Model had been developed and evaluated for use by teams many physicians in their outpatient practice have utilised this model as an individual.

*Please fill out your  
session evaluation now!*

*Complete a session evaluation one of two  
ways:*



*FMF app*

*Session #: 186838-001*



*Fmf.cfpc.ca*

*Session Name: **Decision Making***

***Capacity Assessment 3-Hour Workshop***



***YOUR FEEDBACK IS IMPORTANT TO US!***

Remember to fill in your post questionnaires!

Contact information:

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