

## Society of Hospital Medicine Clinical Quick Talk: Capacity

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- 1) Overview of Capacity
  - a) **Capacity** is the ability to make and communicate a medical decision
    - i) Capacity is defined around a specific decision (e.g., leaving against medical advice, refusing a procedure) and individuals may have capacity to make one medical decision but not another
    - ii) Capacity for a specific decision is also dependent on the current clinical situation and may change as the clinical situation changes. Thus, a capacity determination is not durable. A patient may lack capacity today but regain capacity tomorrow.
    - iii) Unlike capacity, **competency** is a global determination of the ability to make all decisions (e.g., medical, financial) and competency is durable. Competency is determined in court, not by medical providers.
  - b) Any medical provider can assess capacity for individual medical decisions
  - c) Capacity evaluations must be conducted in the patient's native/primary language using a professional language interpreter if the medical provider is not fluent in that language
  - d) Hospitalist teams should consider consulting Psychiatry when:
    - i) They are unsure about the patient’s capacity
    - ii) If there are substantial risks of the patient’s decision (e.g., injury, disability, death, stopping or forgoing life prolonging care)
    - iii) If there is concern about the patient’s capacity being compromised by being under duress or having potential treatable psychiatric illness
- 2) Clinical Evaluation of Capacity
  - a) For a patient to have the capacity to make a medical decision, they must meet all four criteria below
    - i) If the answer is “no” to any of the four criteria, the patient does not have capacity
    - ii) If a patient volitionally does not answer the provider’s questions, then the capacity evaluation is indeterminate and should be attempted again later
    - iii) Include relevant patient quotes in your documentation to support your determination
  - b) **Communicate a clear and consistent choice**
    - i) Does the patient clearly say what they want?
    - ii) Are they consistent on their communicated decision each time they are asked?
  - c) **Understand medical information**
    - i) Does the patient show they understand the medical condition related to the decision?
    - ii) Can they tell you why they were admitted to the hospital?
    - iii) Can they articulate for you what medical issue you are concerned about for them?
  - d) **Appreciate risks and benefits**
    - i) Can the patient tell you the risks of not doing what you are recommending?
    - ii) Can they tell you the benefits of doing what you are recommending?

- iii) Do they show they understand the “worst case scenario” of what could happen if they do not follow the medical team’s recommendation?
- e) **Rational reason for their decision**
  - i) Do they demonstrate a logical reason for their decision (this does not need to be a reason medical teams agree with, just one that appears logical or rational)?
- f) Conclusion
  - i) If the answer is “yes” to **all four** criteria above, then yes - the patient has capacity to make the medical decision in question
  - ii) If the answer is “no” to **any** of the above four criteria, the patient does not have capacity to make that decision
    - (1) If they do not have capacity, the patient cannot refuse or consent to the specific intervention
      - (a) A surrogate decision maker must be identified to ask them to make the decision in lieu of the patient
      - (b) Guidelines for surrogacy vary for each state
- 3) Clinical Pearls
  - a) Providers must distinguish capacity from competency
  - b) For a patient to have capacity, they must communicate a clear and consistent choice, understand medical information, appreciate risks and benefits, and demonstrate a rational reason for their decision
- 4) References
  - a) Appelbaum, P. S., & Grisso, T. (1988). Assessing patients' capacities to consent to treatment. *New England Journal of Medicine*, 319(25), 1635-1638.
  - b) Appelbaum, P. S. (2007). Assessment of patients' competence to consent to treatment. *New England Journal of Medicine*, 357(18), 1834-1840.