

Conceptualizing Competence and Approaches to its Assessment



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Elements of Informed Consent



-
- Information
 - Competence
 - Voluntariness



Competence to Consent to Treatment

Protection of meaningful choice:

- Furthers patients' well-being
- Promotes patients' autonomy



Competence to Consent to Treatment

- General vs. specific competence
- Task specificity
- Temporal specificity



Elements of Competence

- Evidencing a choice
- Understanding
- Appreciation
- Reasoning



Identifying the Applicable Standard

- Some variation in law as to which elements apply.
- Selection of elements and threshold may vary according to risk
 - Low risk procedures may require less capacity
 - High risk procedures may require more capacity



Who Should Assess Competence?

- Ordinary cases: Any well-prepared physician
- Difficult cases: Consultant psychiatrist



Preparing for the Assessment

- Clarifying the purpose of consultation request
- Discussing examination with patient
- Insuring full disclosure of relevant information



Applying the Standard: Understanding

- “Please tell me in your own words what your doctor told you about:
 - Nature of your condition
 - Recommended treatment
 - Possible benefits
 - Possible risks (or discomforts)
 - Alternatives, with their risks and benefits (including no treatment)”



Applying the Standard: Appreciation

- “Tell me what you really believe is wrong with your health now.”
- “Do you believe that you need some kind of treatment?”
- “What is treatment likely to do for you? Why?”
- “What do you believe will happen if you are not treated?”




Applying the Standard: Choice

- “Have you decided whether to go along with your doctor’s suggestions for treatment? Can you tell me what your decision is?”



Applying the Standard: Reasoning


- “Tell me how you reached the decision to accept [reject] the recommended treatment.”
- “What were the factors that were important to you in reaching the decision?”
- “How did you balance those factors?”



Using Assessment Instruments

- MacCAT-T provides individualizable structure for assessment.
- Quantitative scales, but no fixed cut-off.
- Can assist but doesn't replace clinical judgment.
- Particularly helpful in difficult cases or cases that will go to court.
- Research use showing previously undetected impairments, e.g., mild Alzheimer's disease.

Grisso T, Appelbaum PS: Assessing Competence to Consent to Treatment. NY, Oxford University Press, 1998.



Performing the Competence Assessment

- Importance of adjunctive sources of information, e.g., family, nursing staff.
- Limited value of general assessment instruments
- Value of repeat examination



Maximizing Patients' Performance

- Goal is to help patients retain decisionmaking power
- Decision should be deferred, if possible, while amelioration of deficiencies is attempted.



Ameliorative Techniques

- Enhancing disclosure
 - Written information
 - Teaching aids
 - Translators
- Reducing anxiety
- Addressing medical condition
- Providing situational supports



Judging Competence: Physicians vs. Courts

- In theory, only judges can deprive someone of decisionmaking power
- But requiring judicial determinations in all cases would bring medical care to a halt
- So physicians have *de facto* authority to reach judgments on patients' competence



Reaching a Competence Decision

- No algorithm exists
- Structured instruments can be helpful, but are not definitive
- Will suggest an approach to balancing the variables involved: extent of patient's abilities, risk/benefit ratio of choice, societal goals




Balance of Autonomy vs. Protection

- Goal is to weigh reasons to respect patients' autonomy against reasons to protect patient from harmful consequences of impaired decision making
- Scale begins tipped in favor of autonomy



Assessing Abilities vs. Demands

- Most impairments in difficult cases will be partial; complete loss of capacity is usually straightforward
- Need to ask about impact of limited capacity on patient's decision making
 - Does deficit actually impact the treatment decision, or is it incidental?
 - How much capacity is really required?



Benefits vs. Risks of Autonomous Decisions

- Because competence is context-dependent, should consider potential benefit vs. potential harm to patients if their decisions are honored
 - E.g., low probable gain vs. high risk tilts balance toward protection
 - High probable gain vs. low risk tilts balance toward autonomy
 - Intermediate situations call for closer judgment



Documenting the Decision

- Patient informed about purpose of evaluation
- General mental status
- Information provided to patient
- Performance on elements of competence
- Consequences of patient's choice
- Balance of factors favoring autonomy vs. protection
- Evaluator's opinion