Assessing for the Need for Guardianship

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What is the role of the doctor

• Capacity versus Competence
  ■ Doctors evaluate capacity
    ● The cognitive ability of the individual
  ■ Competence is a legal determination of capacity
    ● The judge determines this

• Many people use these terms interchangeably
Criteria to determine capacity

- Is a person’s decisions consistent with what is deemed to be rational?
  - This doesn’t take into account cultural variability
  - The health care team then is the source of what is rational
The Diagnosis

- A number of illnesses compromise capacity
  - Lucid at some points
  - Stage of the illness

- Examples
  - Dementia (Alzheimer’s Disease)
  - Mental retardation
  - Major depression
  - Schizophrenia and other psychoses
  - Parkinson’s disease
  - Stroke
  - Delirium
Areas of capacity

- Can the individual handle the responsibilities of making decisions relating to:
  - Health care
  - Finances
  - Relationships
  - Residence

- They might have capacity for some areas but not all areas
  - Not all or none

- Capacity changes and can fluctuate

- Degree of capacity depends on the nature and context of the situation
Four elements of capacity

- Understand the information
  - Communicate their choices
  - Able to weigh alternatives

- Appreciate the relevance for their particular situation
  - Appreciate the consequences of their decisions
  - Knows the risk and benefits or various possible decisions both short- and long-term

- Reason with the relevant information to reach a decision
  - Apply one’s own life situation, one’s understanding not only of the details at hand, but also the likely long term outcomes

- Express a consistent choice
  - Able to make a decision about the matter at hand in a manner consistent with one’s long held value system
Initiating a capacity assessment

- Patient should be told the purpose of the evaluation
- Patient should be told the limits of confidentiality
- Patient has the right to refuse to participate
  - This may be factored into the evaluation
  - Can use collateral information
    - Medical and other records
    - Family members
    - Diagnostic tests
    - Clinical observation
Conduct a formal psychiatric interview

- Obtain history
  - Psychiatric
  - Medical
  - Social history

- Evaluate medications
  - Do they alter the mental status

- Determination of mental status
  - Increased focus on cognitive evaluation

- Determine if a psychiatric diagnosis exists
  - Dementia and delirium are psychiatric diagnoses
  - Is it acute or chronic, reversible or not
Ask specific questions that investigate the four elements

- Understanding
  - Do they have access to the information

- Appreciation
  - Can they explain the risk and benefits

- Reasoning
  - Follow the patient through the reasoning process, as he or she makes the decisions

- Expression
  - What determine the patient want
  - See if he or she clearly express a decision
Use tools to aid in assessment

- Mini-Mental State Examination
- Clock drawing
- Activities of daily living
  - Basic
  - Instrumental
- Home safety assessment
- Other
  - Formal neuropsychological assessment
  - Occupational therapy assessment
  - Neuroimaging (CT, MRI)
  - Laboratory testing
DMAT: Decision Making Assessment Tool

DECISION-MAKING ASSESSMENT TOOL

Name of Individual being assessed: __________________________

Date of Birth: __________________________

Current address: __________________________

Perma nt address (if different): __________________________

City/State/Zip: __________________________

City/State/Zip: __________________________

Instructions for Completion

This document will be used by a Probate Court to determine whether to appoint a guardian to assist this individual in some or all areas of decision-making.

This document has two parts. Please first complete the part which is right after these instructions, titled Assessment. Then complete the second section, titled Summary.

To a physician completing this document: The individual’s treating physician must complete this document. If there is any information or which the treating physician does not have direct knowledge, he or she is encouraged to make such inquiries of such other persons as are necessary to complete the entire form. These persons might include other medical personnel such as nurse, or other persons such as family members, or social service personnel, who are acquainted with the individual. If the physician has received information from others in completing this form, the names of these individuals must be listed on the Summary.

To a non-physician completing this document: Professionals or other persons acquainted with the individual being assessed may also complete this document. If there is information which a non-physician does not have knowledge, such non-physician may either leave portions of the document blank, or also make inquiries or do such investigations as is necessary to complete the entire document. Again, the name of any individual from whom information is derived should be listed on the Summary.

The document must be signed and dated by the person completing it. It does not need to be notarized.
A. BIOLOGICAL ASSESSMENT

THE FOLLOWING IS BASED UPON A PHYSICAL EXAMINATION CONDUCTED BY ME ON (DATE): __________________________

1. DIAGNOSIS and PROGNOSIS:

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

2. MEDICATIONS (PLEASE LIST):

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

How do the above medications, if any, affect the individual’s decision-making ability? Parent explains:

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________

3. CURRENT NUTRITIONAL STATUS:

__________________________________________________________________________________________

__________________________________________________________________________________________

__________________________________________________________________________________________
DMAT: Decision Making Assessment Tool

B. PSYCHOLOGICAL ASSESSMENT

1. MEMORY (CHECK ONE)
   - A. None
   - B. Mild Impairment
   - C. Moderate Impairment
   - D. Severe Impairment

2. ATTENTION (CHECK ONE)
   - A. None
   - B. Mild Impairment
   - C. Sluggish/Withdrawn
   - D. Distractible
   - E. Unresponsive

3. JUDGEMENT (CHECK ONE)
   - A. None
   - B. Attrib to Minor Most Often
   - C. Impaired
   - D. Gross Impairment

4. LANGUAGE (CHECK ONE)
   - A. None
   - B. Sensory Deficit
   - C. Impairment in Comprehension
   - D. Speech Mild/Moderate/Severe
   - E. Completely Unresponsive

5. EMOTION (CHECK ALL THAT APPLY)
   A. ANXIETY/DEPRESSION
      1. None
      2. History of Anxiety/Depression
      3. Manic Symptoms of Anxiety/Depression
      4. Severe Symptoms with sleep/appetite/energy disturbance
      5. Suicide/Panicked

   B. OTHER
      1. Suspiciousness/Illegitimacy/Explosiveness
      2. Delusions Hallucinations
      3. Unresponsive

If you checked any of the above, other than "A" or "1" for any of the above categories, please explain whether the situation is temporary or reversible, and if so, how:

______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
______________________________________________________________________________
**DMAT: Decision Making Assessment Tool**

3. **MOBILITY (CHECK ALL THAT APPLY)**
   - A. Uses Transportation
   - B. Uses Car or Uses Public Transportation
   - C. Independent Ambulation in Home Only
   - D. Walker/Cane
   - E. Requires Assistance

   If you checked “C”, “D”, or “E”, is situation treatable or reversible? If so, how?

4. **SELF CARE (CHECK ALL THAT APPLY)**
   - A. No Assistance Needed
   - B. Requires Assistance with:
     - 1. Medication
     - 2. Bathing
     - 3. Dressing
     - 4. Toilet/Feeding

   If you checked any choices under “B”, is individual aware that assistance is required? ________

   Is individual willing to accept assistance? ________

   Is individual able to arrange for assistance? ________

5. **CARE PLAN MAINTENANCE (CHECK ALL THAT APPLY)**
   - A. No Active Problem
   - B. Active Problem in Orientation
   - C. Actively Cooperative
   - D. Passively Cooperative
   - E. Insomnia
   - F. Actively Uncooperative

6. **SOCIAL NETWORK RELATIONSHIPS (CHECK ONE IN “A” AND ONE IN “B”)**

   **A. SUPPORT**
   - 1. Very Good Supportive Network
   - 2. Some Supportive
   - 3. No or Limited Support
   - 4. Needs Community Support
   - 5. Isolated/Alone/Board

   **B. SOCIAL SKILLS**
   - 1. Very Good Social Skills
   - 2. Good Social Skills
   - 3. Instructed with Prompting
   - 4. Isolated
DMAT: Decision Making Assessment Tool

**D. SUMMARY**

I hereby certify that I have reviewed sections A, B, & C attached hereto and based on such assessments that the individual’s decision-making ability is as follows:

1. Please describe as fully as you can the individual's decision-making ability in each of the following areas:
   - (A) FINANCIAL MATTERS:
     - [ ] YES  [ ] NO  [ ] LIMITED
   - (B) HEALTH CARE MATTERS:
     - [ ] YES  [ ] NO  [ ] LIMITED
   - (C) RELATIONSHIPS:
     - [ ] YES  [ ] NO  [ ] LIMITED
   - (D) RESIDENTIAL MATTERS:
     - [ ] YES  [ ] NO  [ ] LIMITED

2. Please indicate your opinion regarding whether the individual needs substitute decision-maker in any of the following areas. (Check one for each category. If you check “limited” for any category, please explain.)
   - (A) FINANCIAL MATTERS
   - (B) HEALTH CARE MATTERS
   - (C) RELATIONSHIPS
   - (D) RESIDENTIAL MATTERS

3. OTHER: If there are any other areas in which you think the individual lacks decision-making ability or the limited decision-making ability, please explain:

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DMAT: Decision Making Assessment Tool
Who can the doctor give the DMAT to

- HIPPA rules
- DEA can be given DMAT
- Can give it to the court directly
- Consent form must be signed to give it to lawyer or family
  - Unless the family member has power of attorney
Case: Delusional Patient

- 91 year old Caucasian widow who lives alone in her own home.
- She was referred by DEA to assess her capacity to make decisions in regards to finances and ability to live independently.
- Concerns were raised about her ability to manage her finances when she overpaid her taxes twice.
- During the evaluation, she reported numerous delusions, such as, she believing while she in a hospital being treated, the doctors performed surgeries upon her against her will.
Case: Delusional Patient

D. SUMMARY

I hereby certify that I have reviewed sections A, B, & C attached hereto and based on such assessments that the individual's decision-making ability is as follows:

1. Please describe as fully as you can the individual's decision-making ability in each of the following areas:

   (A) FINANCIAL MATTERS: She is able to make financial decisions. She does not know the details of her accounts, but does pay her own bills. It should be noted that she was financially abused in the past and on one occasion paid her taxes twice. These issues currently are resolved.

   (B) HEALTH CARE MATTERS: She is cognitively intact and able to identify her medical problems. She keeps track of doctors appointments. She is capable of taking her own medications. She is capable of obtaining medical assistance when needed. She has poor insight into her psychiatric issues.

   (C) RELATIONSHIPS: She is capable of forming and maintaining relationships. There is no evidence that she enter into inappropriate or harmful relationships.

   (D) RESIDENTIAL MATTERS: She is able to understand and make decisions regarding residential matters. As a matter of fact she voluntarily went to a nursing home for rehabilitation after her stroke.

2. Please indicate your opinion regarding whether the individual needs a substitute decision-maker in any of the following areas. (Check one for each category. If you check "limited" for any category, please explain.)

   (A) FINANCIAL MATTERS [ ] YES [ ] LIMITED
   (B) HEALTH CARE MATTERS [ ] YES [ ] LIMITED
   (C) RELATIONSHIPS [ ] YES [ ] LIMITED
   (D) RESIDENTIAL MATTERS [ ] YES [ ] LIMITED
   (E) OTHER: If there are any other areas in which you think the individual lacks decision-making ability or has limited decision-making ability, please explain:

   ________________________________
   ________________________________
   ________________________________
Case: Societal Rule Breaker
Patient

- 78-year-old divorced male referred by DEA to evaluate whether he was capable of making his own decisions.
- Buys cocaine and pays for women. Runs out of money to buy food.
- He denies practicing safe sex and states that if he contracted something harmful to his health that it would not really matter to him.
- Refuses any medical treatment even if it meant dying from a treatable illness. He has prostate cancer.
  - Aware of the risks of not having medical care including that some of his decisions could result in death.
Case: Societal Rule Breaker

Patient

D. SUMMARY

I hereby certify that I have reviewed sections A, B, & C attached hereon and based on such assessments that the individual’s decision-making ability is as follows:

(1) Please describe as fully as you can the individual’s decision-making ability in each of the following areas:

(A) FINANCIAL MATTERS: Although patient is using his funds for illegal and questionable activities, he is aware of his financial situation and has no plans to change his behavior. He is aware of the consequences of his actions.

(B) HEALTH CARE MATTERS: He has chosen not to seek medical care. He was specifically asked what he would do if he had pneumonia. He stated that he would not seek care even if he died.

(C) RELATIONSHIPS: He is aware that he is dealing with drug dealers and prostitutes and that there is a risk to his safety. He does not want to change his lifestyle.

(D) RESIDENTIAL MATTERS: He is able to make decisions regarding where he lives. He is borrowing money from his landlord and being charged high interest. He is aware of this, but plans to continue as he can then buy drugs and women.

(2) Please indicate your opinion regarding whether the individual needs a substitute decision-maker in any of the following areas: (Check one for each category. If you check “limited” for any category, please explain.)

(A) FINANCIAL MATTERS  [ ] YES  [ ] NO  [ ] LIMITED
(B) HEALTH CARE MATTERS [ ] YES  [ ] NO  [ ] LIMITED
(C) RELATIONSHIPS [ ] YES  [ ] NO  [ ] LIMITED
(D) RESIDENTIAL MATTERS  [ ] YES  [ ] NO  [ ] LIMITED

(2) OTHER: If there are any other areas in which you think the individual lacks decision-making ability or has limited decision-making ability, please explain:

He is making informed decisions and is cognitively intact to do so. Although these may not be viewed as socially acceptable decisions they are being made without influence of others, and with knowledge of the risk and consequences.


Case: Financial Exploitation

- 91 year old female who lives alone in senior housing. Referred by DEA for evaluation of her capacity due to concerns of financial abuse by the granddaughter.
- Progressive memory decline.
  - “I don’t know why people are concerned”.
- Reports of letting other people in her apartment and that she is in danger of being evicted.
- Believes that granddaughter is managing her finances. On a bank statement dated on 2/27/2006 $1500 was withdrawn, leaving only $213.45 in the account.
  - She does not know the full name of her granddaughter. She only would state “I know she loves me”.
- All the food in the house is spoiled.
Case: Financial Exploitation

D. SUMMARY

I hereby certify that I have reviewed sections A, B, & C attached hereto and based on such assessments that the individual's decision-making ability is as follows:

1. Please describe as fully as you can the individual's decision-making ability in each of the following areas:

   (A) FINANCIAL MATTERS: She is unaware of her finances. She does not even know the name of her bank. Her granddaughter presumably is removing large sums of money from her account which she is unaware of. She is unable to manage financial matters.

   (B) HEALTH CARE MATTERS: She does not know the name of her doctor. She may or may not be taking her medications correctly. She is unaware of her past medical history. She is unable to arrange her medical care. She may be able to make decisions still about major medical issues.

   (C) RELATIONSHIPS: She does not recall the names of her husbands and historical information about her daughter. She does not know her granddaughter's full name. She may be allowing others to financially exploit her. She cannot discern what a harmful relationship is.

   (D) RESIDENTIAL MATTERS: She is in jeopardy of being evicted due to allowing her granddaughter to stay at times in her apartment and letting strangers into the building. She would like to continue to live in her apartment. She does not appreciate the extent of her memory impairment.

2. Please indicate your opinion regarding whether the individual needs a substitute decision-maker in any of the following areas: (Check one for each category. If you check "limited" for any category, please explain)

   (A) FINANCIAL MATTERS [ ] YES [ ] NO [ ] LIMITED
   (B) HEALTH CARE MATTERS [ ] YES [ ] NO [ ] LIMITED
   (C) RELATIONSHIPS [ ] YES [ ] NO [ ] LIMITED
   (D) RESIDENTIAL MATTERS [ ] YES [ ] NO [ ] LIMITED

   (E) OTHER: If there are any other areas in which you think the individual lacks decision-making ability or has limited decision-making ability, please explain.

   Health care she currently still can participate in discussing major medical decisions, but may not be able to recall what the decision was some time later. As for relationships she needs to be protected from others exploiting her.
Case: The Boyfriend

- 86-year-old female living in senior housing. Referred for guardianship assessment by DEA over concern about financial abuse of an individual with Alzheimer’s disease.

- Is frequently confused, and does not recall where she put things away.

- She is being abused financially by boyfriend. This individual had her open six accounts.

- He has been sexually active with her, but this appears to be consensual.

- He has supplied her with alcohol. She was not a drinker and now is drinking whiskey regularly and smoking.
D. SUMMARY

I hereby certify that I have reviewed sections A, B, & C attached hereto and based on such assessments that the individual’s decision-making ability is as follows:

(1) Please describe as fully as you can the individual’s decision-making ability in each of the following areas:

(A) FINANCIAL MATTERS: She is impaired in ability to make financial decisions. She is allowing her male friend to take her money and he has been buying his liquor for him. This situation has gotten to a point where this individual has tried to threaten her relatives for money.

(B) HEALTH CARE MATTERS: She is unable to manage medications independently. As a matter of fact she has begun to drink alcohol and smoke cigarettes an activity she was not doing earlier due to her male friend. She is also taking unknown medications given by her male friend that have led to periods of confusion.

(C) RELATIONSHIPS: She is in a relationship with a male friend who is clearly taking financial advantage of her, and who is placing her health in danger. She is conversely sexually active with this individual. However, it is unknown if he is practicing safe sex. In addition, her relationship with her children has become strained as a result.

(D) RESIDENTIAL MATTERS: Her family would like to place her in a safer environment which she has refused. On a test of safety awareness she only scored 11/24, indicating being able to know how to dial 911 suggesting she is no longer safe to live independently.

(2) Please indicate your opinion regarding whether the individual needs a substitute decision-maker in any of the following areas. (Check one for each category. If you check “UNFIT” for any category, please explain.)

(A) FINANCIAL MATTERS [ ] YES [ ] NO [ ] LIMITED

(B) HEALTH CARE MATTERS [ ] YES [ ] NO [ ] LIMITED

(C) RELATIONSHIPS [ ] YES [ ] NO [ ] LIMITED

(D) RESIDENTIAL MATTERS [ ] YES [ ] NO [ ] LIMITED

(E) OTHER: If there are any other areas in which you think the individual lacks decision making ability or has limited decision-making ability, please explain:

This individual is currently in a situation where she is in a relationship where she is being taken financial advantage of and placed in harms way by her male friend. In addition, the evidence suggests she can no longer manage independently in an apartment. She is refusing to live in a safe environment and guardianship is required to accomplish this.