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## **Determining Capacity**

**Mark E. Kunik, MD, MPH**

Mark E. Kunik, MD, MPH  
Baylor College of Medicine  
Michael E. DeBakey VAMC  
Houston, TX

[mkunik@bcm.edu](mailto:mkunik@bcm.edu)  
281-236-6452

- I. Introduction
  - A. An “**Incapacitated Person**” is an adult who, **because** of a physical or mental condition, is substantially unable to: (a) provide food, clothing, or shelter for himself or herself; (b) care for the person’s own physical health; or (c) manage the person’s own financial affairs. Texas Estates Code § 1002.017.
  - B. Need to determine
    - 1. Primary task
      - a. Is there a physical or mental condition
      - b. Is there an inability to provide food, clothing or shelter, manage health, and manage financial affairs
      - c. If a. and b. are present, is b. due to a?
    - 2. Secondary tasks
      - a. What is prognosis? Will they improve or decline?
      - b. Is there partial or total incapacity?
      - c. What can be done to improve capacity and autonomy?
      - d. What is least residence?
- II. Common mental illnesses that result in incapacity
  - A. Dementia
  - B. Psychotic illnesses
    - a. Chronic paranoid schizophrenia
  - C. Severe mood disorders
    - a. Bipolar illness
    - b. Severe chronic depression
  - D. Developmental Disorder (e.g., mental retardation)
- III. Barriers to effective examination
  - A. Patient
    - 1. Must initially inform that examination is non-confidential
    - 2. On defense, tries to cover up deficits
    - 3. May not have insight
    - 4. Evaluation not absolutely “ecologically valid”.
    - 5. Elderly patients are not use to formal testing questions them
      - a. Gather as much information as you can while gathering history
      - b. Try as much as possible to use practical tests.  
I.e. Instead of asking to remember 3 items, ask who visited them recently or what did they eat for breakfast, who brought them....
    - 6. Must establish rapport
      - a. Older persons have difficulties with psychiatrists under best conditions
      - b. Important to learn about patient’s life, recognize where he has been and his accomplishments.
      - b. Don't start with illness
    - 7. Hearing or visual impairment – Best to have amplifier on hand.
  - B. Informants
    - 1. Important to gather information from them with patients' (or attorney/judge) permission
    - 2. Often they have their own agenda
    - 3. Often have own biases about normal aging
  - C. Mental/medical Health Providers

1. Also may have biases and misinformation about normal aging
- IV. Examination Format
- A. Home versus office-based examinations. Home testing much preferred.
  - B. Allow flexibility of time
  - C. Establish hearing and visual impairments and corrections
  - D. Begin with non confidential nature
    1. Insight
      - a. Have they noticed any difficulty with thinking or memory
  - E. Talk about their life
    1. What has been important to them during their life
    2. Quality of past and present relationships
    3. Work history
    4. Education
    5. Hobbies and religion
      - a. Any changes over past months
  - F. Functional capacity
    1. Better guide to capacity than cognitive testing
      - a. More impact on judges and juries than cognitive assessment
      - b. Need to be able to articulate and demonstrate
    2. Activities of Daily Living
      - a. Bathing, dressing, grooming, feeding, transferring, toileting
      - b. Declines late in illness and important in assessing level of care
    3. Instrumental Activities of Daily living
      - a. Handling money and medication, cooking, using telephone, household chores, making travel plans, responding to emergency
      - b. Decline earlier in illness and more related to areas of capacity
      - c. Diet
        - What is usual for day
      - d. Finances
        - aa. Do they know income, bills, assets, and savings
        - bb. Give some calculations. IF you went to the store...
      - e. Medical problems
        1. Do they understand them
        2. Do they know their physicians
        3. When is their next appointment
        4. Do they know medications, doses, times and what they are for
        5. Who would they call in an emergency
        6. Tell me the steps you would go through if you had an acute medical problem (i.e., severe chest pain)
        7. Tell me steps you would go through if you ran out of medications
    4. Assessment
      - a. Self report and informants
      - b. Best is to use tests that require actual demonstration
        - aa. Can do as part of examination
        - bb. Standardized assessment available
          - ii. Kohlman Evaluation of Living Skills
          - iii. Direct Assessment of Functional Status

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