We hold these truths to be self-evident, that all...are endowed...with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.
Learning Objectives

1. When to initiate an evaluation and when to leave it alone

2. How our own values can cloud our judgment of competency

3. Learning to craft the precise referral question for the evaluation

4. Knowing which cognitive domains should be assessed

5. Identifying the complexities of various real-life competency decisions.

Oklahoma Statutes

Incapacitated person: 18 or over and impaired by reason of: mental illness, developmental disability, physical illness or disability, drug or alcohol dependence AND whose ability to receive or evaluate information effectively OR Make and communicate responsible decisions is impaired to the extent that they lack capacity for physical health/safety or ability to manage financial resources.
Oklahoma Statutes

Capacitated (Competent) person:
1. Adult
2. Able to receive (hear, read, watch)
3. Evaluate information, make responsible decisions (comprehend, remember)
4. Communicate decisions (speak, write)
5. Regarding:
   (a) physical health/safety
   (b) management of financial resources.

- Historically Capacity was “All or Nothing”
- Modern concept emphasizes personal autonomy --retaining as many rights as possible.
- “CAPACITY” is the ability to perform a specific task
  there is no such thing as General Capacity
Prime Directive
Protect the Patient

1. The patient is competent until I find evidence to the contrary.

2. Evidence of incapacity in one area does not prove incapacity in another.

3. Prior incapacity does not prove current incapacity.

4. Family report is “hearsay”, subject to confirmation if possible and only one source of information.

Physical health/safety

- Medical Decisions & Informed Consent.
- General Health and Self Care
- Home Safety
- Understanding the Risk
- Freedom to Assume That Risk
Medical Decisions

1. Expressing a treatment choice
2. Making a “reasonable” treatment choice
3. Appreciating the consequences
4. Evaluating the options logically
5. Verbalizing a thorough understanding

Financial

- Nonverbal and more complex
- Basic monetary transactions, bank interactions, complex investments
- Varies widely across intact populations
  - Bill Paying
  - Excessive Spending
  - Long term planning
  - Fraud and Exploitation
  - Testamentary Capacity
### Testamentary Capacity

- Capacity to Make a Will, Choose a guardian, enter into contracts.
- Understand nature of the act
- Understand and recollect nature of property
- Knowledge of persons to benefit
- Manner of disposition of property

### Knowing When to Leave It Alone

- When the patient is already making “reasonable choices”. Example, a patient might be competent if they accept recommendations yet incompetent if they refuse.
- When the consequences of their decision aren’t critical.
- When they already have Power of Attorney in place.
- When they are delirious
Evaluation

• The Competency Question
• The Interview (In their residence)
• Collateral Information (Family)
• Formal Testing (office)
• Time, time, time

The Referral Question

Do they have capacity for:

• Independent living
• Refusing or directing medical care
• Informed consent for surgeries
• Making a will, choosing guardian
• Managing their finances
• Revoking a Power of Attorney or Guardianship
• Driving
Examiner Values

You’re the boss and there’s little time nor little interest for a life outside of the office. You rely on the facts in order to reach conclusions, even if it may be more time consuming. The evidence, unlike people, never lets you down. With an answer for everything, from the mundane to the bizarre...

You are

The Examiner

The Crooked Yardstick of our Values

A competent person has the right to make bad decisions and take risks.

• Smoking
• Drinking
• Sex
• Spending
Uncooperative Patients

Just because they’re ticked off, insulting, uncooperative, combative and hateful, doesn’t mean they’re wrong…or incompetent.

Interview

• Preferably in their home environment
  – This is the environment you’re trying to predict – Environmental Validity
  – Best performance
  – “Historical Data”
  – Hygiene, Clutter, Smell, Safety, Cigarettes, alcohol, Medications
  – Temperature, Lighting
  – “Manners”
  “You’re Only as Smart as Where You’re At”
Interview

Personal Hygiene
  Wardrobe
  Fingernails (manicured, brown, cracked, long)
  Hair, Teeth
  Clothing
  Body wasting, lesions, excessive bruising
  Smell
  Glasses (new style or old)
  Excretory Issues
Eccentric or Impaired?

Collateral Information

• Family (multiple sources)
  – Personality Traits
  – Recent functioning, illnesses, etc
  – Decline in Function over months
But:
  – Consider Agendas (Who benefits)
  – How much “face time” contributors have
  – Examinees opinions about those sources
• Medical Records, labs, etc.
“Formal” Psychometric Testing

• Primarily for support or contrast of information from other sources

• Advantages
  – Objective
  – Good Age Norms
  – What specific results suggest this person is incompetent

Decision and Outcome

• Answer the referral question about the specific capacity. Always play client advocate but evaluate the consequences of “bad outcome”. Balance Autonomy vs. Protection

• Describe what the patient CAN do as relevant to the question.

• Offer a diagnosis if relevant (TBI) as well as relevant comorbidities

• Make reasonable recommendations
Questions?

Thank You