

MENTAL CAPACITY ASSESSMENTS MADE

Easy



Text by Dr Goh Kar Cheng, Clinical Assistant Prof Bharathi Balasundaram, Dr Chen Shiling, Dr T Thirumoorthy and Dr Giles Tan



Dr Goh is a consultant family physician with G-RACE, Department of Psychological Medicine at the National University Hospital. Her interest is in care consolidation for elderly patients with complex care needs. She is a strong advocate of person-centred care.



Clinical Assistant Prof Bharathi is a senior consultant in geriatric psychiatry at the Department of Psychological Medicine, Changi General Hospital. Her areas of interest are delirium, dementia and patient safety.



Dr Chen is a physician with special interests in dementia and intellectual disability. She is the founder of Happee Hearts Movement and practises in Tsao Foundation and Khoo Teck Puat Hospital.



Dr Thirumoorthy has been with the SMA Centre for Medical Ethics and Professionalism (SMA CMEP) since its founding in 2000 and most recently been given the responsibility of being the SMA CMEP Academic Director.



Dr Tan is a neurodevelopmental psychiatrist at the Institute of Mental Health, Associate Director of SMA CMEP, Honorary Secretary of the College of Psychiatrists at the Academy of Medicine, Singapore and Vice-President of the Singapore Psychiatric Association.

The SMA Centre for Medical Ethics and Professionalism (SMA CMEP), in collaboration with the College of Psychiatrists at the Academy of Medicine, Singapore, held a webinar on Saturday, 13 November 2021 titled **"Mental Capacity Assessments Made Easy"**. The webinar was well attended with over 206 participants, the majority being medical practitioners. The opening address was given by A/Prof Daniel Fung, President of the College of Psychiatrists and CEO of the Institute of Mental Health (IMH). Presentations were then given by practitioners in the field who talked about various aspects of mental capacity assessments involving people with diminished capacity, including a short presentation on the new Office of the Public Guardian Online (OPGO) system. This was then followed by a panel discussion.

Taking up the challenge as a family physician

Dr Goh Kar Cheng, family physician with the National University Hospital, presented on the topic of "Taking up the Challenge as a Family Physician" with the aim of demystifying the process of mental capacity assessments and encouraging primary care physicians (PCP) to do capacity assessments for their patients. The greatest barriers to doing these capacity assessments were the perceived complexity of the process

and the time constraints in often busy primary care practices.

As a PCP herself, Dr Goh sought to equip other PCPs with the requisite knowledge and skills needed for doing capacity assessments with confidence. A good understanding of the five principles of the Mental Capacity Act (MCA) and the steps in carrying out these assessments were important foundations, as well as recognising that mental capacity was decision- and time-specific. Through clinical case examples, the key principles of the MCA were illustrated and the complexities of the process of doing capacity assessments were explained, including the steps in assessing the understanding of disclosed information, retaining the information, weighing the information and communicating a choice.

Dr Goh advocated that PCPs begin with simpler and more straightforward cases as the process of capacity assessments will be much less daunting; as one gains proficiency and confidence, it would be easier to take on more complex cases. The time taken for each case would also gradually be shorter as one became more experienced. The importance of good documentation and a clearly stated rationale behind the conclusion for every capacity assessment was emphasised as this would mitigate against being challenged subsequently.

A PCP's role extends beyond just assessing and concluding whether a patient has or lacks mental capacity for a particular decision at a particular time. Where a person lacks capacity, the PCP also plays a major role in ensuring that what was in the patient's best interest was carried out in a manner that was least restrictive and that best respected the patient's autonomy and wishes. As an example, this included mobilising social support services to allow someone to continue to live in their own home for as long as it was safe for them to do so, balancing autonomy against best interest.

By sharing her personal journey of taking her first step and embarking on the endeavour to be proficient at doing capacity assessments for her patients, Dr Goh hoped that many more PCPs would also start on their own journey of learning and building up their experience of doing capacity assessments. PCPs would be providing a much-needed service for their patients whom they know best, and are ideally placed to provide holistic person-centred care. As with every new skillset being acquired, it may be challenging initially but it would certainly get easier over time, and the rewards and satisfaction would follow. She shared that learning never ends and in the process, one will find personal and professional growth.

The joy and perils of capacity assessment

Clinical Assistant Prof Bharathi Balasundaram, Senior Consultant (Old Age Psychiatry) at the Department of Psychological Medicine, Changi General Hospital (CGH), spoke on the "joy and perils" of mental capacity assessments. The session outlined the positive aspects of mental capacity assessments, such as promoting autonomy and applying "best interests" principles as set out in the MCA. Empowering patients to make their own decisions or acting in their best interests is a rewarding experience in our roles in clinical or medico-legal assessments. The session also highlighted that caution and due diligence are required when conducting all mental capacity assessments, especially those of a financial nature. Illustrative examples of financial capacity assessments, such as the capacity to make a will, lasting power of attorney (LPA) and capacity assessments regarding the sale of a HDB flat were discussed.

Clinical Assistant Prof Bharathi focused on practical tips for undertaking financial capacity assessments in persons with dementia and addressed critical red flags for undue influence. Undue influence, a

legal concept, is coercion in the eyes of the law. Relationship risk factors such as emotional or psychological dependency between a cognitively impaired older person and a cohabiting family member, formal or informal carers are predisposed to undue influence. Social and environmental risk factors such as isolation, recent bereavement, changes in family relationships or family conflicts are red flags to be vigilant for. Physical factors to be considered are serious medical illnesses and the presence of physical disability. Mental disorders such as dementia, delirium, mood and paranoid disorders, and substance misuse are other vulnerability factors. She also highlighted that autobiographical memory might be affected in dementia. A person with dementia may change their attitudes towards their loved ones due to their condition. Legal risk factors such as a beneficiary of a will or playing a pivotal role in procuring the will are the other red flags for undue influence. A case study was used to illustrate the practical significance of undue influence.

The talk highlighted the need to consider undue influence while conducting capacity assessments of a financial nature. It ended with concluding remarks on the joyful experience while conducting medico-legal assessments and the need for diligence, and referred to the recent publication "A Practical Approach to Testamentary Capacity and Undue Influence Assessment in Persons with Dementia"¹.

Person-centred care

Dr Chen Shiling, physician with Tsao Foundation and Khoo Teck Puat Hospital, talked about the importance of taking a person-centred approach and going beyond just doing mental capacity assessments in the care of persons with diminished capacity.

"Doctor, I understand that my mother has dementia and does not have the mental capacity to decide on

her placement. But she repeatedly tells us that she wants to remain in her own home and gets very upset whenever we mention sending her to a nursing home. What should we do now, doctor?"

The above scenario, an example shared by Dr Chen in her talk, is not an uncommon one encountered in today's context. With the ageing population, the question regarding care options and consequently the ability to make choices has become an increasingly important one to answer.

It is important to consider what we, as medical professionals, would advise in a situation like this. What would take precedence? The patient's wishes, care needs, safety or decision-making capacity (or lack thereof)? This is a conundrum and it is important that we learn how to navigate it – for the patient, as it impacts how he/she could potentially live the rest of his/her life; for his/her family, as it affects how they would support the wishes (or not) of their loved one; and for us, as the medical practitioner, because we would want to guide decision-making that would ultimately benefit the patient and improve his/her life.

In situations like this, the answer was not a straightforward one. There would be multiple considerations, but a good starting point would be to remind ourselves of the "best interests" principle set out in the MCA. This states that "any act done, or a decision made, under this Act or on behalf of a person who lacks capacity must be done, or made, in his best interests". What does this mean? When distilled, the crux of this is that said person must be respected as an individual and encouraged to participate in the decision-making process as much as possible. Furthermore, it is imperative that his/her past and present values, beliefs and wishes be central and key considerations.

Sanderson² stated that "**person-centred planning** is a process of continual listening and learning; **focused on what is important to someone now, and for the future**; and **acting upon this in alliance with their family and friends**".

This is an essential point to remember as medical practitioners support their patients and patients' families in making decisions. Ultimately, the decision is not ours to make, and neither is it truly the family members'. We need to honour the patients by placing them at the centre of all decisions; seeking to understand who they truly are and ultimately work towards the goal of supporting them to live well, in a manner that holds meaning and purpose for them.

Office of the Public Guardian Online system

Ms Regina Chang, the Public Guardian, provided an overview of the LPA and highlighted that the MCA was amended on 6 July 2021 to enable making and registering LPAs online, although the changes have yet to become operational. The OPGO system³ would allow the certificate issuer to obtain an access code from the donor so as to retrieve a soft copy of the LPA from OPGO before going through the LPA with the donor. This allows for digital signing without the requirement for the red seals, and allows the certificate issuer to submit the LPA on behalf of the donor through the system.

She also shared what was expected of medical practitioners when writing medical reports for the activation of LPA and when filing an affidavit for deputyship application.

Panel discussion

The panel discussion included the speakers, as well as Ms Ravina Bte Said Abdul Rahman (Deputy Director, Adult Protective Service, Ministry of Social and Family Development), Ms Ruby Lee (Deputy Director, Singapore Management University Pro Bono Centre), A/Prof Aaron Ang Lye Poh (Senior Consultant, Department of Psychological Medicine, Tan Tock Seng Hospital), A/Prof Yap Hwa Ling (Senior Consultant, Department of Psychological Medicine, CGH) and Dr T Thirumoorthy (Academic

Development Department, Duke-NUS Medical School), and was moderated by Dr Giles Tan (Senior Consultant, Department of Developmental Psychiatry, IMH). Questions posed by the audience were addressed and there were also elaborations on the issues raised in the presentations earlier.

Conclusion

This online webinar has covered aspects of mental capacity assessments relevant to medical practitioners and has hopefully upskilled and encouraged more to undertake these assessments with confidence.

SMA CMEP continues to run free online training modules to educate medical practitioners on the issuing of LPA certificates. It also conducts courses on mental capacity assessments of people with diminished capacity, including people with dementia or intellectual disability, and writing medical reports for the courts. In collaboration with the College of Psychiatrists and the Law Society of Singapore, there will be further training webinars planned for April and September 2022, so do look out for them! ◆

References

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 3. Ministry of Social and Family Development. *Office of the Public Guardian*. Available at: <https://bit.ly/32p34ji>.
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- a. *Mental Capacity Act (Cap 177A, 2010 Rev. Ed.)*. Available at: <https://bit.ly/3rYAF5f>.
 - b. Ministry of Social and Family Development. *The Code of Practice*. Available at: <https://bit.ly/3e5VAEg>.
 - c. General Medical Council. *Decision making when patients may lack capacity*. Available at: <https://bit.ly/32aRtV6>.
 - d. Keene AR. *Assessment of mental capacity*. London: BMJ Books, 2015.