

How do I define capacity?

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Family physician Ian Trench reaches out to psychiatrist Ivory Tower for advice about a challenging situation.

The first phone call

Ivory Tower: Hello, Ivory Tower here. How can I help you today, Ian?

Ian Trench: There is a patient of mine. He's 68. A while back, he had some rectal bleeding and we sent him for investigation. It turned out he had an adenocarcinoma of the colon, stage three. He visited our regional centre recently and had surgery. He just came back and was supposed to return to have chemotherapy. They suggested he have a course of 5-fluorouracil, and some other drug that I can't remember right now. Anyway, after coming home, he announced to his family that he was not having any more treatment, and that he was not going back to any hospital. They've just called me and, of course, they're begging me to do something. What should I do?

Ivory Tower: Have you assessed his capacity?

Ian Trench: Capacity? Well, he can eat, drink, and dress himself. He seems quite capable. What exactly do you mean by capacity?

Ivory Tower: Clinically, capacity refers to the ability

to understand information relevant to his decision regarding his illness and treatment. Furthermore, he must be able to understand and appreciate the consequences of accepting or not accepting treatment.¹

Ian Trench: Just a few weeks before the surgery, he knew he was going to have it done, and he knew about the diagnosis. At that time, he did his will. He was deemed to be capable at that time to complete a will. Doesn't that mean he is capable to make this decision regarding his chemotherapy?

Ivory Tower: Capacity is specific to particular decisions. For example, someone can be capable of making a will, but may not be capable regarding treatment decisions. Capacity is not an all-or-nothing phenomenon.

Ian Trench: He did have a little trouble with his memory a while back. I did an mini mental state exam (MMSE) and he got 27/30. Surely this must mean he is capable.

Ivory Tower: The MMSE score does not necessarily indicate capacity. The MMSE does not test areas of judgment and reasoning, which are important when assessing capacity.

Ian Trench: So what do I have to do?

Ivory Tower: You need to spend some time with him and make sure he is well-informed about his illness, about the treatments that are being offered, and about the consequences of accepting or not accepting treatment.

Ian Trench: Do you know how busy I am out here? I'm the only doctor for miles.

Ivory Tower: Any physician can declare capacity regarding treatment decisions. It doesn't have to be a specialist or a capacity assessor. You, as his family doctor, can declare capacity with respect to this decision. Also, it is our ethical responsibility that a patient who is capable of making a decision about his treatment be allowed to make that decision. Also, if the patient is not capable of making a decision, he should be protected from making the wrong one.

Ian Trench: Okay. I will talk with the patient about the treatment and get back to you.

Ivory Tower: Good luck.

The second call

Ivory Tower: Hello.

Ian Trench: Hello, it's Ian Trench. I spoke with the patient. We sat down and talked about the treatment

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and I was satisfied that he understood the nature of his illness and the treatment that was being proposed. He also understood the consequences of taking or not taking the treatment. Still, he is firm in not wishing to take this treatment. At 68, he has had enough of hospitals, and feels that there is enough of a grey area with respect to outcome that he would rather take his chances and avoid chemotherapy. What do you think?

Ivory Tower: Why are you hesitating making a declaration of capacity here?

Ian Trench: If I declare that this guy is capable, the family is going to be on me. How should I deal with the family if I make this declaration?

Ivory Tower: Perhaps it is time to hold a family meeting to clarify, for them, what capacity means and why you think this gentleman is capable.

Ian Trench: Are there any other conditions that I should be looking for? Anything that could affect his capacity or interfere with it?

Ivory Tower: One always has to ensure that this decision is not being made in the context of a major mental illness. For example, perhaps this man is depressed and has passive suicidal ideation. Rejecting therapy may be an expression of his wish to die. Or, he may be delusional, and rejecting therapy is part of his delusion. One has to ensure that a major psychiatric disorder is not part of his presentation. One also has to ensure that the psychiatric disorder is not influencing his decision. Have you clarified these issues with him?

Ian Trench: I know this guy fairly well. In talking with him these last few days, he is clearly not

depressed. He is rational in his thinking, and is actually optimistic about the future. He remains very active and wants to get back to his old interests. He loves woodworking, and he is back at that already. Clearly, I'm not seeing any indication of delusions or hallucinations, or any impaired reality testing. But, I'm only a family doctor.

Ivory Tower: Well, Dr. Trench, my recommendation at this point is to have a family meeting, clarify the issues with them, and then you need to make a firm decision regarding his capacity. Why don't you do these things and give me a call back in a few days to discuss your progress.

Ian Trench: Thanks.

The third call

Ivory Tower: Hello Dr. Trench.

Ian Trench: I met with the family. They are a loving, very supportive family. They just want to ensure that their dad is getting all of the available treatment. I explained my assessment of his capacity and they had a chance to talk it over with him. I think they understand his reasoning for not wishing to take the chemotherapy. Also, the patient and I agreed to continue talking and see how things progress over the next while. We got on the phone and spoke with the oncology people at the Regional Centre. They understood his decision at this time. If he changes his mind, they're quite receptive to seeing him. I've been looking at the literature on this, and, if I was in his position, I would take the treatment. I mean, I don't agree with his decision.

Ivory Tower: It is a very difficult to determine capacity and support someone's decision when it goes against what you would choose or what the family would choose. As long as you're confident in this

man's capability in making this decision you need to support him and the family through it.

Ian Trench: Thanks. You've been very helpful. I may be in touch with you as the situation unfolds.

Ivory Tower: I'll be waiting for your call. CME




Reference

1. Etchells E, Sharpe G, Elliott C, et al: Bioethics for Clinicians: 3. Capacity. CMAJ 1996; 155(6):657-61.

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SS0104