PART II: DECISIONAL MENTAL CAPACITY AND CAPACITY ASSESSMENT

1. What Is Decisional Mental Capacity?
   - Legal Definition NOT Clinical Definition
   - Different legal definition in different jurisdictions (e.g. different provinces, different countries)
   - Assessment of capacity for treatment refers to a LEGAL assessment NOT a clinical assessment
   - Not tested by the Mini-Mental Status Test (MMSE)
   - Clinical assessments underlie diagnosis, treatment recommendations, and identify or mobilize social supports
   - Legal assessments remove from the person the RIGHT to make autonomous decisions in specified areas
   - Legal Assessments look at Decisional Ability to make a Particular decision (e.g. Capacity in respect to particular treatment, Capacity to handle property, Capacity in respect to admission to long-term care, Capacity to make personal care decisions about shelter)

2. Legal Definition of Capacity in Respect to Treatment, Admission to Care Facilities, and Personal Assistance Services

   Health Care Consent Act s.4

   Two step definition
   1. Able to understand the information that is relevant to making a decision about the treatment, admission, or personal assistance service as the case may be, and
   2. Able to appreciate the reasonably foreseeable consequences of a decision or lack of decision

3. Presumption Of Decisional Capacity
   - MCCA s.4
   - Persons presumed to be capable for treatment, admission to care facilities and personal assistance services.
   - Exception
   - Person entitled to rely on presumption: UNLESS he or she has reasonable grounds to believe the other person is incapable in respect to treatment, admission to care facilities, personal assistance services as case may be.
   - MCCA s.8
   - May be capable in respect to some treatments and incapable in respect to others.
   - May be incapable with respect to treatment at one time and capable at another

4. Assessment Of Decisional Capacity *
   - Need to assess:
     1. Ability to understand (factual knowledge + problem solving ability)
     2. Ability to Appreciate (realistic appraisal of outcome + justification of choice)

   Unders tand - 1st Base
   - Factual knowledge: preservation of old skills & knowledge
   - Has the person had learning opportunities to acquire the relevant facts?
   - Updated information re: medical status, new risks or limits in ADL functions?
   - Does the person understand what treatment is being offered - what it is, benefits of it, risks, Understanding Options - 2nd Base
   - Able to comprehend information about options, risks to make an informed choice
   - Able to attend to relevant stimuli, understand at conceptual level and retain essential information long enough to reach a decision
   - Able to remember prior choices and express them in a predictable and consistent manner over time
   - Able to problem solve around personal issues-probe specific examples

   Appreciate - 3rd Base
   - Able to appreciate potential outcomes of a decision
   - Focus on reasoning process, explore the personal weights, values attached to each outcome
   - Acknowledges personal limitations/show insight
   - Decision-making is reality-based, not being affected by delusions (fixed false beliefs) or skewed by emotional states (depression, hopelessness causing an undervaluing of survival issues).

   Appreciate - 4th Base
   - Justification of choice:
     - Shows evidence of rational (based in reality) manipulation of information - a "reasoned choice", not necessarily a reasonable choice
     - Grounded in personal beliefs and values consistent with previous actions, expressed wishes, cultural or religious beliefs

   (credit to workshop slides by Dr. Janet Munson)

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provide the information about the proposed treatment in these categories that the reasonable person would require to make decisions. The Patient or SDM is also entitled to receive responses to any further questions that he or she may have about these matters.

6. WHAT IS CAPACITY FOR TREATMENT AND HOW DO YOU ASSESS THIS CAPACITY?

7. WHOSE COMPETENCY IN ASSESSMENT?

8. PROCESS FOR OBTAINING CONSENT TO TREATMENT

9. PROCESS FOR OBTAINING CONSENT TO TREATMENT - INCAPACITATED PERSON: RCCA S.5.18

10. REQUIREMENTS FOR SDM - HCCA S.5.20

11. WHAT ARE BEST INTERESTS?

12. PARTICIPLES FOR GOING OR REFUSING CONSENT

If no person meets the requirement then OPGT. If no person meets the requirement then OPGT. If no person meets the requirement then OPGT. If no person meets the requirement then OPGT. If no person meets the requirement then OPGT.