



# Assessing Decision-Making Capacity in Seniors

**Gary H. Oberlender, MD, FACP**

Consultant in Geriatric Medicine

Roanoke, Virginia

[www.SeniorEvaluations.com](http://www.SeniorEvaluations.com)

**Greater Augusta Coalition Against Adult Abuse**

Webinar

May 4, 2021



# Decision-Making Capacity Essential Requirements

## Ability to:

1. Communicate choice
2. Understand relevant information
3. Rationally weigh risks, benefits, and available options *for the decision at hand*

# Decision-Making Capacity in Health Care Settings

- Incapacity is **surprisingly common**
  - **Half** of hospitalized adults lacked capacity to consent to medical treatment
- Incapacity is **often not recognized**
  - **Only 25%** were recognized by their medical providers as lacking capacity

Kim SYH, et al. Am J Geriatr Psychiatry, 2002  
Raymont V, et al. Lancet, 2004



# What is “Cognitive Function?”

- **The seamless sum of a wide variety of intellectual abilities**
- **Key intellectual abilities:**
  - **Short term memory**
  - **Long term memory**
  - **Orientation**
  - **Calculation**
  - **Language**
    - **Receptive (Comprehension)**
    - **Expressive (Word finding)**
  - **Visual-spatial processing**
  - **Judgment and Reasoning**
  - **Personality**

# Audience Question

**Which one of the following is true:**

- A. Cognitive dysfunction and dementia are synonymous terms**
- B. Dementia and Alzheimer's disease are synonymous terms**
- C. Cognitive dysfunction is a form of dementia**
- D. Dementia is one of several possible causes of cognitive dysfunction**

# Audience Question

Which one of the following is true:

- A. Cognitive dysfunction and dementia are synonymous terms
- B. Dementia and Alzheimer's disease are synonymous terms
- C. Cognitive dysfunction is a form of dementia
- D. Dementia is one of several possible causes of cognitive dysfunction

# Cognitive Dysfunction in Seniors

## 7 Common Causes

- 1. Can't hear well**
- 2. Not listening**
- 3. Overbearing spouse/caregiver**
  - **Spouse/caregiver dominates conversation**
  - **Client frequently looks to spouse/caregiver to answer questions**
  - **Client appears intimidated**



# Cognitive Dysfunction in Seniors

## Common Causes

### 4. Adverse drug effect

- Very common but not commonly recognized
  - By client, family, or medical provider
- Any drug, any time
- More drugs, more risk
  - The avg senior takes  $\geq 5$  prescription drugs



# Cognitive Dysfunction in Seniors

## Common Causes

### 5. Depression

- Intermittent or persistent depressive symptoms are very common
  - > 20% of community-living seniors
  - > 50% of seniors in long term care

# Depression

## Manifestations in Seniors

- **Depressed mood or affect**
  - Social withdrawal, loss of interest, sadness, anxiety, irritability, negativity, sustained anger, ruminating thoughts
- **Neuro-vegetative signs**
  - Altered sleep or appetite; impaired gait and balance; bowel or bladder dysfunction
- **Cognitive dysfunction**
  - More common in seniors than younger adults

# Cognitive Dysfunction in Seniors

## Common Causes

### 6. Delirium

- **Altered mental status due to an underlying medical condition**
- **Typically improves with treatment of the underlying condition but complete resolution may take months**



# **Delirium**

## **Manifestations in Seniors**

- **Impaired Consciousness**
  - **Sleepiness or agitation**
  - **Inattention, trouble staying focused**
- **Impaired Cognition**
  - **Disorientation, generalized confusion**
  - **Delusions or hallucinations**
- **Symptoms persist or fluctuate**

# Cognitive Dysfunction in Seniors

## Common Causes

### 7. Dementia

- **Acquired deficits in 2 or more intellectual abilities**
- **Deficits are always present**
- **Deficits cause some degree of functional dependency**
- **No delirium or active psychiatric disease (includes depression)**

# Dementia in Seniors

## Common Manifestations

- **Impaired memory**
  - **Registration**
  - **Short term recall**
  - **Long term recall**
- **Impaired visual-spatial processing**
  - **Difficulty recognizing familiar objects or faces**
  - **Getting lost in familiar places**



# Dementia in Seniors

## Common Manifestations

- **Impaired language function**
  - **Receptive (comprehension)**
  - **Expressive (word finding)**
- **Change in behavior or personality**
- **Executive dysfunction**
  - **Impaired insight, judgment, planning, reasoning, situational awareness**

# Dementia in Seniors

## 2 Key Points

### 1. Dementia is under-diagnosed

- > 50% of seniors with dementia have not received a medical diagnosis

### 2. Alzheimer's disease is over-diagnosed

- “It ain’t always Alzheimer’s”
- The underlying disease causing dementia cannot be confidently determined in life

# Dementia in Seniors

## Common Causes

- **Alzheimer's disease**
- **Vascular dementia**
- **Mixed dementia**
  - **Presentation suggests two or more causes**
- **Lewy body dementia**
- **Frontotemporal dementia**
- **Parkinson disease**



# Alzheimer's Disease

## Clinical Features

- **Gradual onset > age 65**
  - “Early onset” (Familial) <1% of cases
- **Prominent deficits in short term memory and executive function**
- **CT or MRI imaging: “Normal for age”**
- **Course**
  - **Progressive decline**
    - Median of 12 years from diagnosis to death

# Vascular Dementia

## Clinical Features

- **More likely in pts with known cardiovascular disease or high atherosclerotic risk**
- **Onset at any age**
  - **May be sudden, gradual, or “step-like”**
- **Cognitive dysfunction may be widespread or focal (“juxtaposed”)**
- **Course**
  - **May stabilize, deteriorate, or improve**

# Lewy Body Dementia

- **A distinct neurologic disease that resembles Alzheimer's disease:**
  - **Age of onset**
  - **Progressive course**
  - **Prominent executive dysfunction**



# Lewy Body Dementia

- **But:**
  - **“Parkinsonian features” in early stages**
    - **Unstable gait and recurrent falls**
  - **REM sleep disorder**
    - **Acting out dreams**
  - **Vivid visual hallucinations or nightmares**

# Frontotemporal Dementia

- **A group of disorders with pathology localized to the frontotemporal lobes**
- **Onset at any age**
  - **Onset < age 60 not uncommon**
- **Course**
  - **Progressive, often rapid**

# Frontotemporal Dementia

## Clinical Features

- **Prominent language dysfunction**
- **Prominent behavior or personality change**
  - **Anxiety, restlessness, agitation, obsessive-compulsive behaviors**
  - **New onset socially inappropriate or criminal behaviors**
  - **New onset major depression or mania after age 65**



# Dementia in Seniors

## Clinical Features

**Alzheimer's disease**

# Dementia in Seniors

## Clinical Features

Vascular  
dementia

Alzheimer's disease

A Venn diagram consisting of two overlapping circles. The left circle is solid yellow with a black outline and contains the text "Alzheimer's disease" which is underlined with a thick black line. The right circle is a purple outline. The two circles overlap in the center.

# Dementia in Seniors

## Clinical Features

Frontotemporal  
dementia

Vascular  
dementia



Alzheimer's disease

A Venn diagram with three overlapping circles. The left circle is green and labeled 'Frontotemporal dementia'. The right circle is purple and labeled 'Vascular dementia'. The central circle is yellow and labeled 'Alzheimer's disease'. The text 'Alzheimer's disease' is underlined and positioned across the center of the yellow circle, overlapping the intersection of the other two circles.



# Dementia in Seniors

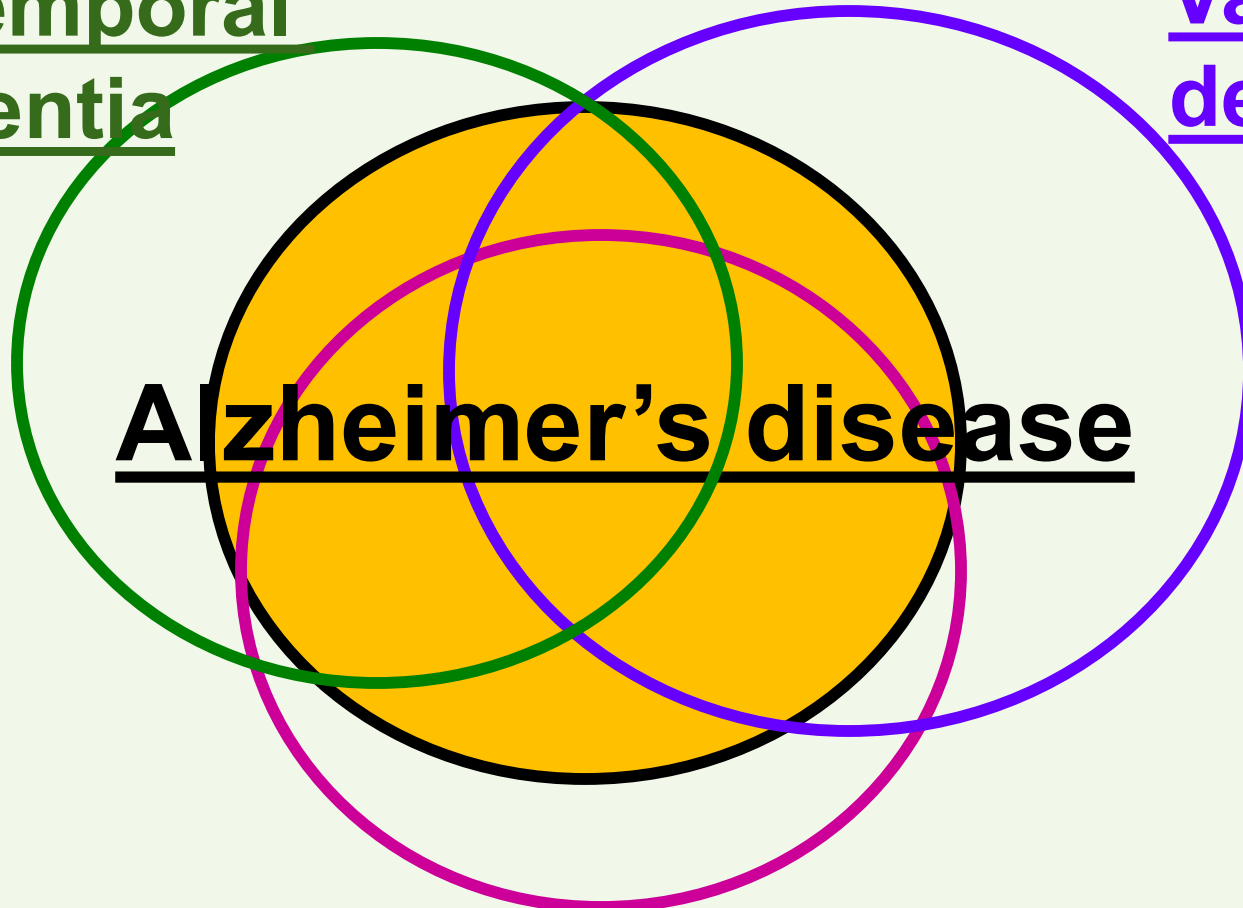
## Clinical Features

Frontotemporal  
dementia

Vascular  
dementia

Alzheimer's disease

Lewy body dementia



# Dementia and Decision-Making Capacity

## 2 Common Errors

### 1. Equating dementia with incapacity

- Half of persons with mild to moderate dementia have intact decision-making capacity

### 2. Equating social appropriateness and use of common niceties with intact capacity

- “The shell of capacity”

# **Decision-Making Capacity in Seniors**

- 1. No medical diagnosis automatically assigns impaired decision-making capacity**
- 2. Be skeptical of decision-making capacity in “red flag situations”**
- 3. When in doubt, request a formal evaluation**



# **“Red Flag Situations”**

- **Established mental health diagnosis**
  - **Intellectual disability (mental retardation)**
  - **Schizophrenia**
  - **Bipolar disorder**
  - **Chronic or recurrent depression**
- **Diagnosis of dementia**

# “Red Flag Situations”

- **Risk of delirium**
  - **Recent ( $\leq 6$  months) change in health status**
  - **Acute illness**
  - **ER visit or hospitalization**
  - **Surgical procedure**
  - **New drug(s) added or dosages changed**

# **“Red Flag Situations”**

- **Refusal of obvious need for care**
- **Insistence on obviously futile care**
- **Potential for “Undue Influence”**
  - **Need for daily in-home care or residence in assisted living or NH**
  - **Overbearing caregiver or family**
  - **Age > 85 years**



# Cognitive Assessment

- **Client interview is the focal point of the assessment**
  - Don't dismiss what family or caregivers tell you
  - Ask questions about the client's personal history
    - Corroborated by family
  - Use open-ended questions

# Cognitive Assessment

- **Ask questions specific to the decision(s) at hand**
- **Assess pt's understanding, comprehension, and reasoning**

# Supplemental Cognitive Tests

## Mini Mental State Exam (MMSE)

- **Reasonably sensitive**
  - Most patients with dementia will have an abnormal score
  - Normal score does not exclude dementia
- **Not specific or diagnostic of anything**
  - Abnormal score has many possible causes
    - Does not diagnose dementia or determine stage of disease
  - Licensed and available by purchase only



# Supplemental Cognitive Tests

## ■ Clock Drawing Test

- *“Draw the face of a clock showing the numbers from 1 to 12 and show the time as 10 minutes past 11.”*
- Assesses executive function
  - Planning, organization
- Useful as an office-based screening test for safe driving

# Supplemental Cognitive Tests

## ■ Read and explain

- *Ask patient to read a short paragraph from whatever's at hand then explain the content*

## ■ Write a sentence

- *“Write a sentence, any sentence you'd like.”*

## ■ 4-Legged animals in 60 seconds

- *“Name as many 4-legged animals you can think of.” (Normal  $\geq 8$ )*

# Case # 1

## Mrs. Hughes

**Ms Hughes is an 89 year old retired nurse. She has been widowed twice, has no children, and lives alone in a private home. She is independent in all ADLs and enjoys church activities and “spending time with my widow friends.” She drives to local destinations including food shopping and appointments. She stated she sleeps well and denied recent falls. She has never used tobacco or alcohol. She has designated her younger sister Nan as her POA and she has prepared her will, naming Nan as her sole heir. She has no active medical problems and takes no medications.**



# Case # 1

## Mrs. Hughes

**8 months ago, Mrs. Hughes was called by a man named Roger who told her she had won a \$1 million lottery prize but needed to "pay the taxes" before she could receive her winnings. She speaks with Roger several times each day. She also began to receive visits at her door from strangers who asked for money, which Ms Hughes gave them, often several hundreds of dollars at a time. She has sent Roger and the visitors over \$150,000 in cash, constituting approximately 10% of her net worth. She has not received any winnings but continues to receive requests for cash from Roger, which she promptly sends.**



# Case # 1

## Mrs. Hughes

**Her sister Nan became aware of all this and insisted she stop, but nothing happened. Mrs. Hughes acknowledges she is being scammed, but continues to expect to receive her prize, telling Nan, "Roger said I would and I believe him."**

**Nan contacted a local attorney who petitioned the local Court to have a conservator appointed and that hearing is pending. At the attorney's request, the Court issued an injunction placing Nan in control of all of Mrs. Hughes' financial assets and that injunction expires in 15 days.**

# Case # 1

## Mrs. Hughes

**I interviewed Mrs. Hughes and she began by stating, “I’ve been scammed...I’ve lost one hundred and fifty thousand dollars.” She spoke in a calm deliberate manner without agitation or distress. She appeared younger than her age and moved in a spritely manner. She appeared clean, well groomed, and nicely dressed and remained pleasantly interactive throughout the evaluation. Voice was clear and vocabulary and usage were appropriate to educational level.**

# Case # 1

## Mrs. Hughes

**She was well oriented to person and place but only partially oriented to time, having doubt about the day of the month and the year. Registration and short-term recall were intact, and she accurately recalled 7 of 8 unrelated items at 5 minutes and 6 of the same 8 items 10 minutes after that. Long term recall appeared intact and she recalled many details from her nursing career and two marriages.**



# Case # 1

## Mrs. Hughes

**She correctly spelled her last name forwards and backwards, accurately made change from a dollar in her head, and correctly identified who was buried in Grant's tomb. She correctly named the current US president, accurately copied two intersecting polygons, and completed the Clock Drawing Test without difficulty. She scored 29 out of 30 on the Mini Mental State Examination (MMSE) with a normal score for her age and educational level being  $\geq 26$ . Thought processes were clear and linear and there was no suggestion of anxiety or depression.**



# Case # 1

## Mrs. Hughes

**She spoke openly about her relationship with Roger and stated someone was going to visit her that day to give her the cash prize. She then added, "They've said that before, but they never come...they come up with some excuse." I asked how they learned her address and she replied, "I gave it to them. How else could they send me the money?" She admitted to receiving calls every day from Roger, sometimes as many as 50 calls in one day.**

# Case # 1

## Mrs. Hughes

**She stated, “This scam is a nightmare and I wish they would just give my my price and it would end.” We discussed actions she could immediately implement to limit her vulnerability, including changing her phone number and allowing her sister to permanently maintain control over her finances. Mrs. Hughes listened carefully and but expressed doubt and hesitation about doing these things.**

# Case # 1

## Mrs. Hughes

- **Does Mrs. Hughes have intact decision-making capacity?**
  - **If not, why not?**
- **Should the court appoint a conservator to manage her financial affairs?**
  - **If yes, why?**

# Delusion

- **A belief or altered reality that is persistently held despite clear evidence or universal agreement to the contrary**



# Delusional Disorder

- **The existence of one or more delusions that occur for at least 1 month**
- **Aside from the delusion, functioning is not obviously impaired and behavior is not noticeably strange**
- **No psychiatric illness, active medical problem, or substance abuse disorder**

# Case # 1

## Mrs. Hughes

**She stated, "This scam is a nightmare and I wish they would just give my my price and it would end." We discussed actions she could immediately implement to limit her vulnerability, including changing her phone number and allowing her sister to permanently maintain control over her finances. Mrs. Hughes listened carefully and but expressed doubt and hesitation about doing these things. Her responses sounded irrational and she had no appreciation of her financial or personal vulnerability.**



# **Questions from the Audience?**



# Gary H. Oberlender, MD, FACP

## Consultant in Geriatric Medicine

- **Comprehensive In-Home Geriatric Evaluations**
  - Detailed review of medical, cognitive, nutritional, psycho-social, and functional issues
  - Performed in the privacy of the patient's home
- **Medical Evaluation of Decision-Making Capacity**
- **Expert testimony on decision-making capacity and all aspects of the medical care of seniors**
  
- **Website: [www.SeniorEvaluations.com](http://www.SeniorEvaluations.com)**
- **Phone: 540-529-7566**
- **E-mail: [Consult@SeniorEvaluations.com](mailto:Consult@SeniorEvaluations.com)**