

How is mental capacity determined for the activation of Enduring Power of Attorney?

In clinical practice it is clear that there is a lack of understanding associated with determining a patient's mental capacity, activation of an Enduring Power of Attorney (EPOA), and any possible consequences that may arise.

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Findings

What is capacity/lack of capacity?

Capacity refers to the ability for an individual to make their own decisions, or take actions to influence their lives (Age Concern, 2013; Douglass, 2016; Justice & Attorney General, 2016; Radio New Zealand, 2016). People with capacity are free to make choices about their lives (Douglass, 2016).

For those who lack capacity, they should have been deemed by assessment as being unable to make an informed choice for themselves, thereby justifying the need for intervention into their lives (American Family Physician, 2001; Douglass, 2016).

Appointing an Enduring Power of Attorney/ Advance Directive

An Enduring Power of Attorney (EPOA) is enacted when the individual is declared incompetent or lacking capacity by a medical practitioner or a mental health clinical nurse practitioner after a capacity assessment has been completed (Age Concern, 2013; Justice & Attorney General, 2016; The New Zealand Medical Journal, 2013).

In most cases surrounding EPOA, issues that arise are based around the appointment and activation of the EPOA (Douglass, 2016; The New Zealand Medical Journal, 2013).

The Assessment of capacity

Capacity is difficult to assess, as it may not be easy to perceive and includes judgements about people's beliefs and preferences. Capacity assessments therefore should be completed with careful consideration to protect the patient's rights (Douglass, 2016). "There are currently no formal practice guidelines from professional societies for the assessment of a patient's capacity to consent to treatment" (Appelbaum, 2007, p.5). The same applies in New Zealand (Douglass, 2016).

Legislation surrounding capacity

In New Zealand law, "The PPPR Act and its regulations provide the mechanisms for the making and use of an ...EPOA... which a person can execute in advance to authorise another person to make decisions about their care, welfare or property if they later become mentally incapable of making those decisions" (Douglass, 2016, p.14).

"The Act provides no single test for incapacity, which makes it complex legislation to follow and apply. In general terms, however, the Act says a person lacks capacity if they do not understand the nature or cannot foresee the consequences of decisions, or are unable to communicate them" (Douglass, 2016, p.15).

Recommendations:

Need for an update in law to support expansion of older population

The Law Foundation (2016) discusses research conducted by Alison Douglass, based around capacity and the need for an updated PPPR test, as thirty years later, the social environment has changed. We now require a modernized legislation that suits the current society and its needs (Radio New Zealand, 2016; The Law Foundation, 2016). "Alison says that the law is needlessly complex and unclear about two essential concepts. The first is capacity, the 'bright legal line' determining whether intervention is permitted in people's lives...Then..." "there should be a single clear test for incapacity- the PPPR evaluation currently includes several tests" (Douglass, 2016; The Law Foundation, 2016, p.1). "There is no nationally accepted Code of Practice or statutory guidance on capacity law and practice for health practitioners" (Douglass, 2016, p.156). Alison Douglass's research has been published alongside a "toolkit" for health professionals to use when assessing capacity. (Douglass, 2016).

Need for further education

In December 2015, doctors within Wellington Hospital and the Hutt Valley were asked to participate in a survey, entitled "what do you know about assessing capacity, and what would help you do it better" (Douglass, 2016, p. 167). Results from the survey indicated that some General Practitioners (24.3%) and hospital doctors (30.1%) did not perceive capacity assessments to be included in their scope of practice. Hospital doctors had difficulty deciding whether it was their responsibility to assess, or if they should refer to a specialist (geriatrician or psychiatrist).

It was also highlighted within the survey that the majority of doctors had not had any formal training in relation to capacity assessments. Those doctors who had had previous training only had a slightly higher understanding scored. Doctor's reasons for difficulties were in relation to lack of knowledge, time pressures, confidence, and lack of understanding in relation to relevant law (Douglass, 2016).

In conclusion, it is evident that change is required within the PPPR Act, EPOA assessment and ongoing education for health professionals. A single, easily understood test must be adopted along with a toolbox to aid in understanding. Education must be provided within the curriculum to support both undergraduate and post graduate health professionals, to ensure timely and safe practice outcomes are adhered to (Douglass, 2016; Corke et al, 2009; Jacoby & Steer, 2007).

COT—(Keenan, 2016; Schneider & Whitehead, 2016).

P (Patient/problem)	I (Intervention)	C (Comparison)	O (Outcome)	T (Time)
Determination of capacity with activation of Enduring Power of Attorney (EPOA).	Understanding capacity/EPOA and their determination/activation.	Understanding EPOA versus not understanding.	Best interests for patient (re. elderly patient).	No timeframe used in question. But, determining capacity is probably required now in law and medical education.

Poster Rationale

This poster (part B of Assignment 1 for BN706000) was made from the information gathered as a part of my literature review for part A of Assignment 1. The topic I chose to research was based on a reflection made from a situation that arose during a placement in a geriatric sector. I chose to display my work in a poster format as I like posters and I find them to be an effective medium to pass a brief, concise overview of a topic across to a reader (Schneider & Whitehead, 2016). I also felt like a poster would best showcase my topic, (a current medical issue- determining capacity alongside activation of EPOA) as it would help to catch people's attention and be the best forum to help highlight the lack of understanding associated with the topic. Siedlecki (2017) discussed that people are more likely to read a poster if it is based on a topic of interest, stands out, and has a title which is easy to read. Which I feel mine does. I also feel that by using a poster I am able to target a wider audience as it will be displayed on the walls of nursing school, as opposed to a submission which would target a direct audience as it would be put into a journal (Schneider & Whitehead, 2016).

References:

- Age Concern. (2013, April). What happens if you can no longer make decisions?: Why you need an enduring power of attorney. Retrieved from <https://www.ageconcern.org.nz/files/EPA/EPA%20Pamphlet%202013%20English.pdf>
- American Family Physician. (2001). Can the Patient Decide? Evaluating Patient Capacity in Practice. *Am Fam Physician*, 64(2), 299-308.
- Appelbaum, P. S. (2007). Assessment of Patients' Competence to Consent to Treatment. *New England Journal of Medicine*, 357(18), 1834-1840. doi:10.1056/nejmcp074045
- Corke, C., Milnes, S., Orford, N., Henry, M. J., Foss, C., & Porter, D. (2009). The influence of medical enduring power of attorney and advance directives on decision-making by Australian intensive care doctors. *Critical Care and Resuscitation*, 11(2), 122-8. Retrieved from https://www.cicm.org.au/CICM_Media/CICMSite/CICM-Website/Resources/Publications/CCR%20Journal/Previous%20Editions/September%202009/13_2009_Sep_Survey-Effect-of-a-supplement.pdf
- Douglass, A. (2016). *Mental Capacity: Updating New Zealand's Law and Practice*. Retrieved from The Law Foundation: New Zealand website: http://www.aspenltd.co.nz/mc/assets/Full_Report.pdf
- Justice & Attorney General. (2016, October 10). Capacity Toolkit Factsheet. Retrieved from http://www.justice.nsw.gov.au/diversityservices/Pages/divserv/ds_capacity_tool/ds_capa_factsheet.aspx
- Keenan, R. (Ed). (2016). *Healthcare and the law*. (5th ed.). Wellington, New Zealand: Brookers Ltd.
- Radio New Zealand (Producer). (2016, July 26). *Mental capacity law- out of date?* [Radio broadcast]. New Zealand.
- ✓ Schneider, Z. (2013). *Nursing and midwifery research: Methods and appraisal for evidence-based practice*. Chatswood, N.S.W: Mosby.
- ✓ Siedlecki, S. L. (2017). Original Research. *AJN, American Journal of Nursing*, 117(3), 48-54. doi:10.1097/01.naj.0000513287.29624.7e
- The Law Foundation. (2016, July). Study by Alison Douglass finds mental capacity law needs updating for better patient protection | The Law Foundation. Retrieved from <http://www.lawfoundation.org.nz/?p=6740>
- The New Zealand Medical Journal. (2013). Review of capacity assessments and recommendations for examining capacity. *Journal of the New Zealand Medical Association*, 126(1383), 38-48.