

# Assessing Diminished Capacity: The Assessment Process & A Guide to Engaging Prospective Wards & Their Families



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# Objectives

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- Learn a conceptual framework for understanding diminished capacity
- Understand the basic elements of conducting an interview
- Learn how to assess for specific functional capacities
- Learn how to engage difficult wards
- Learn about accommodations to aid functioning

## O.R.C. 2111.01 (D)

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- “Incompetent” – Any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation. Or as a result of chronic substance abuse, that he person is incapable of taking proper care of the person’s self or property or fails to provide for the person’s family or other persons for whom the person is charged by law to provide, or any person confined to correctional institution within this state.

## Working with Wards is ...

- A dynamic process
- People are dynamic beings
- We are constantly changing
- Your wards are too

# Understanding Incompetence

- Cognitive Underpinnings
  - Values & Preferences
  - Decision-Making as Risk Assessment
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# Cognitive Underpinnings

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- Disorders that affect capacity often do so because they have a direct effect on cognitive functioning.
  - Insight and Awareness of Deficits
  - Ability to Process Information

# Cognitive Underpinnings

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- Some Capacities are decisional in nature
  - Consent to treatment
- Others involve a behavioral component
  - Driving or financial management

# Values v. Preferences

- Values

- An underlying set of beliefs, concerns and approaches that guide personal decisions.

- Preferences

- The preferred option of various choices that is informed by values
  - A person may value not being a burden to others; thus, prefer treatment minimally burdens caregivers.



## Values & preferences are shaped by...

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- Race, ethnicity, culture, gender, sexual orientation & religion.
  
- Age, generation, & life experience

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The extent to which an individual's current decisions are consistent with long-standing values may be an indicator of capacity

# You Must:

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Understand the  
prospective ward's values  
to the best of your ability

# My Values vs. Your Values

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The ward's values may not be  
same as yours

# Decision-Making & Risk Assessment

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All decision-making must be done in reference to the risk of the situation at hand.

# Risk Assessment

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- Does the specific treatment decision involve a high degree of risk?
- Is the individual's home situation isolated, unsafe, or conducive to risks?
- Is the amount money being bequeathed in a will unusually large relative to total assets?

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The level of intervention or supervision recommended as a result of the capacity assessment must match the risk of harm to the individual....

*Must also include a full exploration of the least restrictive treatment alternatives.*

# Means to Enhance Capacity?

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- Practical accommodations:
  - Ex: Vision aids, Medication reminders
- Medical, psychosocial, or educational interventions
  - Ex: Physical or occupational therapy, counseling, medication, training



# Assessing Changes in Capacity

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The Art of Goal-Directed  
Conversations

# Main Goals

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- Understand the ward's current functioning
- Understand how functioning has changed from a previous level
- Identify the etiology of any impairments
- Identify potential accommodations

# Functional Elements

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- Must obtain information about daily functioning
  - Talk to folks that have first hand knowledge of the ward's functioning.
  - Ask for examples of specific behaviors from collateral informants
  - Ask the ward to describe in detail how they approach specific tasks
- Conduct direct observation when possible

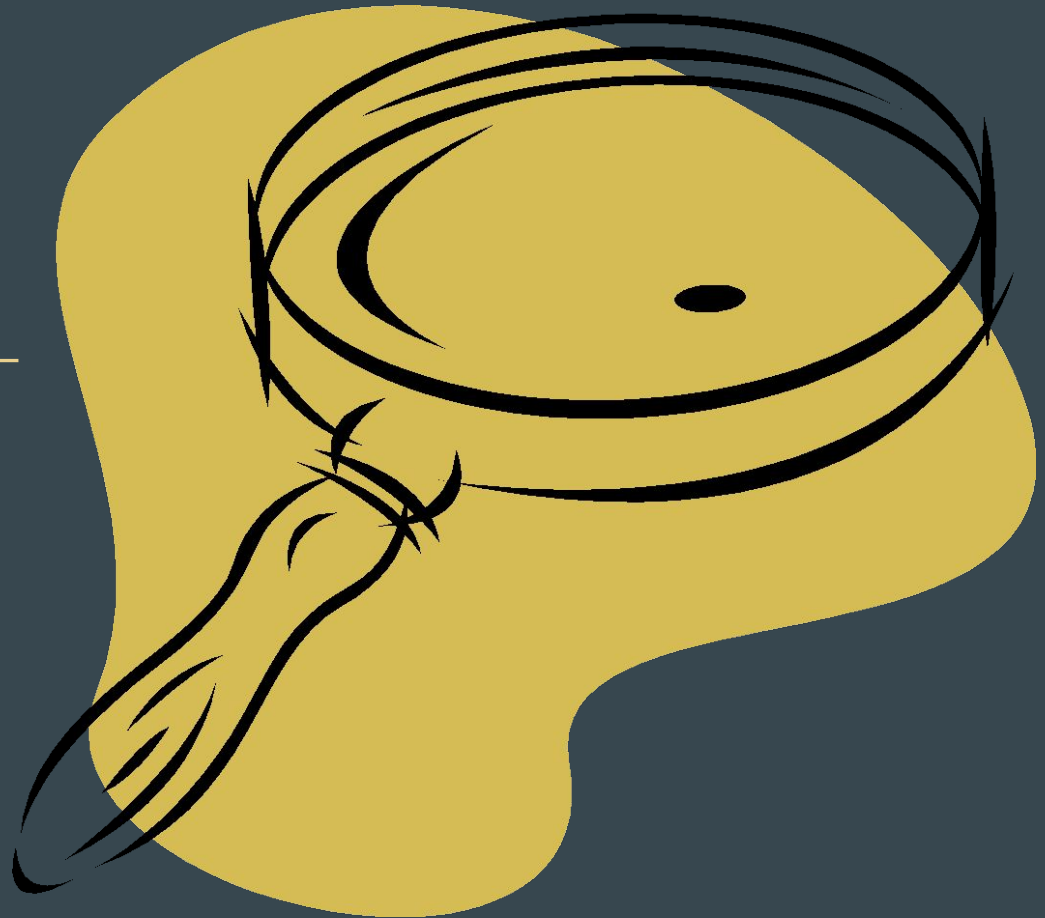
# Etiology

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- Must determine if there is a medical, psychiatric, or neurological condition that is hindering functioning.
  - Obtain a detailed medical and psychiatric history
  - Obtain a detailed substance use history
  - Obtain a list of current medications
  - Speak to current treatment providers
  - Review medical records documenting past and present treatment

# Assessing Diminished Capacity

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# Assessing Changes in Capacity

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Medical Consent

# Doctrine of Informed Consent

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Clinicians must obtain voluntary and competent agreement to medical interventions prior to performing those interventions....

only after the patient has been informed of the potential risks and benefits of undergoing the procedure.

# Functional Elements

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- Preference
  - Can they communicate a clear preference re: their care?
  - Is their preference reasonable, rational, and reality-based?
- Understanding
  - Do they understand treatment-related information?



# Functional Elements

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- Appreciation
  - Can they infer the potential benefits of treatment & accept/believe the diagnosis
  - Related to insight & foresight
- Reasoning
  - Can they process information in a logical & rational manner

## Diminished Capacity is Related to...

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- Impairments in memory, executive functions & comprehension.
- Reasoning ability may be impacted by depression, anxiety, and/or developmental delays.
- “Appreciation” may be hindered by psychosis and/or developmental delays.

## Values and Diminished Capacity

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- Belief that treatment outcomes may be “worse than death.”
- Concern regarding the impact of the illness/treatment on loved ones.
- Desire to take control over treatment decisions
  - Some believe that decision-making authority lies with the treatment provider.

## Must Consider Risk

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- Some have proposed a “sliding scale” for capacity
  - I.e., a low level of capacity is needed for making decisions for low risk procedure.
- Must consider the risks of potential procedures & the risk of not doing the procedures.
- Consider risks in tandem with the individual’s personal values.

# Means of Enhancing Capacity

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- Present information in a manner than maximizes the client's participation
  - Rather than having them memorize information.
- Provide information in writing
  - Use short-phrases and diagrams when appropriate
- Consider the manner in which information is “framed”
  - E.g., “you have a 10% chance of dying” vs. “you have a 90% chance of living”
- Assess role of anxiety in decision-making
  - Would treatment help?

# Questions that Foster Cooperation

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- “Have you decided whether to go along with the recommended treatment? If so, what have you decided?”
- “What is your understanding of the nature of your condition, the recommended treatments, & the potential risks/benefits?”
- “What do you really believe is wrong with your health?”
- “What do you believe will happen if you don’t get treatment?”

# Questions that Foster Cooperation

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- “What factors were important to when making your decision?”
- “How did you balance those factors?”
- “Why does Treatment X seem better than Treatment Z?”
- “How will treatment affect the people who are important to you?”
- “Should financial or other family concerns enter into decisions about your medical care?”

# Assessing Changes in Capacity

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Independent Living



# Impairments May Be Due To...

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- The development of medical illness that causes a decline in physical abilities.
  - Do they have insight into fact that they need help?
  - Will they accept help?

# Impairments May Be Due To...

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- The development/exacerbation of mental health problems.
  - May not have realistic understanding of what they need to do because of psychosis
  - May know what they need to do but be too ill to carry it out.

# Impairments May Be Due To...

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- The development of memory problems.
  - Are they alert enough to know what needs to be done?
  - Can they recall when past events occurred and which ones have yet to/need to occur?
  - Do they remember where things are in the home?

# Impairments May Be Due To...

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- Cognitive deficits
  - Can they exercise appropriate impulse control?
  - Can they communicate with others?
  - Can they understand what others say to them?

# Functional Elements

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- Can they make/implement decisions?
- Do they understand the risks and consequences of their behavior/decisions?
- Are they dependent upon others?

# Functional Elements

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- Can they protect themselves?
- Can they foresee the possible problems related to not performing tasks?
- Can they compensate for deficits?

# Means of Enhancing Capacity

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- Level of assistance required will depend on the severity of the cognitive/physical deficits.
- May benefit from cues and reminders to assist memory.
- Introduction of social services
  - E.g., Meals on Wheels, Home Health Aide
- Move to a more supportive environment
  - E.g., Assisted Living Facility

# Assessing Changes in Capacity

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Finances



# Management of Finances & Estate

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- Involves performance skills
  - Correctly counting coins and paper money
  - Accurately writing checks
  - Correctly paying bills

# Management of Finances & Estate

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- Also involves judgment-related skills
  - I.e., Making decisions that optimize financial self-interest
- And specific legal capacities
  - Contractual capacity
  - Donative capacity
  - Testamentary capacity

# Functional Elements

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- General Domains
  - Knowledge of personal assets
  - Understanding of estate arrangements

# Functional Elements

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- Specific Abilities & Tasks
  - Basic monetary skills
  - Understanding loans, savings, & interest rates
  - Bill Paying

# Diminished Capacity is Related To...

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- Medical Conditions
  - Neurodegenerative Disorders: Alzheimer's Disease & Parkinson's Disease
  - Severe Psychiatric Disorders – Schizophrenia, Bipolar Disorder
  - Substance Abuse Disorders
  - Developmental Disorders

# Values & Diminished Capacity

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- Has the ward been scrupulous in their adult life or laissez faire regarding financial matters?
- Have they taken responsibility for their finances or depended upon others?
- Do recent problems reflect a change from premorbid baseline, or are they an extension of a pre-existing management style?

# Must Consider Risk

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- Consider relative risk
- Poor financial planning can lead to
  - Unintentional poverty
  - Victimization & exploitation
  - Potential for undue influence

# Means of Enhancing Capacity

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Supervision regarding financial matters

*But, must exercise caution because impaired individuals can continue to be highly vulnerable to victimization/exploitation despite the presence of periodic support*



# Questions to Ask

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- “What is your financial history? Are you in debt?”
- “Do you live week to week?”
- “Are you able to plan ahead & save for the future?”
- “Do you have enough money to provide for yourself in retirement?”
- What do you like to spend money on? What are your highest priorities?”
- “Have you made a will?”

# Questions to Ask

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- “If you needed help with your finances, who would you turn to? Who can you trust to ensure your best interests?”
- “How well does that person handle their finances?”
- “What types of investments do you currently have?”
- “How would you like to invest your money in the future?”
- “Do you have, or would you like to, obtain a financial advisor? Would that person be more objective than a friend or relative?”

# Assessing Changes in Capacity

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Undue Influence

# Undue Influence

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- The intentional use of social influence, deception, and manipulation to gain control of the decision making of another.
  - Use of power to exploit trust, dependency & fear of another to gain control over decision making.

# Conceptual Frameworks

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- “Ideal” Protocol – Bennett Blum, MD
  - Isolation from family and friends
  - Dependency on the perpetrator
  - Emotional manipulation/Exploitation
  - Acquiescence of the victim due to the above factors
  - Financial loss

# Conceptual Frameworks

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- “SCAM” Model – Susan I. Bernatz, Ph.D.
  - **Susceptibility** factors of the victim
  - **Confidential** and trusting relationship between the victim & the perpetrator
  - **Active Procurement** of legal or financial transactions by the perpetrator
  - **Monetary** loss of the victim

# Perpetrator Behavior

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- Brandle/Heisler/Steigel Model
  - Isolate victim from others and from information
  - Create fear
  - Prey on vulnerabilities
  - Create dependency

# Perpetrator Behavior

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- Create lack of faith in own abilities
- Induce shame and secrecy
- Perform intermittent acts of kindness
- Keep unaware of their intent and loss of assets



# Must Explore...

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- Changes in the victim's spending habits
- Financial transactions that are uncharacteristic
  - E.g., Multiple ATM withdrawals from an account of someone who is homebound, online transactions when the account owner doesn't have a computer

# Must Explore ...

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- Changes in a will or trust that are not consistent with a previous disposition
- Big decisions being made in the absence of any third party advisors.

# Communicating with Special Populations

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Mental Illness, Dementia, Personality  
Disorders, & Intellectual Disabilities

# The Mentally Ill

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- Be respectful
- Understand that their hallucinations/delusions are part of their reality
  - Don't argue with them about them.
  - Don't pretend that you experience them.

# The Mentally Ill

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- Don't assume that they are not smart and will believe everything you tell them.
  - Don't lie to unless it's for a good reason.
- Paranoid people need additional space & time
  - The pace with them will likely be slower than the pace with other people.

# Suicidal People

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- Be calm
  - Don't be shocked
- Listen
- Don't be judgmental
- Accept their feelings.

# Suicidal People

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- Ask Open-Ended Questions
  - When did you begin feeling like this?
  - How can I best support you right now?
  - Have you thought about getting help?

# 10 Things Not To Say

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To a Suicidal Person



# 10 Things ...

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- “You’re life isn’t that bad”
- “Your family would be devastated if you killed yourself. How could you do that to them?”
  - Comment inspires guilt – which is not helpful
- “You have so much to live for.”
- “Things could be so much worse.”

# 10 Things ...

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- “Suicide is selfish”
  - Depressed people think that they are a burden to others. To them, suicide frees their family/friends of the burden.
  - Escaping excruciating pain is a natural response.

# 10 Things ...

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- “Suicide is cowardly”
  - Comment inspires shame – which is not helpful
- “You don’t really want to die”
  - This is invalidating and dismissive

# 10 Things ...

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- “Other people have problems worse than you and they don’t want to die.”
  - Suicidal people already compare themselves to others & feel defective. Pointing out that others are coping better than them is not helpful

# 10 Things ...

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- “Suicide is a permanent solution to a temporary problem.”
  - Not good to reinforce the idea that suicide is a solution.

# 10 Things ...

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- “You will go to hell if you commit suicide”
  - They likely have already thought of this.
  - They may not believe in hell.
  - They may believe that God will forgive them.
  - Telling they will go to hell can exacerbate feelings of alienation.

# If You Say the Wrong Thing

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- Stay Calm
- You can't unsay it. But you can fix it.
- Acknowledge the mistake.
  - “I’m sorry I upset you.”
- Ask: “How can I help?”

# Dementia

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- Speak clearly and calmly
- Speak at a slightly slower pace
- Allow time between sentences to allow the person to process the information & respond



# Dementia

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- Avoid raising your voice
- Use short, simple, sentences
- Be conversational
- Avoid asking too many questions or complicated questions.

# Dementia

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- Break big concepts down into smaller parts
- Ask one question at a time
- Rephrase rather than repeat if they don't understand what you are saying

# Avoid

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- Saying “I just told you that”
  - Instead, gently restate what you said.
- “Elderspeak”
  - Don’t refer to the person as “honey,” or “dear.”
  - It’s patronizing.

# Intellectual Disabilities

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- Allow additional time to exchange information
- Gain the ward's attention and eye contact if possible
  - But respect the preference to avoid eye contact with individuals with autism or related disorders

# Intellectual Disabilities

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- Talk in a quiet location
- Focus communication efforts on the ward as much as possible
- Use plain /concrete language
- Use short, simple sentences
- Speak slowly

# Intellectual Disabilities

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- Do not shout
- Pause frequently
- Have them state information in their own words
- Rephrase questions/information to facilitate understanding

Admit it when you don't  
know something

# Dealing with Resistance

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- It's not something negative that needs to be eliminated
  - It's a protective mechanism
- Remove your ego
  - They aren't "doing something to you" by being resistant



# Dealing with Resistance

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- Manage Yourself in the Moment
  - Practice mindfulness
  - Take a deep breathe
  - Respond rather than react

# Dealing with Resistance

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- Use reflective statements & questions
  - “I could tell that you didn’t want to talk about your finances when I asked about them. What’s going on?”

# Effective Communication

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## General Guidelines

# Effective Communication

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- Be Encouraging
  - People respond to positive interactions
- Use Silence
  - Not speaking may prompt the individual to process and/or respond
- Appropriate Tone, Rate, & Volume of Voice
  - Speak slowly with a controlled rate and quiet & deliberate tone

# Effective Communication

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- Use Clear Language
  - Rule of 5: No more than 5 words in a directive & no more than 5 letters per word
- Demonstrate Openness
  - An honest demeanor decreases guardedness
- Use “I” & “We” Statements
  - “We can work this out” v. “You need to calm down”

# Active Listening

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- The process of being more attentive & efficient while portraying genuine interest.
- Helps the individual feel understood, worthy, appreciated, and respected
- Validates emotions, encourages conversation, & fosters exploration of options

# Active Listening

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- Attend to the ward's verbal and nonverbal communication
- Listen to what the ward:
  - Says
  - How they say it
  - How they feel about what they say

# Active Listening

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- Understand the ward's behavior
  - Feelings are expressed through behavior
  - Must know what that means for the ward
- Understand how the ward makes sense of their situation
- Are they open to looking at things in a different way?



# Active Listening

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- Listen for themes and patterns
  - Themes: Repeated sets of ideas/notions
  - Patterns: Repeated sequences of behavior
- Both can impact daily behavior
  - E.g., Making threatening statements in response to anger provoking situations.

# Focused Attending

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You must attend in order to listen

&

Listen in order to understand

# Psychological Attending

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- Putting aside personal distractions, worries, and self-concerns
- Giving the ward center stage

# Physical Attending

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- Have an open posture
- Lean forward if appropriate
- Make eye contact
- Relax

# Attuning

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- Validating the individual's emotions by communicating empathically through facial expressions, body language, open attitude & voice

# Empathy

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Having a Supportive Presence

# Empathy

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- Seeing things from the ward's perspective
  - Conveys warmth, caring, & acceptance
  - Appreciate & affirm without condoning specific behavior t

# Genuineness

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- People respond well to sincerity
- Avoid fake smiles and false reassurances
- Not the same as total honesty
  - Don't need to say everything you think
  - But, have to think about everything you say
- Always consider the impact of what you say



# Validation

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- Appreciate the reality of the ward's experience
- Affirm the ward's strengths
- Provide concrete support
- Advocate when appropriate

# Communicating Empathy

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- Mirror the ward's posture, facial expression, & gestures
  - Communicates that you know where the ward is “at”
- Reflect the content/affect of what the ward says back to him/her
  - “It sounds like it scared you when the doctor mentioned surgery”

# De-Escalation Strategies

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Re-directing, Correcting, &  
Diffusing

# Assess the Individual

- Appearance
- Eyes
- Level of Escalation
- Mood
- Body Language
- Respiration

# Assess the Individual

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- Voice
  - Tone: Sarcastic, threatening
  - Rate: Fast, excited
  - Volume: Escalating, uncomfortable silence

# Assess the Individual

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- Variables Influencing Behavior
  - How is their ability to cope affecting the situation?

# Assess the Individual

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- Purpose of the Behavior
  - Intimidation
  - Truly in distress
- History and Patterns of Behavior

# Assess the Individual

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- Medication
  - Type of medication or recent change in medication
  - Non-compliance



# Self-Assessment

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- Emotional State
  - Current mood, level of tolerance, frustration level
- History & Relationship
  - Do you have a positive, negative, or no history
  - Do you have rapport
- Communication
  - Clear and consistent with affect

# Assess the Environment

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- Communication Devices
- Exit Strategies
- Potential Weapons
- Are there people who might also start escalating or encourage escalation?

# Non-Verbal Prompts

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- Purpose: to prompt the individual to self-correct their behavior
- Best when affect and body language communicate a calm and confident presence
- When used correctly, they encourage appropriate behavior without calling attention to the individual's behavior in a negative manner

# Non-Verbal Prompts

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- Planned ignoring
- Signals
  - Eye Contact – Look at the individual in an even & steady manner
  - Facial Expressions smiling, frowning, raising/lowering eyebrows
  - Body Language
  - Gestures

# Non-Verbal Prompts

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- Environmental Prompts
  - Direct the individual's attention to an object/location in the environment
- Minimize External Stimuli
  - Direct them to quiet area/lessen stimuli

# Non-Verbal Prompts

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- Proximity Prompt
  - Moving closer to the individual in a non-threatening manner to encourage appropriate behavior

# Verbal Interventions

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Statements/Requests that Direct or Correct  
Behavior

# Paraverbal Communication

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- The messages that are transmitted through tone, rate, & volume of voice
- Tone: Conveys mood, emotion, & attitude



# Paraverbal Communication

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- Rate
  - Slow & controlled = soothing
  - Rapid = fear, uncertainty, anger
- Volume: Should be appropriate for the circumstance

# Verbal Techniques

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- Used to urge individuals to participate & cooperate
- Goal: Help the individual de-escalate & comply
- Your judgement determines which one to use

# Encouragement

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- Indicate Concern
- Use Clear Language
- Offer Assistance
- Offer Choices Between 2 Appropriate Options
- Acknowledge/Praise Their Efforts

# Discussion

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- Paraphrase
  - Clarifies & demonstrate interest
- Reflect Feelings
- Validate: Acknowledge their feelings & concerns

# Discussion

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- Use Pauses to emphasize key points
- Redirect to another topic if they show signs of aggression or agitation

# Discussion

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- Use open-ended questions/phrases
  - “Tell me more,” “Help me understand”
- Positive Feedback
- Summarize

# Direction

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- Direct Appeal: Ask them to alter their behavior or accomplish a task
- Positive Problem-Solving
  - Identify the situation
  - Provide acceptable alternatives
  - Prompt them to select an alternative

# Direction

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- Benign Confrontation
  - Confront in a non-threatening, non-judgmental manner
  - Provide a quick reminder regarding the expectations for their behavior



# Direction

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- Limit Setting
  - Firmly state/restate what is expected or acceptable
- Consequence Reminder
  - Remind them in a calm, concise, & neutral manner what will occur following a behavior or action

Final Thoughts ... Questions?

# Assessing Diminished Capacity

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## References

*Assessment of Older  
Adults with Diminished  
Capacity: A Handbook  
for Psychologists*

[www.apa.org/pi/aging](http://www.apa.org/pi/aging)