

Intoxicated, Demented and Deranged

Diminished Mental Capacity

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A little about me

- 20 years in EMS
- 7 years practicing law
- 1 year on a helicopter



Disclaimers

- This is legal information, not legal advice. Consult a lawyer if you have a legal entanglement.
- The opinions presented are my own. They do not necessarily represent the opinions of any agency where I am affiliated.
- This presentation does not authorize you to change protocol.

Disclaimer/ Admission

- Much of this lecture is based on the speaker's trial and error.
- Most mistakes discussed in this lecture have been made by me.

Outline

- Various types of mental incapacity.
- Medical reasons for incapacity.
- Assessments of capacity.
- Tools for dealing with diminished capacity

Goals

- Define capacity
- Discuss reasons for mental incapacity
- Describe basic capacity assessments.
- Discuss techniques for dealing with patients who are suffering from diminished mental capacity.

GOAL

- Reduce the grey areas.
- I will try to say something concrete whenever I can.

Golden rules

- Always consider the interests of the patient.
- Always think “WIN-WIN.”

Capacity

- What is it and why do we care?
- Capacity generally describes a person's ability to make a decision.

What aren't we talking about?

- We are concerning ourselves with patients who have a GCS of 14 or 15.
- These are patients we would consider to be awake and oriented (maybe slightly disoriented).
- Patients with true AMS are not the focus of today's lecture.

Medical Consent

- Capacity is required to consent to OR REFUSE medical care.
- Informed consent has 3 elements:
 1. Adequate information about risks/benefits
 2. Decision making free from coercion.
 3. Capacity

Your patient is awake and oriented, but.....

- He seems dazed.
- Or simply not interacting with you.
- An elderly person who takes a long pause and seems to consider answers to very simple questions.

Can we grab these patients and throw them on the stretcher?

- Almost never.

Implied consent

- If the patient can not answer, either verbally or non-verbally consent is implied.
- If they can answer, even non-verbally, consent is not implied.
- If they aren't able to fully understand the meaning of refusal, they are in the hated gray area.

4 elements of capacity

- 1) Understanding
- 2) Expressing a choice
- 3) Appreciation
- 4) Reasoning

Element 1 - Understanding

- Understands the relevant information, including risks and benefits.

Element 2 – appreciate the situation

- Understand how the information presented relates to their particular situation.

Element 3 - reasoning

- Be able to compare choices and explain why one is superior to another

Element 4 – ability to express a choice

- Ability to use elements 1-3 and express a clear choice.

Assessment

- EMS providers are not trained to fully assess competency.
- However, we can use a short version that will give us a pretty good idea.

Assessment

- Ask questions!
 - Describe the risks of refusing to me.
 - Can you tell me in your words what medical problem you are having?
 - Why are you choosing refusal over transport?
- Assesses understanding
- Assesses appreciation
- Assesses reasoning

Asking capacity questions

BAD

- Rushing
- Looking judgmental
- Making it seem like a test.
- Allowing other providers to participate.

GOOD

- Open ended.
- Allow the person to finish.
- Finding out the root problem.

Cognitive assessment

- The prior questions are subjective.
- Some departments prefer a simple cognitive test.

6 point test

Give the patient 3 words to remember (ex: apple, bus, horse)

1. State day
2. State the month
3. State the year
- 4-6. State the three words.

6 point test

- Based on a simple test that was validated for dementia.
- Assesses cognition but not risk assessment.

Arlington fire department

- Determine memory

 - 3 object test

 - Memory test

- Concentration

 - Counting or ABC test

 - Determine attention and verbal recall

 - Follow complex command

Performing tests

- Tests must never be accusatory.
- NEVER present them as pass/fail.
- WRONG: I need you to pass this test so you can refuse.
- BETTER: I want to make sure you're OK. I'm going to take your vitals and ask you some questions. They might seem silly but they help me determine if you are having a stroke or other medical issue we might need to discuss with a doctor.

EMT stuff

- Alcohol
- Endocrine/Electrolytes
- Infection
- Overdose
- Uremia
- Trauma
- Insulin
- Poisoning/Psych
- Stroke/Seizure
- When dealing with capacity issues, always consider an underlying medical emergency.

Case Study

- You respond to a fall patient. He knows where he is but is hesitant to give information.
- You eventually discover he has seizure history.
- You wait the patient out and he eventually agrees to transport to have blood work performed.

REFUSALS

- Probably the largest area for EMS providers.
- Transporting someone to the emergency room who wants to go but lacks the capacity to explain the decision is a low risk offense.

What goes into a refusal?

- Do you explain the risks?
- Was your explanation realistic?
- Did it include the worst case scenario?

Was some of that documented?

Patience

- EMS providers:
 - We often like control
 - We like to do things fast.
 - We like things to fit into orderly protocols.

“Hospital or jail?”

- Get away from it now!!
- Coercive.
- Not in the best interests of the patient.
- Leads to angry patients.

Intoxicated refusal

- Remember alcohol affects risk assessment.
- Appreciation not cognition is the issue.

LA fire case

- Paramedic approaches a man in police custody.
- The man is laying unconscious on the ground.
- Police waive off the paramedic, the man was “just drunk.”

The Tuscon Fire method

- Talking and Walking → Law enforcement/friend
- Talking not Walking → BLS transport
- Not Talking or Walking → ALS transport

Changing the system

1. Stop saying hospital or jail.
2. Stop asking police to do it for you.
3. Advocate for a system wide policy.

Protections

- Patients should always sign the epcr giving permission to transport outside the view of the police.
- The patient should always sign prior to transport.

Dementia

- Occasionally a patient will be conversant, polite humorous....

But utterly incapable of consenting to a medical procedure.

Fluctuations

- Capacity changes.
- A patient who lacks capacity on Tuesday night may have it the next morning.
- Medication schedules and dementia patterns may influence timing.
- This can be very important when discussing things with patients!

assessment

- The tools discussed earlier are a good start.
- Asking family about baseline is often helpful.
- Go slowly. EMS people talk fast and sometimes we just need to slow down.
- Remember your golden rules.

Mental health

- Mental health issues plague a number of patients.
- Over 100,000 patients in the United States may suffer from schizophrenia, bipolar disorder or other conditions capable of producing conditions that alter capacity and cognition in meaningful ways.
- Severe depression can also alter mental capacity in significant ways.
- Drug use can closely mimic the above conditions.

Combative patients

- Place in police custody.
- Use chemical sedative if available.

Excited delirium

- State of agitation that produces hyperthermia, muscle breakdown and life threatening electrolyte and blood gas imbalances.
- May be precipitated by mental illness or drug use.
- This is a life threatening emergency and the patient should be sedated immediately.
- Ketamine 4-5mg/kg IM.

Agitated but not combative

- Always call police if you feel it is necessary for safety.
- You can still talk to these patients.
- The majority of agitated patients do not require handcuffs.

CIT Training

- Many police departments are adding 40 hour training programs that teach police officers de-escalation techniques for dealing with the mentally ill.
- This can be a useful resource.

Agitated approach

- Don't sneak up.
- Don't grab without permission.
- No arm crossing.
- Hands out of pockets.
- Only a few people near the patient.



Communication

- Talk in a normal voice.
- Do not respond in kind to insults.
- Start with the capacity questions.
- Point things out in a non-confrontational way.
 - “I noticed that it’s cold and you left the house without a shirt. Are you cold?”

CONVERSATION

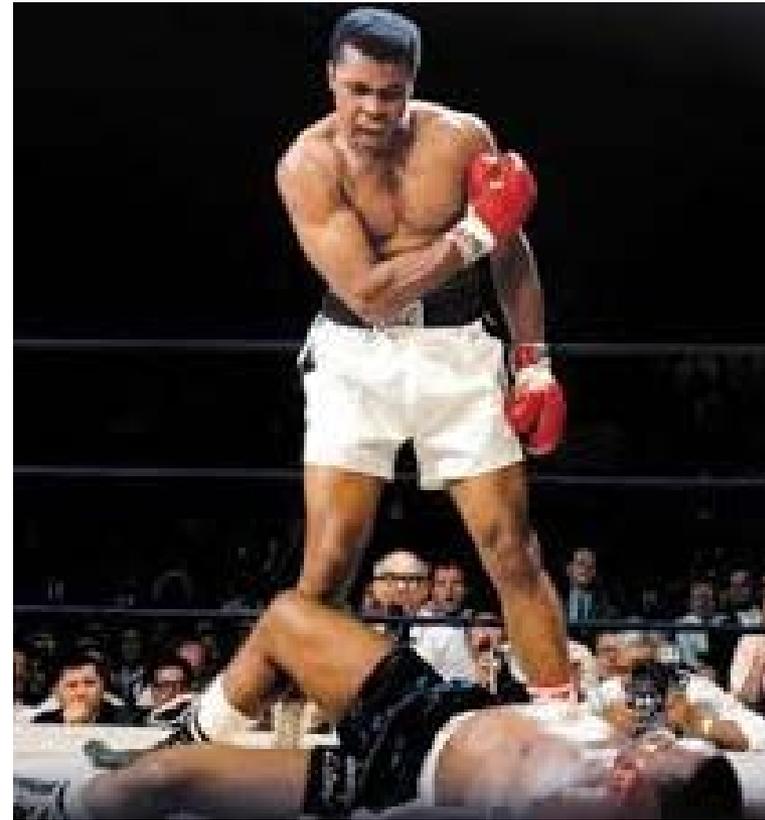
DO

- Acknowledge feelings
- Offer alternatives.
- State boundaries.

NEVER

- Play into psychosis or hallucinations.
- Try to win or refute arguments point by point.
- Be directly argumentative

A guy's first thoughts on conflict resolution



GOALS

- Positive attitude.
- If you tell yourself that the situation is going to escalate you will almost always be right.

What if they aren't competent?

- Talk to them
- Talk to them some more.
- Sometimes you can wear patients down.
- If you think they don't need to go to the hospital, call medical control.

Legal Process

- There are two kinds of orders which allow a person to be taken into protective custody.
- An Emergency Custody Order (ECO)
- And the Temporary Detaining Order (TDO)
- The terms are sometimes used incorrectly.
- We will deal primarily with ECO orders.

ECO

- There are two types of ECO:
 1. Mental Health ECO
 2. Medical ECO
- The two types give the same order in the end but follow a different process.

Mental Health ECO

Va Code 37.2-808

- A magistrate shall issue an ECO when he has probable cause to believe:
 - i) has a mental illness and that there exists a substantial likelihood that, as a result of mental illness, the person will, in the near future, (a) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (b) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs, (ii) is in need of hospitalization or treatment, and (iii) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

Mental Health ECO

- Allows transport by law enforcement for mental health evaluation.
- A law enforcement officer may take someone into custody without a magistrate's prior authorization.
- An ECO expires in eight hours

Mental Health ECO

- Mental health evaluator will determine if further hospitalization or treatment is required.

Medical ECO

Va. Code 37.2-1103

- Deals with patients who can not make an informed decision due to illness or injury that may cause them imminent harm.
- Issues by a magistrate based on the opinion of a physician.

Medical ECO

- You arrive on scene. A man is refusing care for an obviously fractured femur.
- He claims he is fine and will seek treatment next week.
- He is not under arrest for any crime.

Medical ECO

- EMS providers must communicate with a physician.
- If at all possible the physician should speak to the patient by phone.
- The physician must then contact the magistrate.
- An ECO can then be issued. The patient can then be transported to the hospital and tested as necessary. Within 4 hours a TDO must be applied for if necessary.

TDO

- Allows continuation of treatment.
- Also used to compel prisoners to accept medical treatment.

ECO

- Rarely necessary but a good option of last resort.
- You may need to plead your case.
- If you truly believe a patient needs to be treated, convince the magistrate, physician or LEO.
- Terminology helps! Saying that someone failed a cognition screen or has diminished mental capacity evidenced by lack of situational appreciation is better than
“they aren’t thinking straight”

Questions
