

# Capacity vs. Competency: to amputate or not amputate

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Mental decision-making capacity is a medical term. Mental competence is a judicial term. Physicians (not just psychiatrists), registered nurses, and certain licensed mental health professionals are qualified to assess capacity. Only a Judge can declare incompetency. Capacity and competence are often mistakingly intertwined, even by medical professionals. My years working as a medical social worker and later, certified healthcare ethicist, clarified my own understanding between the two.

Capacity typically comes into question with mental illness, dementia, addiction, or observed risky behavior. A person can have the capacity to make one decision and not another. For example, someone can have the ability to decide what to eat, but not what physician-prescribed medications to take.

Capacity includes assessment of orientation, insight, and judgment. Insight and judgment should be assessed for each decision in question. A person may have insight into consequences for one decision but not another.

## **Case Example**

An African-American male in his late 40s (let's call him Joe) has a history of schizophrenia, uncontrolled diabetes, and one leg amputation above the knee. His other leg has a large infection. Joe is homeless and reports having no outside supports. A team of physicians recommends amputating Joe's remaining leg or risk death. Joe disagrees with recommended treatment and desires an attempt to fight the infection with strong IV antibiotics. His decision-making capacity was questioned and psychiatric assessment ordered.

Each time Joe's capacity was assessed (total of 3), he presented with decision-making capacity for making a decision on treatment for infection. In fact, he showed sound judgment and clear insight when he stated, "the only thing worse than dying is living on the streets with no legs. Life on the streets is hard enough with one leg."

He was discharged to a skilled nursing facility to receive treatment plan option # 2, a long course of IV antibiotics that offered its own complications and no guarantee of saving his leg nor his life. Several months later, Joe lives and thrives with an infection-free leg.

## **Ethics Principles**

Joe's case speaks to the principle of autonomy and the right to self-determination. People are allowed to make decisions for themselves even if they seem illogical. The medical providers seek to do no harm or act with beneficence. Once Joe demonstrated insight and sound decision-making, outsiders were not in a position to impose their beliefs on him. No one other than Joe can fully understand the consequences within the context of his

lifestyle and his values. Joe lives or dies with the outcome of his choices. As long as medical providers explore all treatment options and adequately assess decision-making capacity for each decision, they are not acting with maleficence.

## **Competency**

Some adults lack a mental capacity for making financial, legal, and/or medical decisions. In these wide-ranging cases, someone petitions the courts to make a judgment on competency. A petition requires medical professionals to attest to incapacity. Each state and individual Judge hold views over autonomy at varying thresholds. Competency is rarely a clear-cut decision.

In all cases, it's important for professionals to work as a multi-disciplinary team that considers all perspectives and involves the patient and their families. People are social and don't function in silos (even Joe). Patient outcomes impact many - self, family, providers, health organizations, and the public (via policy).

Joe's case could have had different results with other providers in another state. Capacity. Competency. It's complicated.