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## FAST FACTS AND CONCEPTS #55

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**Background** Informed consent is based on the principle that patients should be allowed to make decisions for themselves. Decision making capacity thus serves as a gatekeeper concept. Patients who have it can make decisions for themselves; conversely, a surrogate is needed for patients who lack decision-making capacity. Competency is a legal term referring to a decision made by judge, although a physician's opinion carries considerable weight in a competency hearing. In contrast, decision making capacity ('decisionality') refers to a physician's determination, based on clinical examination, that a patient is able to make medical decisions for him- or herself. Most state Power of Attorney for Health Care documents require a physician (or similarly qualified individual such as a psychologist) to document that a patient has lost decision making capacity for the surrogate to become the legal agent for medical decisions.

### Assessing decision making capacity

- To be deemed 'decisional,' a physician must be satisfied that a patient is able to do three tasks:
  - Receive information (e.g. must be awake, but not necessarily oriented x 4),
  - Evaluate, deliberate, and mentally manipulate information, and
  - Communicate a treatment preference (e.g. the comatose patient by definition is not decisional).
- Physicians should look for:
  - **Understanding.** Does the patient adequately understand the information about the risks, benefits, and alternatives of what is being proposed? The patient does not have to agree with your interpretation, but should be able to repeat what you have said. Ask, Can you repeat to me the options for treating X I have just discussed with you? Can you explain to me why you feel that way? What is your understanding of what will happen if we don't do Y?
  - **Logic.** Is the logic the patient uses to arrive at the decision "not-irrational"? One wants, as much as possible to make sure the patient's values are speaking, rather than an underlying mental or physical illness. Note: Severe depression or hopelessness will make it difficult to interpret decisionality; consult psychiatry for assistance with this or other complex cases.
  - **Consistency.** Is the patient able to make a decision with some consistency? This means not changing one's mind every time one is asked. Is the decision consistent with the patient's values? If there is a change in the patient values, can the patient explain the change?

### Decision making capacity is contingent

- Task specific. Deciding if the patient is decisional means weighing the degree to which the patient has decision making capacity against the objective risks and benefits to the patient. Some decisions are more complex than others, requiring a higher level of decision-making capacity. Thus a moderately demented patient may be able to make some decisions (e.g. antibiotics for pneumonia) but not others (e.g. chemotherapy for metastatic lung cancer). This sliding scale view of decisionality holds that it is proper to require a higher level of certainty when the decision poses great harm.
- Time specific. When encephalopathic a patient may not be decisional; after treatment decisionality may be regained.

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