

# **Court-Appointed Counsel for Alleged Disabled Persons**

**Understanding Disabilities and Diminished Capacity:**

- **Assessing Capacity**
- **Signs and risk factors of abuse, neglect, and exploitation**

**Adult Public Guardianship Review Board**

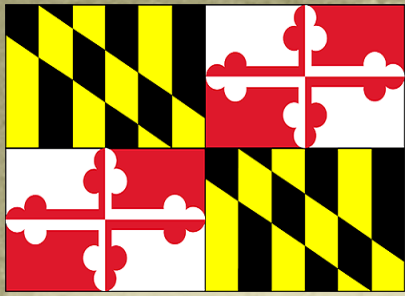
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# Court-Appointed Counsel for Alleged Disabled Persons



## Training Elements

- Assessing Capacity
- Signs and risk factors of abuse, neglect, and exploitation
- Types of abuse (financial, physical, emotional and sexual abuse, neglect, abandonment)
  - How to report suspected abuse or neglect
  - Adult Public Guardianship Review Board

# CAPACITY ASSESSMENTS

May be needed to:

- Determine if abuse has occurred
- Determine what interventions are available and appropriate

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Several simple screening tools are available to help detect problems. Examples include:

- BIMS (Brief Interview for Mental Status)
- Clock Drawing Test/Mini Cognitive Assessment
- BCAT (Brief Cognitive Assessment Tool)



# PRINCIPLES OF CAPACITY ASSESSMENT

Capacity is specific to the task at hand. Various tasks and decisions required different types and levels of capacity.

**Does your client understand their situation?**

**Does your client understand the risks of their behavior?**

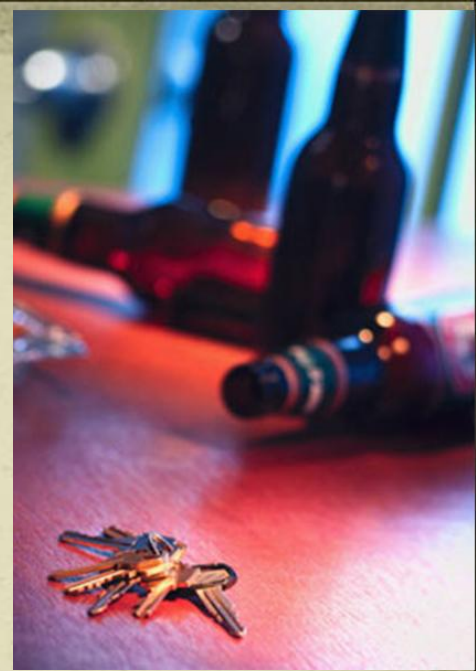
**Does your client understand the benefits of accepting help?**

**Does your client  
understand their  
situation?**



Your assessment of whether the client has the mental capacity to understand the elements of their situation as well as the risks and benefits will determine whether you can walk away if they refuse services or whether you need to refer the client for a full geriatric assessment.

**Does your client  
understand the risks of  
their behavior?**



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People of all ages have the right to make poor decisions and engage in risky behaviors. However, you need to determine whether your client understands the risk.



# CAPACITY CAN VARY:

- ▶ As a result of physical or mental stress.
- ▶ According to the complexity of the decision.
- ▶ From day to day.
- ▶ From morning to evening.

Source: Kemp 2005

# CAPACITY EVALUATION

A complete capacity evaluation usually includes:

- A physical examination
- A neurological examination
- Short and long term memory assessment
- Assessment of executive function
- Exam for existing psychological disorders
- Diagnosis of any existing addictive syndromes.



# ASSESSMENT TOOLS

- All assessment tools:
- Have limitations
- Cannot measure all variables in assessing decisional capacity
- Should never be used exclusively to assess a client's decisional capacity



Source: Quinn 2005

# BIMS (Brief Interview for Mental Status)

Resident Name \_\_\_\_\_ Identification # \_\_\_\_\_ Date \_\_\_\_\_

## Brief Interview for Mental Status (BIMS)

### Repetition of Three Words

Ask resident: "I am going to say three words for you to remember. Please repeat the words after I have said all three. The words are: sock, blue and bed. Now tell me the three words."

Number of words repeated after first attempt:

0. None

1. One

2. Two

3. Three

After the resident's first attempt, repeat the words using cues ("sock: something to wear; blue: a color; bed: a piece of furniture"). You may repeat the words up to two more times.

### Temporal Orientation (orientation to month, year and day)

Ask resident: "Please tell me what year it is right now."

Able to report correct year


0. Missed by > 10 years, or no answer

1. Missed by 5-10 years

2. Missed by 1 year

3. Correct

Ask resident: "What month are we in right now?"

Able to report correct month


0. Missed by > 1 month, or no answer

1. Missed by 2 days to two months

2. Accurate within 2 days

Ask resident: "What day of the week is today?"

Able to report correct day of the week


0. Incorrect, or no answer

1. Correct

### Recall

Ask resident: "Let's go back to the earlier question. What were the three words that I asked you to repeat?" If unable to remember a word, give cue ("something to wear," "a color," "a piece of furniture") for that word.

Able to recall "sock"

0. No - could not recall

1. Yes, after cueing ("something to wear")

2. Yes, no cue required

Able to recall "blue"

0. No - could not recall

1. Yes, after cueing ("a color")

2. Yes, no cue required

Able to recall "bed"

0. No - could not recall

1. Yes, after cueing ("a piece of furniture")

2. Yes, no cue required

### Summary Score

Add scores for each question and fill in total score (00-10). Enter 99 if the resident was unable to complete the interview.

\_\_\_\_\_

# Example:

## CLOCK DRAWING TEST

- ▶ Tests frontal lobe functioning.
- ▶ Provides information about executive functioning (the ability to think abstractly, plan, judge situations, etc. Executive functioning affects many areas of life)
- ▶ Of 49% of APS clients who passed the MMSE, 55% failed CLOX<sub>1</sub>



Source: Royal and Polk 1998



# B-CAT (Brief Cognitive Assessment Tool)



**BCAT™** | BRIEF COGNITIVE ASSESSMENT TOOL

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Name: \_\_\_\_\_  
 DOB: \_\_\_\_\_  
 Gender: Female / Male  
 Education: \_\_\_\_\_  
 Examiner: \_\_\_\_\_

Today's Date: \_\_\_\_\_

Total Score: \_\_\_\_\_  
 Cut Score: 37/38 (dementia  $\leq 37$ ; non-dementia  $\geq 38$ )

**POINTS**

## ORIENTATION

Year     Month     Day/Week     State     City     Situation

\_\_\_\_\_ / 6

## IMMEDIATE VERBAL RECALL

(Instructions: Score Only 1<sup>st</sup> Trial)    **BANANA**    **JUSTICE**    **SARA**    **BRIDGE**

1st Trial                   

2nd Trial                   

\_\_\_\_\_ / 4

## VISUAL RECOGNITION/NAMING



\_\_\_\_\_ / 3

## ATTENTION

**Letter List:** (Instructions: Read Letters, Instructing Patient to Tap with Hand at Each Letter C; No Errors=1 Point, Error=0 Points)

C F B T O L C C Q A Z C B R B Q W D C S B L R B C B Z X C B

\_\_\_\_\_ / 1

**Mental Control:** (Instructions: Count Backward from 20-1)

(Instructions: Recite Days of the Week Backward from Sunday)

\_\_\_\_\_ / 1

**Digits: FORWARD**    2 5 9 7 4    5 1 7 8 9 6

**BACKWARD**    6 2 7    4 1 8 9

\_\_\_\_\_ / 2

\_\_\_\_\_ / 2

## ABSTRACTION

(Instructions: Find the Similarities)     Apple - Orange     Train - Boat     Book - Newspaper

\_\_\_\_\_ / 3

## LANGUAGE

**Repeat:** (Instructions: No Errors=1 Point, Error=0 Points)

"Michael married Marie's mother."

\_\_\_\_\_ / 1

**Fluency:** (Instructions: Girl Names/60 Seconds; X > 15 = 2 points, X = 8-14 = 1 point, X  $\leq$  7 = 0 points)

\_\_\_\_\_ / 2

# Overview

- **Adult Protective Services Program (APS)**
- **Risk/Investigation Categories of Adult Abuse**
- **Reporting Guidelines**
- **APS Investigation Timelines**
- **Coordination with other agencies**
- **Resources**



## State Law/COMAR (Regulations)

- ❑ Title 14 - Maryland Family Law Article, contains the statutory law that governs APS. Purpose of this program is to assist or act on behalf of disabled adults who are unable to protect their own interests, health, safety and welfare. Law also provides protection for any person who in good faith makes or participates in making a report.
- ❑ APS is regulated under the Annotated Code of Maryland Regulations (COMAR)



# Duty to Report - Mandated Reporters



- ❖ *New (2012) MD law now requires Fiduciary Institutions (Banks) to report suspected financial abuse or exploitation of an elderly person aged 65 years & older years to local APS agency, local law enforcement, long term care ombudsman, Office of the Attorney General or State's Attorney for investigation.*
- ❖ Health Practitioner
- ❖ Police Officer
- ❖ Human Service worker
  
- ❖ Anyone who contacts, examines, attends, or treats an alleged vulnerable adult, who has reason to believe that the alleged vulnerable adult has been subjected to abuse, neglect, self-neglect, or exploitation.



# Adult Protective Services Program

A social services program to assist vulnerable adults who:

- are unable to care for their basic living needs **or**
- are unable to access necessary professional services, **or**
- are unable to protect their own interests **and**
- are subject to abuse, neglect, exploitation, or self-neglect.

# Vulnerable Adult

An individual 18 years of age or older who lacks the physical or mental capacity to provide for the adult's daily needs.



# Basic Needs of a Vulnerable Adult

Basic needs as referred to in the COMAR definition of Adult Protective Services?

- Medical Care
- Shelter
- Nourishment
- Education
- Exercise
- Socialization

# **Risk/Investigation Categories**

➤ **SELF-NEGLECT**

➤ **NEGLECT**

➤ **ADULT ABUSE**

➤ **EXPLOITATION**

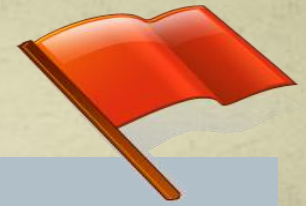
(Includes both Financial and Sexual)

# Self Neglect





# Indicators of Self-Neglect



- Reluctance to leave their homes to visit a doctor's office, clinic, or hospital
- Lack of medical care for a prolonged period of time
- Inability or refusal to see physicians
- Possible under diagnosis, overmedication, or inadequate care
- Pressure ulcers
- Environmental hazards
- Living conditions
- Signs of malnutrition
- General decline

*Neglect  
by  
others*



# Types of Neglect or Warning Signs?



Lack of medical treatment



Inadequate nutrition and/or hydration



Lack of assistive devices



Hazardous environment



Isolation



Lack of social / emotional support



Lack of appropriate clothing, hygiene



Abandonment



Failure to provide mental health resources



# *Physical Abuse*



# Signs and Symptoms Abuse and Neglect

- **Frequent arguments w/caregiver**
- **Drug overdose or mismanagement of meds**
- **Unexplained bruises, marks, broken bones, abrasions, or burns**
- **Sudden changes in financial situation**
- **Bedsore, unattended medical needs, poor hygiene, unusual weight loss or change in behavior of the caretaker**
- **Unable to see vulnerable adult alone, unsuitable clothing or covering**
- **Unsafe living conditions**



# *Exploitation*

*Financial and Sexual*





# Warning Signs of Financial Exploitation

- Withdrawals of money inconsistent with a person's spending habits
- Withdrawals of money inconsistent with a person's income
- Will, property title or valuable asset bequeathed to "new" beneficiary
- Older person "can't find" or "misplaced" valuable personal belongings
- Unusual credit card activity or new credit card account
- Lack of necessities or amenities person can afford
- Unfilled prescriptions or untreated medical problems
- Care giving incommensurate with person's income
- Document(s) missing, suspicious signature on document
- Financial document altered or acquaintance takes up residence with the older person or mail redirected, services overcharged or incessant telephone calls

# Intervention Strategies – Financial Exploitation Cases

Interventions to address financial abuse may include ...

- ▶ Closing joint bank accounts
- ▶ Revoke the power of attorney
- ▶ Put in place a responsible person or agency to assist with managing the victim's funds
- ▶ Restarting utilities if they've been shut off
- ▶ Working through multi-disciplinary teams with law enforcement, banks and others
- ▶ Working closely with banks to recognize, report and investigate financial abuse
- ▶ APS often works to reduce the isolation of the victim, through putting in services, etc., which reduces his/her risk of continued abuse. In many situations, APS refers cases to law enforcement for investigation and prosecution.



# Referral Criteria & Reporting Guidelines

A person having reasonable cause to believe that an adult is in danger of harm of suspected abuse, neglect, self-neglect, or exploitation, or is an emergency situation, should make a report to the local department of social services (LDSS).



# Making a report to APS

- Reports can be made by telephone, letter, direct conversation or other communication. Reports should contain the following:
- Name, age and home address of the alleged vulnerable adult
- Name and home address of the person responsible for the care of the alleged vulnerable adult

# Making a report the APS cont.

- Whereabouts of the alleged vulnerable adult
- Nature and extent of the abuse, neglect, self-neglect, or exploitation of the alleged vulnerable adult, including information available to the reporter concerning previous injury possibly resulting from abuse, neglect, self-neglect, or exploitation
- Any other information that would help to determine the cause of the suspected abuse, neglect, self-neglect, or exploitation

## Referrals not appropriate for APS investigation

- ❑ LDSS does not investigate allegations of abuse of a patient in a mental health facility (Title 10, Health-General Article-DHMH).
- ❑ Abuse of a patient in a facility for developmentally disabled individuals, patient in a nursing home or abuse of a patient in a hospital.
- ❑ Investigations are conducted by the MD Department of Aging/Local Ombudsman, DHMH/Office of Health Care Quality staff or local law enforcement.





# Investigation Timelines

- ❑ Within 5 working days after the receipt of the report of suspected abuse, neglect, self-neglect, or exploitation, if the report indicates a non-emergency exists
- ❑ Within 24 hours after the receipt of the report of suspected abuse, neglect, self-neglect, or exploitation, if the report indicates an emergency exists

# Investigation Timelines cont.

- LDSS has 30 days to complete the investigation
- LDSS has 10 days to complete the investigation if the report indicates that an emergency exists
- Parties participating in an investigation may share pertinent client information relevant to the investigation with APS staff

# Scope of Investigation

- ❑ Investigation shall determine if the individual is a vulnerable adult
- ❑ If there has been abuse, neglect, self-neglect, or exploitation
- ❑ Determination of the nature, extent, and cause of the abuse, neglect, self-neglect, or exploitation
- ❑ Determination of the identity of the person or persons responsible
- ❑ Evaluation of the home environment
- ❑ Determination of any other pertinent facts



# Coordination with other agencies

- ❑ Local law enforcement agencies
- ❑ Local State Attorney's Offices (SAO)
- ❑ Local Area Offices on Aging (AAA) representatives
- ❑ Adult Evaluation Review Services (AERS)
- ❑ Local Health Departments
- ❑ Community organizations (Catholic Charities, Meals on Wheels, Legal Aid Bureau etc.)

# Adult Public Guardianship Review

Advisory board whose purpose is to advise the court (guardian) on the what is in the best interest of the disabled adult. The board votes to either continue, amend or terminate guardianship.

There is an Adult Public Guardianship Review Board in each jurisdiction of Maryland to review public guardianships. It assesses each public guardianship case in that jurisdiction twice per year. The individual has a right to be at the review, if able, and to be represented by an attorney.

# Adult Public Guardianship Review Board

## Eleven Members

- One professional representative of the LDSS
- Two physicians, including one psychiatrist from a local health department
- One representative of an AAA
- One professional representative of a local non-profit social service agency
- One attorney
- Two lay individuals
- One public health nurse
- One professional from the field of disabilities
- A person with disabilities



# Adult Public Guardianship Review Board

- Does this individual need a guardian?
- How can this multidisciplinary team best ensure the health, safety and well-being of the disabled adult?
- Is there an appropriate lay guardian?
- What are the alternatives to guardianship?