Neuropsychological Evaluations of Capacity

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Qualifications of Neuropsychologists

- Doctoral degree in psychology from an accredited university training program
- Internship
- Equivalent of 2 years in the study and practice of neuropsychology and related neurosciences (one of which at post-doctoral level)
- License to practice in his or her state or province or is employed by an exempt agency.

- Board certification
Components of Neuropsychological Evaluations

- Record Review
  - Medical, psychiatric, legal, etc.
- Clinical Interview
  - Collateral interview
- Cognitive Testing
- Psychological Testing
- Performance and Symptom Validity Testing
Neuropsychological Model of Capacity Assessment

- **Input**
  - Understanding a decision needs to be made

- **Computation/Reasoning**
  - Weighing options

- **Output**
  - Communicating decision
The Clinical Interview

- Appearance
- Behavior
- Mood and Affect
- Speech
- Thinking
- Perception
- Insight
- Judgment

- Capacity Assessment
  - Input
  - Computation/Reasoning
  - Output
Cognitive Testing

- Orientation
- Attention and Concentration
- Processing Speed
- Language
- Learning and Memory
- Executive Function
- Visuospatial abilities

- Capacity Assessment
  - Input
  - Computation/Reasoning
  - Output
Executive Function

- Working Memory
- Planning/Sequencing
- Anticipation of Consequences
- Self-monitoring
- Self-awareness
- Flexibility
- Inhibition of Impulses
- Insight
- Judgement

- Capacity Assessment
- Input
- Computation/Reasoning
- Output
Psychological Testing

- Emotion Regulation
- Personality
- Mood disorders
- Thought disorders
Test Examples

- Wide Range Achievement Test, 5th Edition
- Wechsler Adult Intelligence Scale, 4th Edition
- Repeatable Battery for the Assessment of Neuropsychological Status (RBANS)
- Neuropsychological Assessment Battery
- Wisconsin Card Sorting Test
- Geriatric Depression Scale
- Minnesota Multiphasic Personality Inventory, 2nd Edition
- Texas Functional Living Scale

- Screeners
  - MoCA
  - MMSE
Symptom and Performance Validity

- Symptom – psychological symptoms
- Performance – cognitive performance

What are we measuring?
- Effort
- Task Engagement
Issues in Test Interpretation

- Age
- Educational achievement
- Occupational attainment
- Cultural background
- Premorbid psychiatric and medical conditions
- EtOH and other substance use
- Medication effects
- Convergence with typical neuropsychological profile
- Effort and engagement in testing
- Re-testing
Important!

Diagnosis ≠ Disability
Important!

Diagnosis ≠ Incapacity
Activities of Daily Living and Related Capacities

- Self-care
- Financial
- Medical
- Home and Community Living
- Civil or Legal
Activities of Daily Living and Related Capacities

- **Self-care** → bathing; dressing; toileting
- **Financial** → using cash, checks, or credit cards; paying bills; making or modifying a will; buying or selling property; entering into a contract; making investments; resisting exploitation or undue influence
- **Medical** → consenting to treatment; choosing healthcare providers; making or changing an advance directive; managing medications; handling medical emergencies; commitment or discharge from health facility or institution
Activities of Daily Living and Related Capacities

- **Home and Community Living** → choosing or establishing residence; maintain safe and clean shelter; drive or use public transportation; use mail and telephone (computers); avoid environmental dangers and obtain emergency help; leisure activities; personal relationships including marriage and divorce; religious participation

- **Civil or Legal** → retain legal counsel; vote; make decisions about legal documents
Guardianship Options

- Supported Decision Making
  - Individual remains the primary decision maker with support, guidance, and assistance
- Limited Guardianship
- Plenary Guardianship
<table>
<thead>
<tr>
<th>Examiner</th>
<th>$n$</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Psychologists identified as the sole examiner</td>
<td>23</td>
<td>AZ, CA, CO, GA, HI, IA, KS, ME, MA$^b$, MO, NJ, NY, NC$^c$, ND, OK, OR$^d$, SD, TN, TX$^a$, VA, WA, WV, WI</td>
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<td>Psychologists accepted if determined to be qualified by the court</td>
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<td>AL, AK, AR, DC ID, IN$^e$, LA, MI, NV, NH$^e$, NM, OH, PA, VT</td>
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<tr>
<td>Physician only</td>
<td>8</td>
<td>CT, DE$^f$, IL, MT, NE, RI, TX$^a$, UT</td>
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<tr>
<td>Psychologists accepted as part of a team</td>
<td>6</td>
<td>DC$^g$, FL, MD, MS, NC, SC</td>
</tr>
<tr>
<td>Psychologists required as part of a team</td>
<td>2</td>
<td>KY, MA$^b$</td>
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<tr>
<td>Insufficient information</td>
<td>5</td>
<td>DE$^f$, IN$^e$, WY$^h$, MN$^i$, NH$^e$</td>
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</table>

* Total number of jurisdictions across groups will sum to greater than 51.

$^a$ Psychologists are only accepted as sole examiner in cases of intellectual disability.  
$^b$ A team is required in cases of intellectual disability.  
$^c$ Per author (GJD), psychologists are accepted as sole examiner.  
$^d$ Psychological reports accepted as sole source of findings when requested by the court-appointed intermediary.  
$^e$ Per phone call, psychologists appear to be acceptable.  
$^f$ Only physician accepted per Chancery Court rules, not per statute.  
$^g$ A team is required for healthcare decision-making capacity.  
$^h$ Per phone call, no examination is required.  
$^i$ Per Minnesota Conference of Chief Judges, a multidisciplinary team including a physician and psychologist is required.
The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains (1) a description of the nature and type of the respondent’s disability and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently; (2) an analysis and results of evaluations of the respondent’s mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within 3 months of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor; (4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefor; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.
The petition for adjudication of disability and for appointment of a guardian should be accompanied by a report which contains (1) a description of the nature and type of the respondent’s disability and an assessment of how the disability impacts on the ability of the respondent to make decisions or to function independently; (2) an analysis and results of evaluations of the respondent’s mental and physical condition and, where appropriate, educational condition, adaptive behavior and social skills, which have been performed within 3 months of the date of the filing of the petition; (3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor; (4) a recommendation as to the most suitable living arrangement and, where appropriate, treatment or habilitation plan for the respondent and the reasons therefor; (5) the signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician unless the evaluation and report are completed by a licensed clinical psychologist and the evaluation is limited to the respondent’s mental condition, and a statement of the certification, license, or other credentials that qualify the evaluators who prepared the report.
For More Information

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