

BOOK REVIEWS

Clinical Assessment of Consent Capacity

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Evaluation of Capacity to Consent to Treatment and Research, by Scott Y.H. Kim (2010). New York: Oxford University Press, 201 pp., \$35.00 (PB).

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“Good things come in small packages” is the well-known adage, and it is particularly apt for this small volume which focuses on the clinical assessment of treatment and research consent capacity. Although short and concise (a mere 171 pages of small page folioed text), the book is remarkably comprehensive in scope, addressing in a clearly written fashion a broad range of topics relevant to clinicians evaluating decisional capacity in their patients. The book is part of a series developed by Oxford University Press addressing “best practices” in forensic mental health assessment and is edited by leading forensic psychologists (Thomas Grisso, Alan Goldstein, and Kirk Heilbrun).

The book is a worthy addition to the book series. Although decisional capacity has received a fair amount of empirical research attention in the scholarly literature, far less has been written on clinical method and best practices in capacity assessment. This book sets a new standard for analyzing treatment consent capacity issues and educating clinicians on conducting effective and ethically sound assessments. Conceptual and clinical topics are carefully described and well-referenced, tough ethical issues are not shied away from, and the book is replete with well-considered, practical clinical advice and guidance that clearly derive from Dr. Kim’s consult-liaison psychiatry experience. Both the new and the experienced neuropsychological practitioner will come away with a deeper understanding and appreciation of consent capacity issues, and with a clearly described method for conducting these often challenging assessments.

The volume is organized into two major sections that comprise the first seven chapters. The “foundational section” (Chapters 1–3) is comprised of important background topics including the legal context for treatment consent evaluations, critical mental health concepts informing the consent capacity construct, and appreciation of the different neuropsychiatric disorders that can compromise consent capacity. With this as backdrop, the “application section” (Chapters 4–7) addresses practical aspects of the treatment consent evaluation process itself, including the important preparation period before an assessment, the evaluation proper including the interview and

data collection, interpretation of the obtained assessment information and arrival at a categorical capacity judgment, and just as importantly, the clinician’s role *after* a consent capacity judgment has been rendered.

The book’s final chapter (Chapter 8) focuses on research consent capacity, a decisional capacity kindred to treatment consent but involving some important conceptual and assessment setting differences. As discussed further below, the addition of this chapter is both a strength and weakness for the book. On the positive side, the chapter provides valuable information on the assessment of a related consent capacity of great importance to clinical researchers and behavioral scientists. At the same time, because the construct of research consent capacity is not referenced or conceptually integrated into the earlier chapters, the final chapter appears somewhat disconnected from the book as a whole.

The first chapter in the foundational section appropriately begins by describing the legal context for treatment consent assessments. While clinical capacity judgments occur in medical settings, they do not occur in a legal vacuum, but rather within a legal context – a particular state legal jurisdiction that may have specific applicable statutory, regulatory, and case law standards for these assessments. In this chapter, Dr. Kim provides a useful historical overview of the evolution of the legal doctrine of informed consent, from the paternalistic “simple consent” (doctor knows best, patient simply accepts or not the doctor’s treatment options) formulations of the 19th and early 20th centuries, to the patient centered doctrine of “informed consent” that is familiar to us today. The chapter also briefly delineates the emergence of legal standards for treatment consent capacity that have subsequently informed the consent ability constructs (understanding, reasoning, appreciation, and choice) that are widely used today. The chapter concludes with a very thoughtful discussion of the distinction between the terms “capacity” and “competency.” Although the distinction is usually framed in basic terms of “capacity” being a clinical concept and “competency” a legal one, Kim persuasively argues that the distinction is not so clear-cut. For example, he notes that increasingly courts are using the term “capacity” as a legal term

in its own right, and also that clinical capacity judgments may have “explicit legal force” under some statutes.

The second chapter addresses key mental health constructs and principles underlying treatment consent capacity and represents the conceptual core of the book. First, Kim discusses in detail the “four consent ability model” developed by Appelbaum, Grisso and colleagues over the past 20 years, which has emerged as a dominant and enduring framework for assessments of decisional capacity (including both treatment and research consent capacity). In addition to elaborating on the three core clinical standards of understanding, reasoning, and appreciation, Kim also offers a sophisticated analysis of the simple consent ability of “choice” (making a treatment choice), emphasizing the importance of a patient’s choice showing stability over time. A second crucial conceptual focus of the chapter concerns the functional/contextual analysis underlying modern capacity assessments. For an individual patient, the exercise of the four consent abilities occurs within a relational context specific to the patient—decisional abilities but also medical condition and symptoms, treatment options, risk/benefits ratios, personal health and spiritual values, and family wishes. As stated by Kim, the clinician’s capacity judgment “is not simply about the decisional abilities of the person, but rather about the relationship of two concepts—a person’s functional abilities and the context (such as the risks-benefit profile of the choices in question) in which he is expected to exercise those abilities” (p. 33). This chapter also makes the important conceptual observation that a treatment consent decision is limited and specific; for example, a patient may lack consent capacity to elect heart surgery, but may still retain decisional autonomy to change his will, consent to participate in research, or consent to other medical procedures.

The third and final chapter in the foundations section addresses the empirical science and published studies that inform the new field of decisional capacity research. This chapter will be of particular interest to neuropsychologists, as it describes how different neuropsychiatric disorders (e.g., delirium, dementia, psychosis, mood disorder, traumatic brain injury, mental retardation, and substance abuse) affect consent capacity, and also provides a very useful table of available capacity assessment instruments. The chapter also covers existing neuropsychological models of consent capacity, such as predictors of consent capacity in patients with dementia, and their scientific value. However, as discussed further below, the book does not appear to appreciate as fully the clinical value of such neuropsychological models. For example, knowledge of specific cognitive predictors of the “understanding” consent ability in patients with dementia can inform both the assessment approach and the resulting data pool for making a clinical judgment of consent capacity in a patient with Alzheimer’s disease.

Neuropsychologists should take heed of some clinical pearls provided in the chapter. First, cognitive test measures such as the MMSE do not predict capacity well, and cannot substitute for specific capacity assessment measures such as the MacArthur Competence Assessment Tool-Treatment (McCAT-T) or Capacity to Consent to Treatment Instrument (CCTI).

Decisional capacity must be evaluated in terms of performance on capacity relevant decisional constructs (i.e., understanding, reasoning, appreciation) in a particular context and not a capacity remote cognitive test score. However, cognitive tests are useful secondary measures or levels of evidence insofar as they can document cognitive impairments that in turn diminish the core understanding, reasoning, or appreciation abilities integral to consent capacity. Second, consent ability scores are not sufficient by themselves to answer capacity questions; they must be translated into a final categorical judgment or status (e.g., capable, incapable); this challenging clinical step is elaborated more fully in Chapter 6. Kim notes that there are no gold standards or clear empirical guidelines for arriving at this critical determination. It is a decision that, while hopefully informed by interview information, capacity test scores, cognitive and personality test scores, diagnostic information, and the scientific research overall, ultimately remains a clinical and moral judgment of the evaluator.

As noted above, Chapters 4 to 7 represent the “application section” and comprise a comprehensive clinical method for assessment of treatment consent capacity—from preparatory steps, to data collection and interpretation, to the clinician’s role after the assessment is completed. Effective preparation before the clinical interview includes careful evaluation of the referral question(s), consideration of the parties involved and their respective biases, and ultimately the necessity of a capacity assessment if other clinical approaches are available. Excellent clinical guidance is offered concerning assessment of the difficult patient who is refusing treatment. With respect to data collection and the clinical interview, Kim appropriately emphasizes the importance of taking a flexible approach. The clinician’s initial approach to the patient can be challenging, given the sensitive issues surrounding a capacity assessment and the inherent potential for the loss of autonomy it represents. As Kim notes dryly: “When introducing oneself to the patient, there is no getting around the fact that patients do not initiate—and therefore do not expect—a capacity interview. It is always someone else’s idea” (p. 80). There follows a nicely developed discussion of how a clinician can use the interview to elicit information about each of the four core consent abilities. Guidance is also provided on the use of both capacity and cognitive test measures to develop a fund of objective data that will inform the clinician’s capacity judgment. As part of this discussion, the book presents a balanced clinical comparison of the two capacity measures, the McCAT-T and the CCTI, most widely used in empirical research studies.

In the chapter on interpretation of results (Chapter 6), the book returns to the critical clinical task of making a clinical capacity judgment. The clinician must move beyond the assessment of specific consent abilities and form a categorical and dichotomous clinical judgment (capable, incapable) about an individual’s actual treatment consent capacity in a particular medical situation. This section again reflects the detailed, careful, and thoughtful discussion of clinical issues that is a hallmark of the book. For example, Kim discusses the application of risk-benefit considerations to the

decision-making calculus, notes the dangers of clinician paternalism and bias, and provides valuable guidance on a series of special situations that clinicians may encounter. The latter include the uncooperative patient, patients who offer “enigmatic refusals of high benefit, low risk treatments”, how to discriminate patient authentic religious belief from delusional thinking, and the handling of a depressed patient refusing beneficial treatment.

The core premise of Chapter 7 is that the clinician’s role does not necessarily conclude after a capacity judgment is made. This, of course, is particularly true if there is a judgment of decisional incapacity, an outcome that triggers questions of surrogate decision-making. The chapter covers options available when there is an advance directive in place providing for a surrogate decision-maker, and also in those cases (unfortunately quite common) where there is not an advance directive in place. The chapter provides a valuable discussion of the different standards that can apply in such cases (previously stated preference, substituted judgment, best interests, or a combination thereof), as well as of specific patient procedures that lie outside of advance directive authority (psychiatric admissions, electroconvulsive therapy, abortion, psychosurgery). Psychiatric advance directives also receive appropriate attention. Finally, the book points out that even in cases of patients found to be ‘capable’, the assessing clinician can still play a valuable clinical role by supporting such patients as they face difficult medical situations and choices.

Although an outstanding addition to the field, this volume does have a few weaknesses. The lack of an introduction laying out the book’s goals, approach, and organization represents a limitation to the current edition. Such an introduction could be a great place to initially discuss and “link up” conceptually the two core topics of treatment consent and research consent capacity. In this vein, as noted above, research consent capacity is not well integrated in the current volume, and the final chapter (Chapter 8) appears to be a bit of an afterthought rather than a chapter that flows clearly from the chapters preceding it. As noted, the book might also

benefit from a stronger emphasis on the value of neuropsychological models of consent capacity in the assessment process. Not only do such models provide scientific insight into the disease specific cognitive changes affecting decisional capacity, but the specific neuropsychological predictors of different consent abilities in a particular disease entity (e.g., Alzheimer’s disease, schizophrenia, traumatic brain injury) can become an additional part of the clinician’s testing armamentarium. Finally, although a more minor point, this reviewer was uncomfortable with the book’s stated desideratum that in expressing a capacity determination, “the clinician is approximating an ideal court’s decision” (p. 128). Clinicians have markedly different roles and a narrower purview than judges, who in addition to clinical evidence must also consider legal precedent and a host of non-clinical factors in their rulings. Clinicians in their reports should offer the clearest clinical judgment and rationale possible, with the hope and expectation that the court will incorporate this clinical decision and associated findings into its own broader legal judgment.

These clearly are minor criticisms in light of the contributions of *Evaluation of Capacity to Consent to Treatment and Research* as a whole. This small volume is a treasure trove of information for the clinician needing expert guidance on the assessment of decisional capacity in patients with neuropsychiatric disorders. It is arguably a “must have” resource for clinical neuropsychologists in hospital and other medical settings, for forensic neuropsychologists, and for neuropsychologists who conduct capacity and other human subjects’ research. It should also be on the office shelves of those clinical psychologists who encounter consent capacity issues in their practice.

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Handbook of Medical Neuropsychology

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Handbook of Medical Neuropsychology: Applications of Cognitive Neuroscience, Carol L. Armstrong and Lisa Morrow (Eds.). 2010. New York: Springer Science + Business Media, LLC. 564 pp., \$79.95 (HB).

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Although neuropsychology has a long history of important contributions in primary central nervous system (CNS) disorders such as cerebrovascular accidents, epilepsy, traumatic brain injury, and dementia, the role of neuropsychology in medical conditions with secondary or less well established CNS effects is rapidly evolving and represents an important future direction for the field of neuropsychology. Armstrong and Morrow’s edited

volume, *Handbook of Medical Neuropsychology: Applications of Cognitive Neuroscience*, provides an impressive overview of both disorders with obvious CNS involvement and those with more subtle or indirect CNS effects. The editors indicate that the purpose of the book is to “provide a current and cutting edge understanding of the various diseases and disorders covered within and their neuropsychological effects,” and they certainly