

Decision Making Capacity Assessment Professional Training Program

Class 4 – November 12, 2025



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Elder Education Institute



Agenda

- 15 min breaks
- 1 hr lunch
- Case Studies
- Documentation and moving forward into doing this work

| Time | Topic |
|---------------|---|
| 830a | Agenda, discussion from Class 3 |
| 845a | Guest speaker: Detective Robin Fry |
| 905a | Court/testifying update |
| 920a | About subpoenas |
| 940a | BREAK |
| 955a | Case Study A in breakout rooms |
| 1025a | Groups report back/discussion |
| 1050a | BREAK |
| 1105a | Case Study B in breakout rooms |
| 1135a | Groups report back/discussion |
| 12noon | BREAK FOR LUNCH |
| 100p | Questions/thoughts from morning |
| 110p | Case Study C in breakout rooms |
| 140p | Groups report back/discussion |
| 205p | BREAK |
| | Documentation |
| 220p | Finding others doing this work Shadowing/ collaborating Marketing your services |
| 310p | BREAK |
| 325p | Discussion |
| 425p | Recap, resources provided, events |

Heads-up: CEU Questions

These will be multiple-choice and true/false questions.

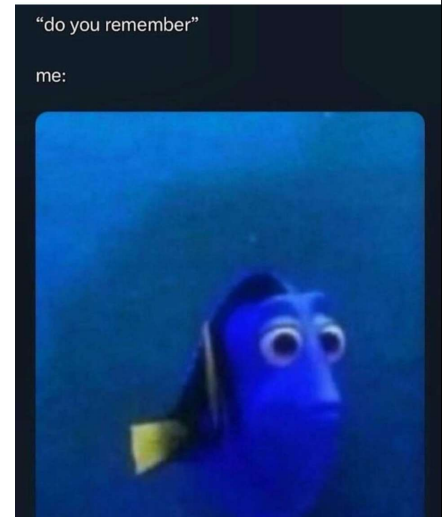
1. Appropriate documentation of an assessment visit is...
2. Examples of formal approaches to documenting capacity assessment are...
3. Ethical and systemic factors to document include all EXCEPT
4. Social and cultural factors to document include...
5. After completing these classes, you are a certified capacity assessor.

Guest speaker: Detective Robin Fry

- After serving as a volunteer reserve officer with the Olympia Police Department, Robin completed the Washington State Criminal Justice Training Academy in 1991 to become a fully commissioned officer. She has been with the King County Sheriff's Office since 1999, and a detective assigned to Criminal Investigations for over twenty years.
- In 2009 she worked several financial crimes investigations which turned out to be where she would spend the rest of her career – cases involving complex financial fraud, and the financial exploitation and abuse of elders, vulnerable adults, and children. She finds investigating crimes against elders to be the most challenging at times, but undoubtedly the most rewarding.
- In 2016, Robin was assigned to the Greater Puget Sound Financial Fraud and Identity Theft Task Force, and in 2018 she was credentialed as a Certified Fraud Examiner by the Association of Certified Fraud Examiners. She is a member of the King County Elder Abuse Multidisciplinary Team and the Association of Certified Fraud Examiners.

About court/testifying – and my experience

- You likely will never have to testify about your report, BUT...
- If you do, you'll be testifying (largely) to your report.
- If you remember something to say in court that's not in your report, that will be called into question – why didn't you document that at the time of your visit/report?



Prepare to testify

- Your assessment report or documentation has to put together the path of your reasoning that led to your findings.
- You'll be asked not only about the data in your report, but how you analyzed it and came to the conclusions you did.



Subpoena and process

- If you are asked to testify in any case, you should receive an official subpoena (this covers you privacy-wise).
- The attorney that calls you to testify should prepare and support you throughout the process.
- You have the right to have the attorney that calls you and/or your own counsel with you for any meeting with other attorneys.

You have the right to bill for your time (and you should).

Ask when you are subpoena'd about how/when you should bill.

Subpoena and process

If you are testifying for the prosecutor, defense attorneys may want to meet with you ahead of time for:

- a deposition: you may get questions ahead of time, you will be sworn in to speak under oath, or
- a defense interview: you won't get questions ahead, you won't be sworn in, but it may be recorded.

You have the right to bill for your time (and you should).

Ask the prosecutor if you bill their office or the defense attorneys.

Testimony – other cases

- If a client's attorney calls you as a witness, send them your fee schedule and discuss getting a **retainer** before testifying.
 - Avoids question of your testimony depending on if they'll pay you.
 - Your retainer should cover the anticipated time of testifying as well as any coordination/scheduling communication, travel, etc.
 - When complete, you do your invoice, apply the retainer, and refund the credit balance (or bill remaining balance owed).

Your professional association and malpractice insurance carrier may be able to answer questions or offer support.

Be prepared

Brodsky: great tips on how to prepare both personally and professionally for testifying.

- Observe a trial or professional/expert testimony if you can (not TV).
- Know your report.
- Work with the attorney prior to court.
- Get there early to become familiar with the courtroom.
- Don't be defensive, stay calm, it's ok to say you don't know.

THIRD EDITION

“ Testifying in Court ”

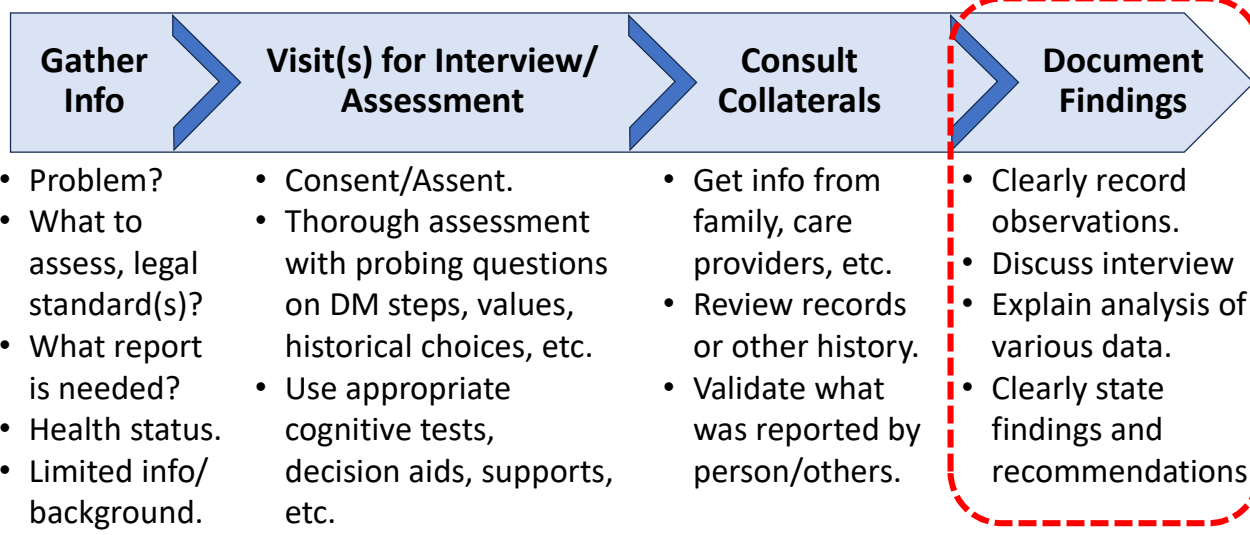
GUIDELINES AND MAXIMS
FOR THE EXPERT WITNESS

Stanley L. Brodsky

Case studies in breakout rooms: 30 minutes

- Each break-out room will have a unique case study to review and discuss for 30 minutes.
 - Person whose case study it is, read it aloud to the group.
 - Someone else volunteer to take notes and report back on discussion →
- What type of capacity is in question?
 - What tests/tools would you consider using?
 - What questions would you ask to explore capacity?
 - What follow up would you recommend?
 - Any strategies or less restrictive alternatives?

Documentation: end product of assessment



Documentation

- Most capacity assessments won't be captured on a form, but rather as clinical documents, reports, summaries, or memos/letters.
- Unless your agency/org has existing formats, you'll have to make your own – feel free to use these as a starting point (handouts on webpage)

| | |
|--|---|
| Briefer summary of findings: | Sample Redacted ACCS Summary for Testamentary DMC |
| Longer detailed report of a comprehensive eval: | Sample Redacted ACCS Report for DMC in EA |

Documentation: more resources on webpage

- Newest:
 - Documentation Guidance
- From Class 3:
 - Documentation Examples Explaining Tests and Data
 - Documentation Examples of Discussion and Findings
- From Class 1:
 - ABA/APA worksheets
 - Reference Materials and Online Resources List


| SELECTED COURT FORMS RELATED TO CAPACITY | |
|--|--|
| FL | “Report Of Examining Committee Member” per Stat Ann. 744.331(3)(a) – see one county’s form at https://2ndcircuit.leoncountyfl.gov/resources/Guardianship.reportoftheExaminingCommittee.pdf |
| GA | Affidavit of Physician, Psychologist, or Clinical Social Worker for Guardianship and/or conservatorship per Code Ann. 29-4-11(d)(1) – see https://gaprobate.gov/wp-content/uploads/2024/04/GPCSF-12-Petition-for-the-Appointment-of-a-Guardian-and-or-Conservator-for-a-Proposed-Ward.pdf at page 15 - OR https://www.gasupreme.us/wp-content/uploads/2017/06/GPCSF12_0717.pdf at page 17 |
| ID | No form – written report per Idaho Code 15-5-303(b) |
| MI | “Report of Physician or Mental Health Professional” per M.C.L.A. 700.5304(1) – see https://www.courts.michigan.gov/4a7eea/siteassets/forms/scao-approved/pc630.pdf |
| NY | No form – documentation not specified per Mental Hygiene Law 81.09(a),(b)(1) |
| OH | “Statement of Expert Evaluation” per R.C. § 2111.031 – see https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/probate_forms/guardianship/17_1.pdf |
| TN | “Report of Physician” – to be completed “by a physician or, where appropriate, a psychologist or senior psychological examiner” per Ann. 34-3-105(a) – see one county’s form at https://circuitclerk.nashville.gov/wp-content/uploads/formpro_consphysicianreport.pdf |
| WA | No form – written report per RCW 11.130.290 |

What if it’s not a solid opinion?

???

- There’s not enough information to firmly support an opinion on someone’s capacity.
- There are medical or other issues that may be impacting capacity, and these would need to be addressed before you can more thoroughly assess for capacity.
- The person cuts short the visit or fully refuses assessment.
- Communication isn’t clear enough to assess their DM process.

“Provisional” opinion

- It’s still possible to offer a “provisional” opinion based on the information you have available at the time of the visit.
- Like a provisional diagnosis 

For clinicians, the DSM-5 defines “provisional” as when the clinician thinks a particular disorder is present, but realizes more information is required to be confident of a specific diagnosis.

“Provisional” opinion – sample language

When there is limited information or a more complete assessment isn’t possible:

- Based on the limited observations / information available at the time of this visit, it appears there are concerns about Mr A’s abilities to manage [specific decision type]; however, more information [specify] would be helpful to form a more definitive opinion of his capacity in this area.

“Provisional” opinion – sample language

When there is a medical condition that needs addressing:

There are clear concerns about Ms B’s ability to manage her finances and make healthcare decisions; however, before making any more definitive opinion of her capacity, she needs a thorough medical evaluation to ensure that her infection has completely cleared and her diabetes is reasonably managed. Once medically cleared, her decision making abilities should be reassessed.

“Provisional” opinion – sample language

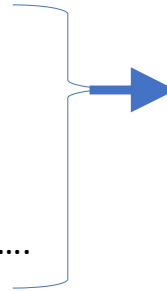
When there are communication impairments, such as aphasia:

*Impairments in Mr C’s comprehension and communication presented challenges in assessing his ability to understand [what specific details]...
opinion about [issue]...
wishes for [specific area]...*

Limited opinions

In cases where:

- The loss of capacity is partial...
- The loss of capacity is temporary...
- Their capacity fluctuates over time....



Explain specifically the circumstances or areas where they have retained abilities and where they need support, and how DM can best be supported.

Remember the overarching goal is to protect the older adult AND their autonomy and independence as much as possible.

Reports – consider audience/use

- Remember, your audience likely knows less about capacity assessment than you do.
- Define clinical terms and explain clinical concepts in plain language.
- Walk them through the steps of the decision making process and how the assessment data relates to each step, leading to your findings.
- Explain diagnostic criteria and its significance, e.g. dementia.

Examples of report use

| | | |
|---------------------------|--|---|
| By courts | For the client's protection | <ul style="list-style-type: none"> • Guardianship/conservatorship • Protective arrangements |
| | For criminal cases (trials and sentencing) | Showing the client did not have capacity when victimized and/or was a victim of undue influence |
| By law enforcement | For information about the victim in criminal investigations | |
| By APS | <ul style="list-style-type: none"> • To support guardianship or other protections • For investigations and enforcement actions | |

Report uses

- Can direct clinical action.
- May inform or support a plan of care.
- Could be used in a “guardianship plan” developed by a guardian.
- Cases can evolve and reports may be subject to additional uses:

A report originally meant to be informational may ultimately end up as evidence in a judicial setting.



Report use by attorneys

- Can be “informational and advisory” for an attorney to have better understanding of their client’s abilities or their decline.
- Justification for action related to trusts, POA status, supportive decision-making arrangements, or protective action.

(ABA/APA)

Potential uses of clinical opinion regarding client capacity:

- Expert testimony in a subsequent deposition or courtroom hearing.
- Clarification of the areas of diminished capacity and of retained strengths.
- Affirmation of the client’s capacity.
- Justification of the attorney’s capacity concerns to disbelieving clients and family members.
- Expert advice on strategies to compensate for identified mental deficits.
- Indication of the need for protective action.
- Recommendation for follow-up testing (anticipated restoration of capacity).

Report use by attorneys

(ABA/APA)

- **Retrospective estimates of legal capacity:** “Clinical professionals are essential... Attorneys and courts are usually ill-equipped at forming retrospective judgments on their own.”
- **Support legal arguments:** “Clinical opinions by themselves do not dictate legal decisions about capacity... but they help lawyers better formulate their own arguments and conclusions for and against legal capacity using legal frameworks based on precedent.”

**CLINICAL
CORE
COMPETENCIES**



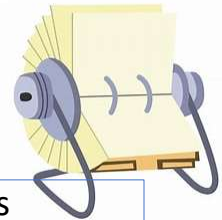
**CAPACITY
SPECIFIC
KNOWLEDGE**



**PRACTICAL
LEARNING
PROCESS**

- Shadow: Observe an experienced assessor throughout the visit(s) and assessment process of one or more cases.
- Be shadowed: Conduct assessment visit(s) and completion of case(s) under the supervision of an experienced assessor.
- Participate in consultation/supervision and/or a collaborative working group on a regular basis, with opportunities to:
 - Review cases,
 - Discuss methodology, approach, and problem-solving, and
 - Exchange feedback for continuous improvement.

First – finding people in your area



- Find local professionals who are doing capacity assessments or working with issues around decision making.

Places to look:

- Local agencies/government entities (city, county, state) →

- Adult Protective Services
- Aging/disability services
- Guardianship/probate court
- Departments with regulatory oversight of LTC/health providers
- Ombudsman services
- Prosecutor offices
- Specialized law enforcement or multi-disciplinary teams

Finding people – medical/health related

- Hospital/inpatient departments
- Outpatient clinics
- Specialized clinical practices
- Medical school departments

Plus:

- Long-term care
- Skilled nursing/rehab
- Assisted living communities

- Geriatrics/gerontology
- Neurology
- Neuropsychology
- Psychiatry
- Mental health
- Social work
- Care management
- Home health/hospice
- Occupational therapy
- Speech language pathologists



Finding people – who work with seniors

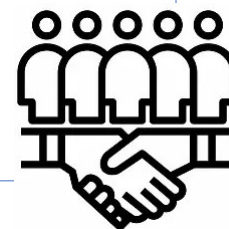
- State/local clinical societies or professional associations →
- Senior centers, nonprofits serving seniors
- Networking/alliance organizations for professionals working with seniors



alzheimer's
association®

- Alzheimer's Association and other organizations

- Care managers: ALCA, CMSA
- Counselors: AMHCA, ACA, APA
- Gerontology: GSA, NAGP
- Geriatrics: AGS
- OT: AOTA
- SLP: ASHA
- SW: NASW



Finding people – through attorneys

- National Academy of Elder Law Attorneys (www.naela.ORG) and state affiliates
- ABA Commission on Law and Aging (https://www.americanbar.org/groups/law_aging/about_us/)
- Local legal aid programs in your community or with area law schools
- Your state and local bar associations may have sections on aging or disability, probate, and/or mental health.

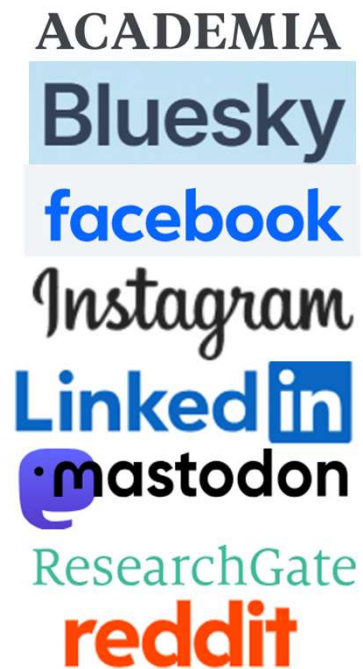


Washington Academy
of Elder Law Attorneys



Finding people – your network

- Ask colleagues for suggestions.
- Reach out to your LinkedIn or other network contacts.
- Consider posting on LinkedIn or social media that you are looking for collaboration partners and opportunities.



Prepare to introduce yourself

Write some key info / language – have a draft email or “elevator speech” that you can personalize:



- About you, that you’ve taken this class, what you’re hoping to do.
- Inquiry – have an email what you are asking from them, whether that’s pointing you to other professionals or asking other questions.

Shadowing – finding a partner

- Outreach to connect
 - Is there anyone who can introduce you?
 - Email or send letter of inquiry
- Have a call or meet to discuss
 - Share program info
 - Explain what you’re looking for
 - Ask →
- Discuss terms
 - Confidentiality, any paperwork to sign
 - Their work process
 - Financial considerations

SHADOW:
Observe their whole process of visit(s) and assessment for one or more cases.

BE SHADOWED:
Conduct visit(s) and complete case(s) documentation under their supervision and mentorship.

Shadowing

- It's not ethical or appropriate for you to charge for services while you are shadowing someone else to learn.
- But you're providing advantages...



To the client:

- two clinicians for the price of one
- more expertise, experience, and insight.

To your mentor:

- richer observations/data
- increased rigor and depth of assessment process

Being shadowed

- It is fair for you to charge for your work, even while you're being shadowed (like pre-licensure work).
- You and your mentor will have to figure out what's fair in terms of billing/compensation.
- Consider a written agreement that spells out how you'll work together.
 - Something similar to supervision contracts?
 - Address privacy, liability, etc.



Shadow



- Observe an experienced assessor on a case
- See them go through their work process as much as possible:
 - from the referral,
 - throughout the visit(s),
 - documentation and
 - followup.

Be shadowed



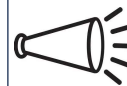
- When you feel ready, you “drive the bus”
 - An experienced assessor provides you with supervision and mentoring →
- Discuss your preparation for the visit – tests, tools, materials, etc.
 - Do a joint visit if possible
 - Debrief after the visit to review and get feedback
 - Draft your documentation and review for guidance
 - Record your learning, revise your approach

Consultation/supervision and collaboration

Please consider joining our DMCA Collaborative Working Group:

- If you're already doing DMCA work and want to collaborate with this program's classmates and other professionals,
- If you're definitely wanting to dive into doing DMCA work, or
- If you're not sure how much you can do, but want to stay in the loop.

We will focus on the “business” side or practice development of offering these services, as well as clinical and case discussions.



***Kick-off meeting
next Wed Nov 19
at 11am-12noon
Pacific time on zoom***

Consultation / collaboration opportunities



- Join Dr Adria Navarro's consult group on decisional capacity issues – based in LA area but on zoom and open to anyone. Email: Adria.Navarro@med.usc.edu
- Find out if there is a local team or group you can join, or start one!

Marketing your services

According to your licensure:

- State-specific laws, regulations
- Ethics (profession specific)
- Any requirements/limitations

&

Within your area of expertise:

- Specific focus areas
- Types of clients or settings
- Types of capacity questions

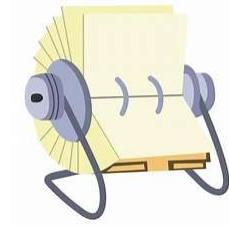
Prepare to introduce yourself

Like before, write some key info / language:

- About you, that you've taken this class, what DMC is.
- Announcement(s) – what kind of services you provide
 - a general summary
 - a more detailed description of services, e.g.: location (home visits? office? virtual?), coverage area, range of fees, insurance coverage.
- Offer – volunteer to present a short talk on capacity assessment



Marketing your services



Target all those agencies and organizations you reached out to before, plus

- Employee Assistance Programs that offer eldercare supports – find through insurance companies and large employers in your area
- Local/regional chamber of commerce, Rotary, other community/business groups

Marketing your services – attorneys

- Legal ethics rules point lawyers to find an “appropriate diagnostician” but don’t specify what is appropriate or how to find such a person.
- Have a brief summary of your credentials, experience, and training to explain how you help in what types of situations.
- Local bar groups may welcome a presentation on capacity assessment!

Coming up

| | |
|--------------------|---|
| November 19 | DMCA Collaborative Working Group Kick-Off / Launch Meeting 11am-12pm Pacific time, on zoom |
|--------------------|---|

Kristin Neff

TODAY at 730 CST
and Sat Nov 22nd

See her website at
<https://self-compassion.org/>



Self-Compassion for Caregivers
with Kristin Neff

Saturday, November 15th
11:00am - 2:15pm CT Online

CE Credits Available

- **WED** | November 12, 2025 | 7:30 PM CT: I'm hosting a conversation in the Self-Compassion Community with [Russell Kolts](#), clinical psychologist, self-compassion researcher, and author. Join us for a conversation about Compassion Focused Therapy and also his work on how compassion for self and others can transform our relationship to anger and help us live a more fulfilling life.
- **SAT** | November 22, 2025 | 11:00 AM CT: I warmly invite you to join me for my monthly online gathering in the Self-Compassion Community. Each gathering includes a guided self-compassion meditation and a Q&A where I answer your questions about self-compassion practice and daily integration. Attendance is free for members, and non-members can purchase tickets [here](#).

AFA Care Connection Webinar THE GROWING CASE FOR MUSIC IN DEMENTIA CARE Thurs Nov 13 at 1pm EST

- A practical session for professionals and family/personal caregivers on using personalized music to support people living with dementia – at home and in care settings. Participants will learn simple, safe steps to choose meaningful music, integrate it into daily routines and transitions, reduce stress, and strengthen connection.
- With Justin Russo, Director of Programming – Institute for Music and Neurologic Function (IMNF), a nonprofit dedicated to advancing the therapeutic power of music to awaken, stimulate, and heal.
- https://us06web.zoom.us/webinar/register/WN_PPITjAZ8SvS450TnuMi5rA#/registration

Nov 18:

National Family Caregivers Month Webinar

THE POWER OF STORYTELLING:

Shaping Caregiving Narratives and Preventing Abuse

🕒 10:00 AM - 11:15 AM PT / 1:00 - 2:15 PM ET

📅 NOVEMBER 18, 2025

REGISTER NOW

NCEA National Center on Elder Abuse
Keck School of Medicine of USC
USC Leonard Davis School of Gerontology
HOLLYWOOD, HEALTH & SOCIETY USC ANNEBERG ROTMAN LEAR CENTER

https://us02web.zoom.us/webinar/register/WN_crbTheveS-qZly_GT3443w#/registration

Nov 19:

FREE LIVE AND ON-DEMAND COURSE WORTH 1 CE CREDIT*

Geriatric Care Ethics: Understanding Autonomy, Capacity, and Personal Bias

caregiver-blood-pressure-test image

Join the Webinar Live on Wednesday, November 19, 2025
10 a.m. PT | 1 p.m. ET

Register Today

Continuing Education Credits for:

National Council of Certified Dementia Practitioners | California Board of Registered Nursing | California Professional Fiduciaries Bureau | National Commission for Health Education Credentialing | New York State Education Department | National Academy of Certified Care Managers | Society of Certified Senior Advisors

- <https://www.rightathome.net/professionals/continuing-education-units/geriatric-care-ethics-11-19-2025>

Nov 20:

UW SW Innovations in Aging Series

TRANSGENDER AGING:
What Trans Elders Need from Social Workers.
With Marsha Botzer, MA

Thursday, November 20th

12:30 - 1:30 PM (Pacific time)

On Zoom:

Meeting ID: 932 1649 9536 Passcode: 973329

Join by phone: 206.337.9723

Nov 20: NW Regional Telehealth Resource Center

Burnout & Telemental Health: Re-Connection to Ourselves while Connecting to Others

Thursday, November 20th 11AM-12PM PT

Burnout is ubiquitous in all aspects of health care, but telemental health has its own unique challenges. Technology allows us to rapidly connect with patients anywhere in the country, and yet technology also can, paradoxically, isolate us (working from home, without colleagues), emotionally distance us from others (limiting emotional and non-verbal communication), and make us more sedentary and disconnected from our bodies. This talk will explore ways of mitigating telemental health burnout through enhancing human connection with ourselves and with patients.

Speaker: David R. Kopacz, M.D.

Staff Tele-Psychiatrist, Talkiatry; Steering Committee, The Doctor as a Humanist;
Ambassador, Lorna Breen Heroes' Foundation

https://us02web.zoom.us/webinar/register/WN_LbYSIBEPfKrcVjj5omFRg#/registration



Keck School of Medicine of USC USC Leonard Davis School of Gerontology USC University of Southern California

USC Judith D. Tamkin International **Symposium on Elder Abuse**

The Elder Justice Panorama: Promising Programs, Sustainable Progress, and the Path Forward

February 26 - 27, 2026 • Pasadena, CA • The Westin Pasadena

<https://elderjustice.usc.edu/tamkin-2026/>

PLEASE SHARE: Age- and Dementia-Friendly Washington Survey

Help shape a statewide plan that supports healthy aging for everyone.

Aimed at adults living in Washington, with a focus on reaching older adults (60+) and people living with disabilities and/or memory loss/dementia.

It takes about 15–25 minutes and is open through December 7.

<https://www.surveymonkey.com/r/age-wa>

Wrapping up

- Resources provided
 - References List
 - Documentation Guidance*
- CEU process
- Evaluations

*Please provide your
honest feedback and
suggestions to help us
improve this program.*



- To Alison and Sound Generations for making this program possible,
- To all our guest speakers, and
- **To each of you for taking part!**

