

# Decision-Making Capacity Assessment Program

**Class 4: June 4, 2025**

for Sound Generations Elder Education Institute by



**Aging Care Consultation Services PLLC**  
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	Time	Topic
Morning  • 2 breaks • 1 hour lunch	830a	Agenda, questions/discussion from prior
	840a	Components of DMC assessment, ABA/APA worksheets, court forms
	900a	Guest speaker: Dr Carrie Rubenstein Documentation and reports
	945a	Break
	955a	Report usage by various parties Considerations and impacts
	1045a	Break
	1055a	Case studies (A) in breakout rooms
	1130a	Report out, discussion
	1200p	Lunch

	Time	Topic
Afternoon  • 2 breaks • Finish by 410p	100p	Questions/discussion from morning
	105p	Guest speaker: Detective Robin Fry
	125p	Case studies (B) in breakout rooms
	155p	Break
	205p	Report out on case studies, discussion
	225p	Case studies (C) in breakout rooms
	255p	Break
	305p	Report out on case studies, discussion
	325p	Next steps: finding others, shadowing Collaboration/consultation, marketing Questions/discussion
	405p	Wrap up, resources, CEU process

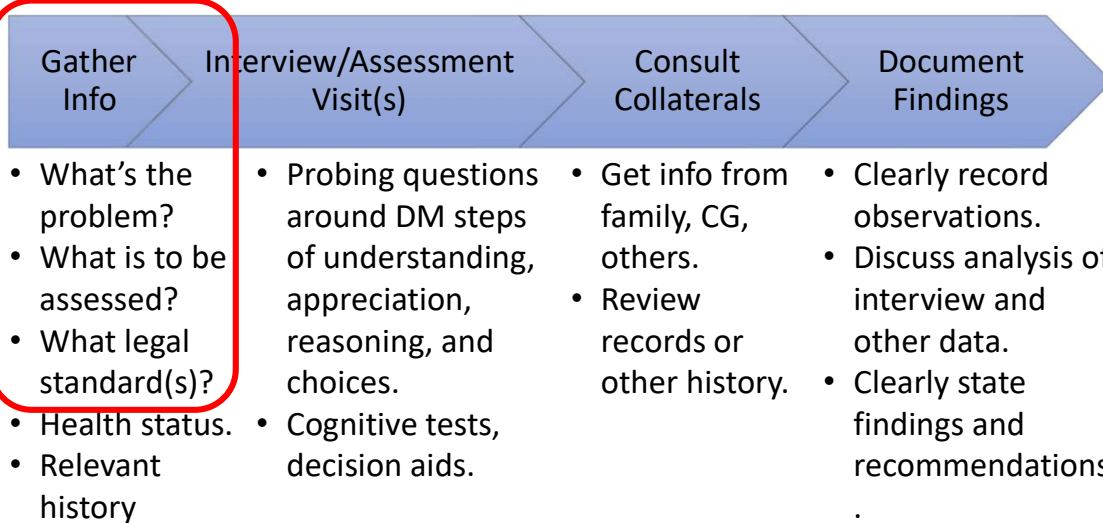
## Heads-up: CEU Questions

*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.

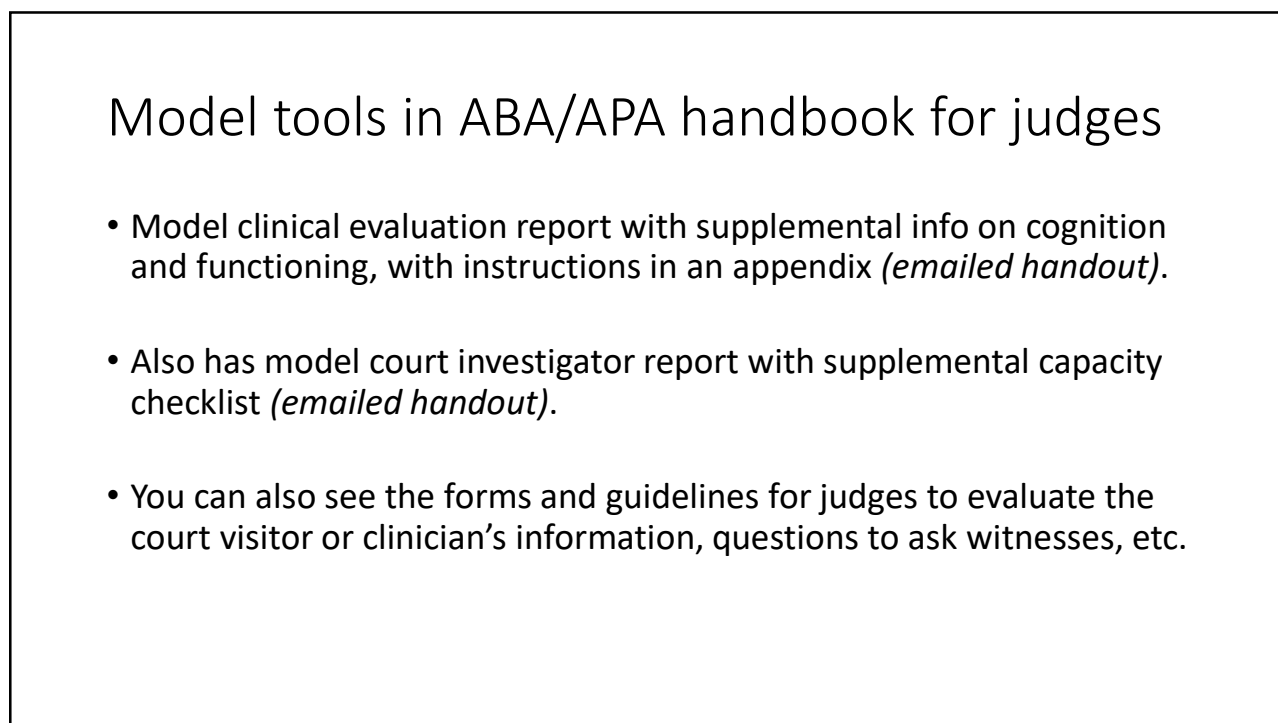
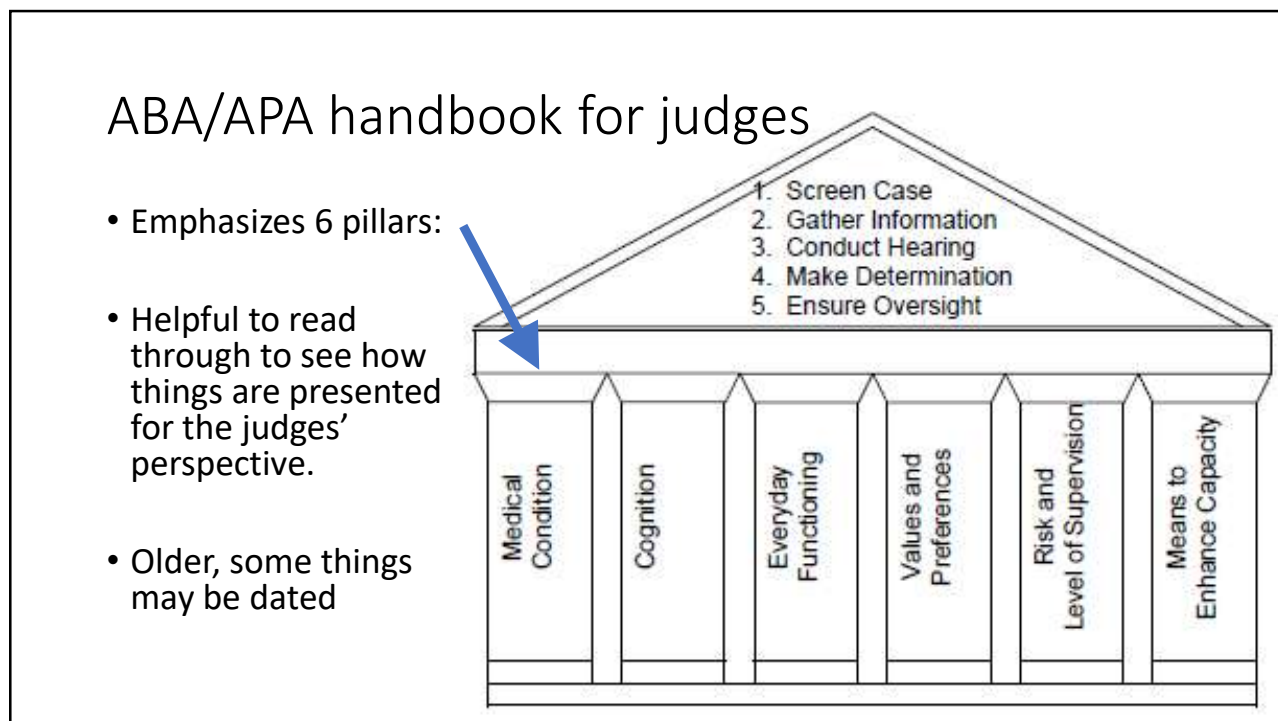
## At the start, clarify documentation needed

*Documentation needed*



## Components of DMC assessment


- The ABA/APA handbooks provide guidance for what should be covered in assessing DMC. Links to these were provided in the resource handouts in prior classes:
  - Judicial Determination of Capacity of Older Adults: A Handbook for Judges (2006): <https://www.apa.org/pi/aging/resources/guides/judges-diminished.pdf>
  - Assessment of Older Adults with Diminished Capacities: A Handbook for Lawyers, 2nd ed. (2021): <https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf>
  - Assessment of Older Adults with Diminished Capacity: A Handbook for Psychologists (2008): <http://www.apa.org/pi/aging/programs/assessment/capacity-psychologist-handbook.pdf>



## New resources for judges

- May 15 webinar from USC Center for Elder Justice: “Advancing Guardianship Practice: Introducing the Judicial Guardianship Worksheet & Less Restrictive Alternatives to Guardianship Guide”
  - Judicial Guardianship Evaluation Worksheet Tool 120420 v.2:  
<https://www.justice.gov/elderjustice/file/1206636/dl?inline>
  - Glossary:  
<https://drive.google.com/file/d/1fce709nSGb7d1ZNxJwLIX9Qf0Q5qdz8r/view>
  - Less Restrictive Alternatives – listing of suggestions/examples by type of need/situation:  
[https://drive.google.com/file/d/1O\\_cpRBI5s6EmhrLbpS4Z1G5WqufLepfV/view](https://drive.google.com/file/d/1O_cpRBI5s6EmhrLbpS4Z1G5WqufLepfV/view)
  - Give feedback on the above items: [Bonnie.Olsen@med.usc.edu](mailto:Bonnie.Olsen@med.usc.edu);  
[Lori.Mars@med.usc.edu](mailto:Lori.Mars@med.usc.edu)

## ABA/APA handbook for lawyers

- This handbook discusses specific capacities in detail with examples. 
- Chapters IX and X discuss components of a clinical report with language that can be helpful to use in your report writing.
- Includes a model form for attorney assessment of capacity for lawyers to use – helpful to look at how attorneys approach capacity (*emailed handout*).

- *Contractual*
- *Convey Real Property*
- *Testamentary*
- *Donative*
- *Durable Power of Attorney*
- *Financial*
- *Healthcare decisions*
- *Appoint Healthcare Agent*
- *Independent Living*
- *Marry*
- *Mediation*
- *Testify*
- *Sexual Consent*

## ABA/APA handbook for lawyers

### What attorneys look for in a clinical capacity assessment:

- Demographic information
- Legal background and referral
- History of present illness
- Psychosocial history
- Informed consent
- Behavioral observations
- Tests administered
- Validity statement [re testing]
- Summary of testing results
- Impression
- Recommendations

## ABA/APA handbook for psychologists

### A Framework for Capacity Assessment

1. Legal Standard
2. Functional Elements
3. Diagnosis
4. Cognitive Underpinnings
5. Psychiatric or Emotional Factors
6. Values
7. Risk Considerations
8. Steps to Enhance Capacity
9. Clinical Judgment of Capacity


*This handbook has a Capacity Worksheet, and Chapter VI covers specific capacities and provides case studies that show different approaches to report writing.*

- Medical
- Sexual
- Financial
- Testamentary
- Driving
- Independent living

## Selected court forms related to capacity

<b>CA</b>	<a href="https://courts.ca.gov/sites/default/files/courts/default/2024-12/gc335a.pdf">https://courts.ca.gov/sites/default/files/courts/default/2024-12/gc335a.pdf</a>
<b>DC</b>	<a href="https://www.dccourts.gov/sites/default/files/2018-02/probate_II-F.pdf">https://www.dccourts.gov/sites/default/files/2018-02/probate_II-F.pdf</a>
<b>MD</b>	<a href="https://www.courts.state.md.us/sites/default/files/court-forms/family/forms/ccgn019.pdf/ccgn019.pdf">https://www.courts.state.md.us/sites/default/files/court-forms/family/forms/ccgn019.pdf/ccgn019.pdf</a>
<b>OH</b>	<a href="https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/probate_forms/guardianship/17_1.pdf">https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/superintendence/probate_forms/guardianship/17_1.pdf</a>
<b>FYI</b>	Virginia and Washington states don't have eval/report forms. Other states' forms are listed in the handout from the first class (filename: <i>Handout US assess gship.pdf</i> ).

## Other documentation

- Most capacity assessments won't be captured on a form, but rather as clinical documents or reports.
- You'll have to develop your own (unless your agency/org has existing formats)
- Feel free to use my examples as a starting point: 

### emailed handouts:

Briefer summary of findings:

*Sample Redacted ACCS  
Summary for Testamentary  
DMC*

Longer detailed report:

*Sample Redacted ACCS Report  
for DMC in EA*

## Guest speaker: Dr Carrie Rubenstein MD

Dr Rubenstein is the director of the Geriatric Medicine Fellowship and is part of the residency faculty at Swedish Family Medicine - First Hill. Carrie is passionate about educating physicians and healthcare teams about best practices for the care of older people. Her academic interests include interprofessional education and practice and Age-Friendly Health Systems.

Carrie grew up in New Jersey and went to the University of Michigan and University of Medicine and Dentistry of New Jersey, then completed her residency and geriatrics fellowship in Family Medicine at Swedish - First Hill. She practiced for 8 years at Carolyn Downs Family Medical Center, a community health center in Seattle's Central District. She returned to Swedish as the director of the Geriatric Medicine Fellowship in 2014.

She also directs an interprofessional geriatrics assessment clinic at Swedish, serves as a medical consultant for the King County Elder Abuse Multidisciplinary Team, and co-leads the elder mistreatment interest group at the American Geriatric Society.

## More about reports and documentation

### **We've covered this information in previous classes:**

- Sample Assess Report Template – my version (*handout from May*)
- Examples of Discussion and Finding Sections” – sample language/format (*handout from March*)
- Documentation testing scores language – how to describe testing tools, tasks, scoring, and validity (*handout from May*)
- Documentation Guidance – new revised version (*emailed handout*).

## 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 →

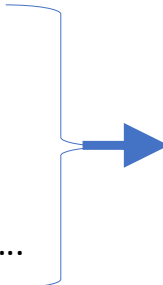
*For clinicians, the DSM-5 defines "provisional" as when the clinician thinks a particular disorder is present, but realizes more information is required to be confident of a specific diagnosis.*

## “Provisional” opinion – sample language

- 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.
- 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 cleared, her decision making abilities should be reassessed.
- 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

- 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 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: guardianship, conservatorship, protective arrangements
  - For criminal cases (trials and sentencing): showing the client was a victim of undue influence and/or did not have capacity when victimized
- By law enforcement: for information about the victim in criminal investigations
- By APS: to support guardianship or other protections, as well as investigations and enforcement actions

## 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.

### 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

- **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.”

## 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.***

## Prepare to testify (*reminder*)

***THREE trials this summer:  
come observe court and  
watch testimony process***

- 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?
- 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.

## Testimony process FYI

- If you are asked to testify in any case, you should receive a subpoena (this covers you privacy-wise).
- The side you are testifying for should prepare and support you throughout the process.
- You have the right to have the prosecutor 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.***

## Testimony process – defense

- 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
- 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).***

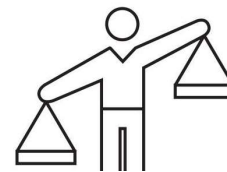
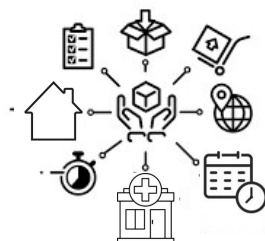
***Ask the prosecutor if you bill their office or the defense attorneys.***

## 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 professional liability/malpractice insurance may be able to answer questions or offer you support as well.

## Other considerations around documentation

SYSTEMIC	LOGISTICAL	SOCIAL/ CULTURAL	ETHICAL
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*(previously we looked at these areas for factors in testing/assessment process)*

<b>SYSTEMIC</b>	<b>LOGISTICAL</b>	<b>SOCIAL/ CULTURAL</b>	<b>ETHICAL</b>
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**Address the context of the assessment and other involved parties:**


- Adult Protective Services investigation
- Guardianship/conservatorship process
- Law enforcement involvement
- Other court proceedings
- Signed or prospective documents
- Medical care and other supportive services
- Substitute decision makers, family, caregivers



<b>SYSTEMIC</b>	<b>LOGISTICAL</b>	<b>SOCIAL/ CULTURAL</b>	<b>ETHICAL</b>
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**Address factors related to the assessment process:**


- Client centered process/setting
- Supported access, e.g. accommodations
- Status of billing/payment
- Conditions for when/how to release report



<b>SYSTEMIC</b>	<b>LOGISTICAL</b>	<b>SOCIAL/ CULTURAL</b>	<b>ETHICAL</b>
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**Address factors related to personal identity, culture, social role:**

- Impact of language (fluency, use of interpreter) and literacy (reading comprehension, financial, health).
- Implications of person’s role in both formal and informal contexts.
- Inequities based on income, age, race, gender, sexual orientation, ability, language, and other identities.
- Need appropriate and accessible and acceptable supports for less restrictive options to work.




<b>SYSTEMIC</b>	<b>LOGISTICAL</b>	<b>SOCIAL/ CULTURAL</b>	<b>ETHICAL</b>
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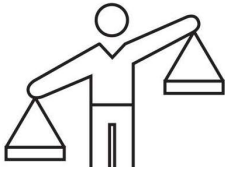
**Address multiple ethical obligations:**

- Describe the process of consent, or at least assent, to the DMC assessment and testing process.

*“It is important to explain to the person refusing the assessment why it is needed and what the consequences of refusal are.  
If the person lacks capacity to agree to or to refuse an assessment, it can normally go ahead provided that the person does not object and it is in their best interests.”  
(Biswas & Hiremath)*



SYSTEMIC	LOGISTICAL	SOCIAL/ CULTURAL	ETHICAL
<b>Address multiple ethical obligations:</b>			
<ul style="list-style-type: none"><li>• Meet your own professional and licensure obligations regarding clinical work and documentation.</li><li>• Know and explain “to whom is your duty” e.g. legal privilege and confidentiality.</li><li>• Autonomy and beneficence: advocacy for client’s rights to be protected and decisions respected as fully as possible, along with their right to (and access to) needed care/services.</li></ul>			



## 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.

## Case studies

Groups report back,  
questions/discussion

**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.

## Finding others doing this work

- City, county, regional, and state governmental agencies that serve older and vulnerable adults
- Adult Protective Services
- Area Administration on Aging / Aging and Disability Services
- Courts for guardianship / probate – especially court visitor list
- Prosecutor’s offices – especially elder abuse/exploitation focus
- Long Term Care Ombuds / disability services
- Multi-Disciplinary Teams / FAST / RISE

## Finding others doing this work

- Departments of hospitals, universities, or larger clinics:
  - Geriatrics/gerontology, geropsych, neuropsych, psychiatry/psychology, neurology, SLP, OT, rehab, ethics consult teams
- Alzheimer’s Association
- Disability rights organizations
- Attorneys: local and state bar committee/sections, elder law association ([www.naela.org](http://www.naela.org))
- Professional association (for your licensure/specialty, and others)
- Care management providers
- Senior communities, especially ones providing memory care and skilled nursing/rehab services
- LinkedIn
- Your colleagues and friends

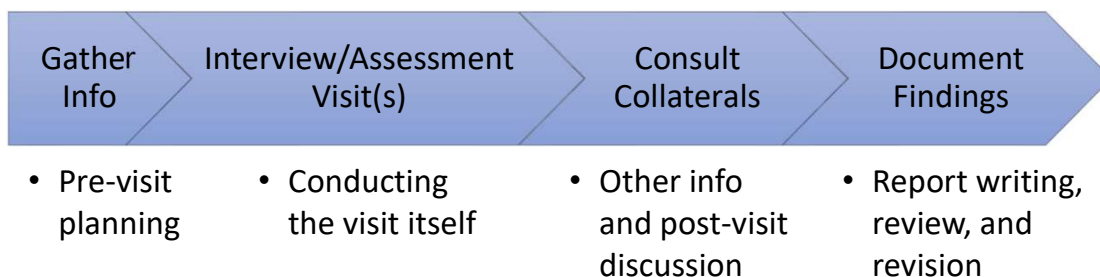
## Building relationships for shadowing

- Write an introductory email about yourself, asking if they are willing to talk with you about their work related to assessing capacity, and if they can refer you to others you should contact.
- You can explain that you took this course and the recommended approach of shadowing and being shadowed.
  - (new handout for your use: one-page roadmap)

*If someone doesn't work for shadowing, they might still be someone you can collaborate with and consult with on cases.*

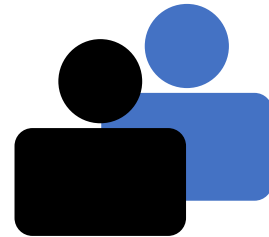
## Shadowing and being shadowed

Discuss how you'll approach each step of the assessment process:



## 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.
  - Similar to supervision contracts.
  - Address privacy, liability, etc.



## Consultation / collaboration

- We will be launching an ongoing collaborative working group focused on the clinical work as well as the business side and practice development processes of offering these services.

*Info to come soon!*

- Join Dr Adria Navarro's monthly consult group on decisional capacity issues – based in LA area but open to anyone. Email: [Adria.Navarro@med.usc.edu](mailto: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



## Upcoming events

<b>June 10:</b>	<b>Hot Topics in Mental Health &amp; Law: Civil Commitment, 12-1pm</b> <a href="https://cmhpl.psychiatry.uw.edu/education/events/civil-commitment/final-panel/">https://cmhpl.psychiatry.uw.edu/education/events/civil-commitment/final-panel/</a>
<b>June 11:</b>	<b>Beyond the Billions: Understanding and Preventing Elder Financial Fraud</b> <a href="https://us02web.zoom.us/webinar/register/WN_vGmxuNU8TpgOOXAt6KoJaA#/registration">https://us02web.zoom.us/webinar/register/WN_vGmxuNU8TpgOOXAt6KoJaA#/registration</a>
<b>June 15:</b>	<b>World Elder Abuse Awareness Day</b> <a href="https://www.napsa-now.org/world-elder-abuse-awareness-day/">https://www.napsa-now.org/world-elder-abuse-awareness-day/</a>
<b>Sept 8-11:</b>	<b>National Adult Protective Services Assn conference (in Bellevue, WA) and NAPSA Financial Exploitation Summit</b> <a href="https://www.napsa-now.org/annual-conference/">https://www.napsa-now.org/annual-conference/</a> <a href="https://www.napsa-now.org/calendar/financial-exploitation-summit-2/">https://www.napsa-now.org/calendar/financial-exploitation-summit-2/</a>
<b>Sept 19:</b>	<b>American Case Management Assn Washington state conference (SeaTac)</b> <a href="https://events.acmaweb.org/website/83013/pricing/">https://events.acmaweb.org/website/83013/pricing/</a>

## Wrapping up

- Resources provided
- CEU process
- Evaluations
- Collaborative Working Group  
*info to come*

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

## Thanks and appreciation

- To Alison and Sound Generations for making this program possible;
- To Dr Adria Navarro, of USC and the Community Resource Center for Aging, for her ongoing support as well as sponsorship of the monthly consultation group on decisional capacity issues;
- To all our speakers and case study providers, especially Denise, Ashica, and Jams; and
- **To each of you for taking part!**