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## Engaging Clients on the Topic of Capacity

Conversations related to capacity can be sensitive. This guide provides a few helpful talking points to facilitate client discussions.

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*Cambridge Brain Sciences has built an indicative tool—in conjunction with key advisors in the legal, medical, and scientific fields—designed to provide lawyers with the ability to quickly and conveniently quantify a client's executive function at a specific point in time. This product is designed to assist lawyers and help further assure clients that the terms of an agreement or document they execute will be enforceable.*

## A General Guideline for Explaining the Assessment to Clients

As opposed to concerns specific to an individual client, conversations related to capacity are often best framed in the *broader context of an ageing population* and the *importance of establishing capacity in order for estate documents to be upheld by the court.*

# Key Talking Points

## 1 Set context regarding an ageing population

- In North America, 15% of the population is now 65 years or older.
- The population 65 years and older is growing four times faster than the overall population.
- It is well established that normal *ageing affects one's ability to recall information and make decisions quickly.*

## 2 Describe the importance of capacity in the context of wills and estates

- *In the case of estate planning, the cognitive effects of normal ageing can have a significant impact.*
- **Clients must possess capacity**, in order for estate documents to be enforceable. A requirement of capacity includes that a client possess the executive function required to make or alter a valid estate document.
- Because of the large and growing ageing population, there is an *increase in estate documents being contested.*

### 3 Explain why you are taking steps towards using an objective assessment

- It is important to *re-iterate that this is an objective measure that is valuable for all clients.*
- The assessment helps to further *assure the client that estate documents are enforceable and increases the likelihood that the client's wishes will be respected.*

### 4 Make the client feel comfortable taking this assessment

- *This is not an intelligence test.* It indicates whether a client's level of executive function (for example, decision making and attention) meets or exceeds the minimum requirement needed to demonstrate capacity.
- The assessment is *highly engaging, gamified, and takes less than ten minutes* to complete.
- The assessment has been *taken tens of thousands of times by individuals over the age of 65.*
- The client will receive *written and video instructions and have a chance to practice before taking the tests.*

# Addressing Questions Your Clients May Have

*“What happens if I don’t do well?”*

Capacity is based on multiple criteria including being time and situation specific. The result of this assessment is one indicative data point for a lawyer to consider. For instance, if a client misunderstands the instructions or is feeling unwell on the day of the assessment, a lawyer may suggest the client retake the assessment at a later time or on a different day.

*“I don’t feel like I did well. Can I take the assessment again?”*

Yes, you can take the assessment again. *(Note: it is at the lawyer’s discretion to determine if a second assessment is warranted.)*

*“If I do poorly on my first assessment because I misunderstand the instructions and then pass the second assessment, do the first results stay on my file?”*

Yes, the first results will stay on a client’s file, however the lawyer can add notes to the report to explain that the client misunderstood the instructions the first time.

*“If these tests don’t measure intelligence, what do they measure?”*

The tests indicate whether a client’s level of executive function (for example, decision making and attention) exceeds the minimum requirement needed to demonstrate capacity.

*“Can I see my results?”*

Yes, the results are stored securely in the lawyer’s administrative account.

*“Are my results stored securely?”*

Yes, the results are stored securely and meet or exceed privacy requirements. Internet-based data is hosted by Amazon's AWS EC2 service, which employs HIPAA-compliant facility access and control. All internet activity is secured by SSL, TLS, or SSH, and all web-based login connections are forced to use SSL or TLS. Personal data is encrypted in the database, and all data is backed up inside EC2 as well as a remote backup site that employs HIPAA-compliant facility access and control. The results are subject to attorney-client privilege.