

Chapter 15

Elder Abuse and Consent Capacity: Our Collective Nemesis?

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ABSTRACT

This chapter explores the findings of theoretical and empirical studies for the complicated construct of capacity to consent to sexual relations in elders. This is alongside an attempt to clarify through small-scale research, the knowledge and attitudes towards consent capacity as reported by elders themselves. Results indicate that Greek respondents are not fully informed about consent capacity and approach this topic as a taboo. Moreover, they believe that the Greek society and state do not provide adequate prevention programs. Future directions on how to make elders and their family members aware of consent capacity problems are discussed.

INTRODUCTION

Although in recent years a great emphasis has been given to the psychological assessment of civil capacities in older adults, namely, medical consent capacity, sexual consent capacity, financial capacity, testamentary capacity, capacity to drive, and capacity to live independently (American Psychological Association, 2005; 2006; Demakis, 2011), still little progress has been made in the assessment of the above capacities worldwide (Diaz-Ponce et al., 2016; Giannouli, 2014; Giannouli & Tsolaki, 2013; Knight et al., 2008). The main problem for this lack of progress is that different researchers adopt diverse theoretical psychological and legal constructs, and in addition to that, the lengthy procedure of standardization of relevant tests across different cultural settings is making the adoption of specific instruments for assessing these capacities hard not only in Greece, but worldwide (Giannouli, 2015; Giannouli & Tsolaki, 2013; 2015).

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Complex sexual behavioral changes, inappropriate/improper sexual behaviors and related disinhibition in older persons with cognitive impairments and especially in Alzheimer's disease patients are present and generally accepted as troubling to their caregivers and family members (Bardell, Lau & Fedoroff, 2011; Bartelet, Waterink, & van Hooren, 2014; Black, Muralee, & Tampi, 2005; Canavelli et al., 2011, 2017; Cipriani et al., 2016; DeMedeiros et al., 2008; Derouesné, 2009; Giami & Ori, 2012; Gomes-Pinto, 2014; Lombardo & Rossi, 2016; Rosen, Lachs, & Pillemer, 2010; Thom, Grudzinskas, & Saleh, 2017; Vloeberghs et al., 2007; Wallace & Safer, 2009; Ward & Manchip, 2013). Especially healthy spouses report inappropriateness and even aversion for this change (Davies et al., 2012; Harris et al., 2011; Simonelli et al., 2010; Ward et al., 2005). Although several pharmacological and nonpharmacological treatment proposals exist (Canevelli et al., 2013; Chen, 2010; Joller et al., 2013; Light & Holroyd, 2006; Ozkan et al., 2008; Tune & Rosenberg, 2008; Tosto et al., 2008; Tucker, 2010), the impact of dementia on sexuality has not been thoroughly examined and controlled (Kamel & Hajjar, 2004; Mahiu & Gastmans, 2012), nurses and other care staff need to gain a better understanding of and insight into late life sexuality (Archibald, 2003; Mayers & McBride, 1998), and as a result the older individuals are more prone to abuse either as perpetrators or as victims (Elias & Ryran, 2011; Johnson, Knight, & Alderman, 2006; Tarzia, Fetherstonhaugh, & Bauer, 2012).

Especially in older adults with Mild Cognitive Impairment (MCI) or in those suffering from different types of dementia, a more positive belief in the accuracy-correctness of their capacities is found (Giannouli et al., 2013; Giannouli & Tsolaki, 2015), something that is accompanied by a significantly deteriorating cognitive and emotional profile (Giannouli & Tsolaki, 2016), thus making assessment difficult. This pattern of cognitive impairment accompanied by overoptimistic views about one's cognitive capacity may be also found in their family members (Giannouli, 2016a).

Although in Greece still no data exists, in USA healthy older adults, both women and men, did in the past and do continue to value and enjoy sexual relationships throughout their lives, while sexual behavior is considered to be an integral part of their human existence even when problems exist due to physical conditions (Comfort & Dial, 1991; Feldman et al., 1994; Guay, 2008; Hodson & Skeen, 1994; Janus & Janus, 1993; Lindau et al., 2007; Malatesta, 2007; Masters & Johnson, 1966; Mathias, Lubben, Atchison, & Schweitzer, 1997; Meston, 1997; Russell, 1998; Marsiglio & Donnelly, 1991; Pate, 2004; Pfeiffer, Verwoerd, & Wang, 1968; Steinke, 1994; Trudel, Turgeon, & Piché, 2000). Sexual assault in healthy older adults, and especially those suffering from some type of dementia, may go unnoticed, because of two reasons: 1) the older individual's incapacity to understand the nature of sexual contact as the person does not know the physiological aspects of sex and/or the possible consequences of sexual activity (e.g. contraction of sexually transmitted diseases, etc.). According to this, the older adult may need the capacity to appraise the nature of the possible social stigma-taboo associated with sexual intercourse outside of marriage, and may be capable of overcoming any difficulties in reporting any such episodes, and 2) the western societies deny facing this problem even when reported (American Psychological Association, 2006).

In general, in determining legally sufficient consent, mental health experts as well as legal experts must examine: (1) knowledge of the relevant information-facts relating to the decision to be made including risks and benefits, (2) the mental capacity to realize and rationally process the risks and benefits of engaging in sexual activity in a way that is consistent with the individual's general values, and (3) voluntariness, meaning a stated choice combined with the absence of coercion, unfair persuasion or inducements and the presence of a realistic choice between engaging or refraining from the activity (American Psychological Association, 2006). While the factors are fairly uniform, the extent and means

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