

FINANCIAL CAPACITY IN THE ELDERLY

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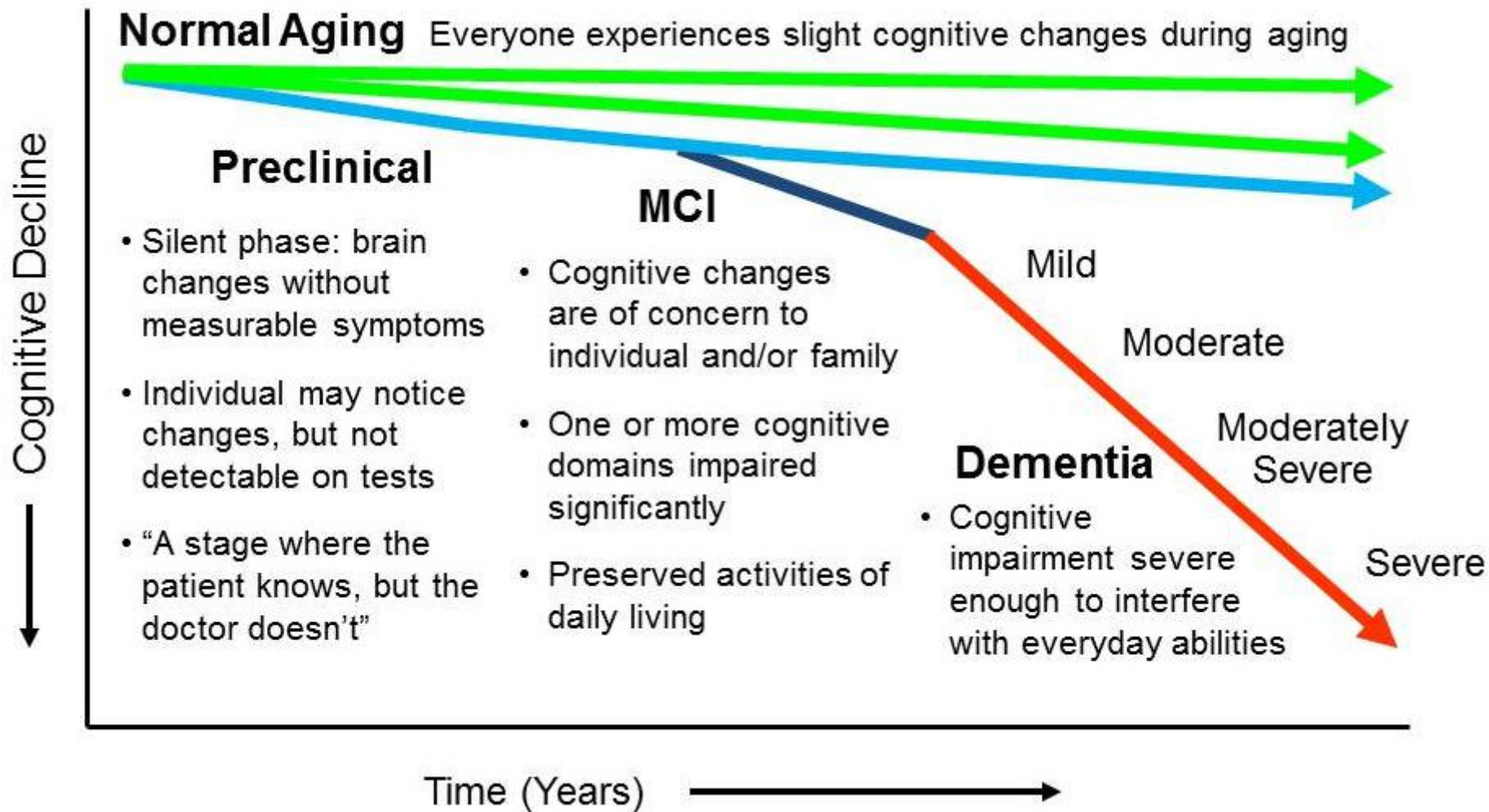
Overview

- Mild cognitive impairment (MCI, minor neurocognitive disorder) and dementia (major neurocognitive disorder)
- Financial capacity
- Specific financial capacities—donative, contractual, testamentary
- Financial abuse
- Mental health professional's role

Review of Dementia

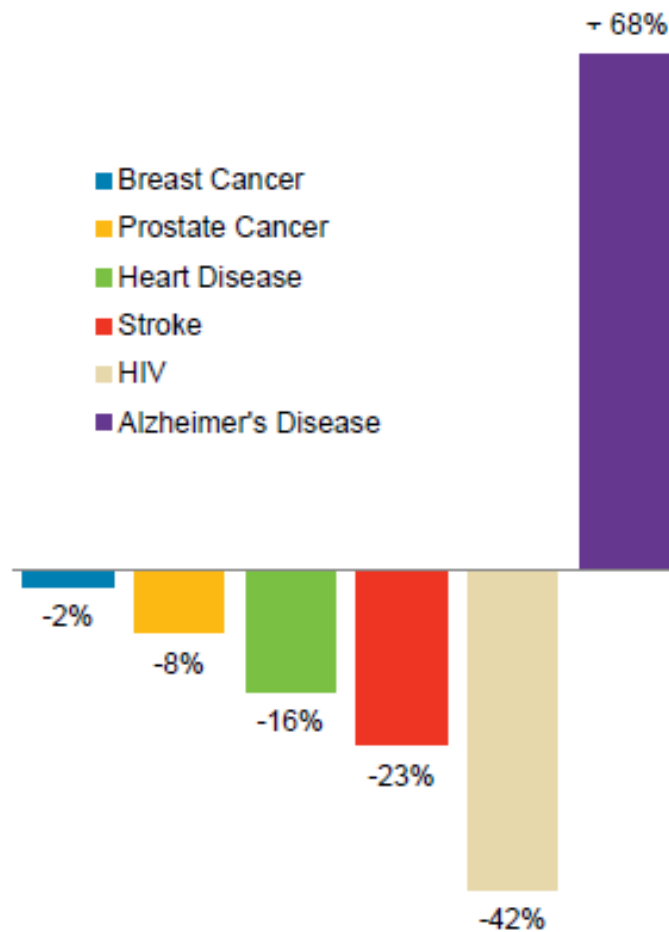
- Dementia is global cognitive decline that affects daily functioning.
 - Mild cognitive impairment (MCI) precedes diagnosis of dementia, particularly Alzheimer's disease (AD).
 - MCI prevalence in persons over age 65 years is 18%.
 - Amnestic MCI converts to dementia, mostly AD, at a rate of 10%-15% per year, or 50% over five years.
 - Memory impairment and accompanied impairments in:
 - Executive functions
 - Personality
 - Visuospatial abilities
 - Language
- Other common dementias:
- Parkinson's disease/Lewy Body
 - Vascular dementia
 - Frontotemporal dementia

Lopez, 2003; Rosenberg et al., 2006



Changes in Numbers of Deaths Between 2000-2010 in US

http://www.alz.org/alzheimers_disease_facts_and_figures.asp



Dementia Demographics

- Prevalence of dementia
 - 5.3 million in US have AD
 - Approximately 1/3 of persons over age 85 years have dementia
 - 1/3 of elderly who die have dementia
- Caregivers for persons with dementia
 - 15.4 million caregivers
 - Provided 17.5 billion hours of unpaid care in 2012

http://www.alz.org/alzheimers_disease_facts_and_figures.asp; (Marson, 2013)

Financial Capacity

- Ability to manage one's financial affairs (money and financial assets) in a manner that meets one's needs and consistent with one's personal self-interest and values
- Medico-legal construct
- Includes both performance and judgment aspects
- Legal definition basis for determining conservatorship
- In literature includes contractual capacity, testamentary capacity, donative capacity, and self management

Components of Financial Capacity

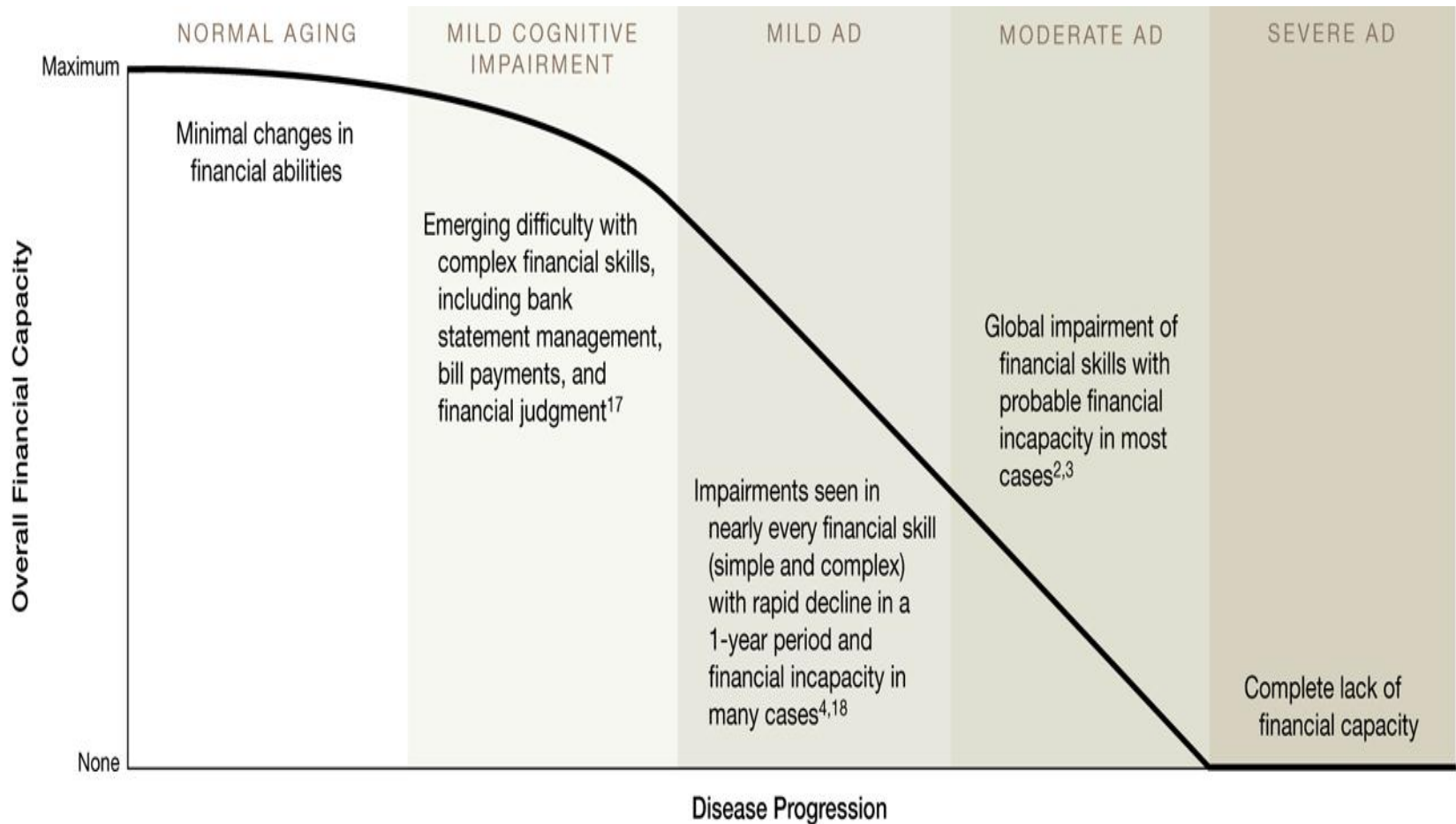
- **Basic monetary skills—Needed to live independently**
 - Identify and count money
 - Understand debt and loans
 - Conduct cash transactions
 - Pay bills
 - Avoid financial abuse
 - Conduct financial activities prudently
- **More complex skills—First to decline in dementia**
 - Bank statement management
 - Financial conceptual knowledge
 - Bill payment skills

Widera et al., 2011

Financial Capacity and Cognitive Impairment

- Is one of the instrumental activities of daily living
- Strongly cognitive mediated
- Impacted by MCI, AD, Parkinson and Lewy Body disease, frontotemporal dementia
- First functional skill to decline in dementia
- Among MCI patients, declines over one year in checkbook management and overall financial skills predicts conversion to AD

Conceptual Schematic of Progressive Decline in Financial Capacity in a Person With AD



Widera et al., JAMA 2011;305:698-706

Capacity Outcomes on Financial Capacity Instrument Domains for Patients with AD

	Percentage of Patients	
	Capable	Marginally Capable or Incapable
Domain 1: Cash Transactions		
Patients with mild AD	47	53
Patients with moderate AD	0	100
Domain 2: Checkbook Management		
Patients with mild AD	27	73
Patients with moderate AD	0	100

Marson, et al., Arch Neurol, 2000

Capacity Outcomes on Financial Capacity Instrument Domains for Patients with AD

	Percentage of Patients	
	Capable	Marginally Capable or Incapable
<hr/>		
Domain 3: Bank Statement Management		
Patients with mild AD	27	73
Patients with moderate AD	0	100
Domain 4: Financial Judgment		
Patients with mild AD	13	87
Patients with moderate AD	0	100

Marson et al., Arch Neurol, 2000

Testamentary Capacity

- Ability to make a will or trust
- Lowest standard of capacity
- Does not require ability to manage everyday financial affairs
- Requires ability to:
 - Know the nature and extent of property
 - Know, without prompting, claims of people who are natural objects of bounty
 - Be aware of scope and reach of document

Undue Influence

A tool used by a person to wrongfully dictate actions that benefit themselves at the expense of another

- Existence of a confidential relationship
- Participation of donee in obtaining the gift
- Lack of independent and interested advice to donor
- Secrecy and haste
- Change of the donor's transfer to others
- Change in the donor's plan
- Unjust or unnatural gift
- Donor susceptibility

Donative and Contractual Capacity

- Donative capacity

- Ability to make a gift requires ability to understand:
 - The nature and purpose of gift or property
 - That the gift is irrevocable
 - Results in reduction of donor's assets

- Contractual capacity

- Ability to understand the nature and effect of the act and the business being transacted
- High level of ability
- Examples—ability to execute a deed, financial power of attorney

What to Advise Families

- Educate on future financial impairments
- Execute Durable Power of Attorney (DPOAF)
 - Authorizes another person to make financial decisions on the patient's behalf
 - Can take effect immediately or after capacity lost
 - Can grant global or restrictive authority
 - Advisable to have attorney draft
 - Legal fiduciary responsibility
 - Joint bank account does not require the holder to act in the elder's best interest

Financial Abuse

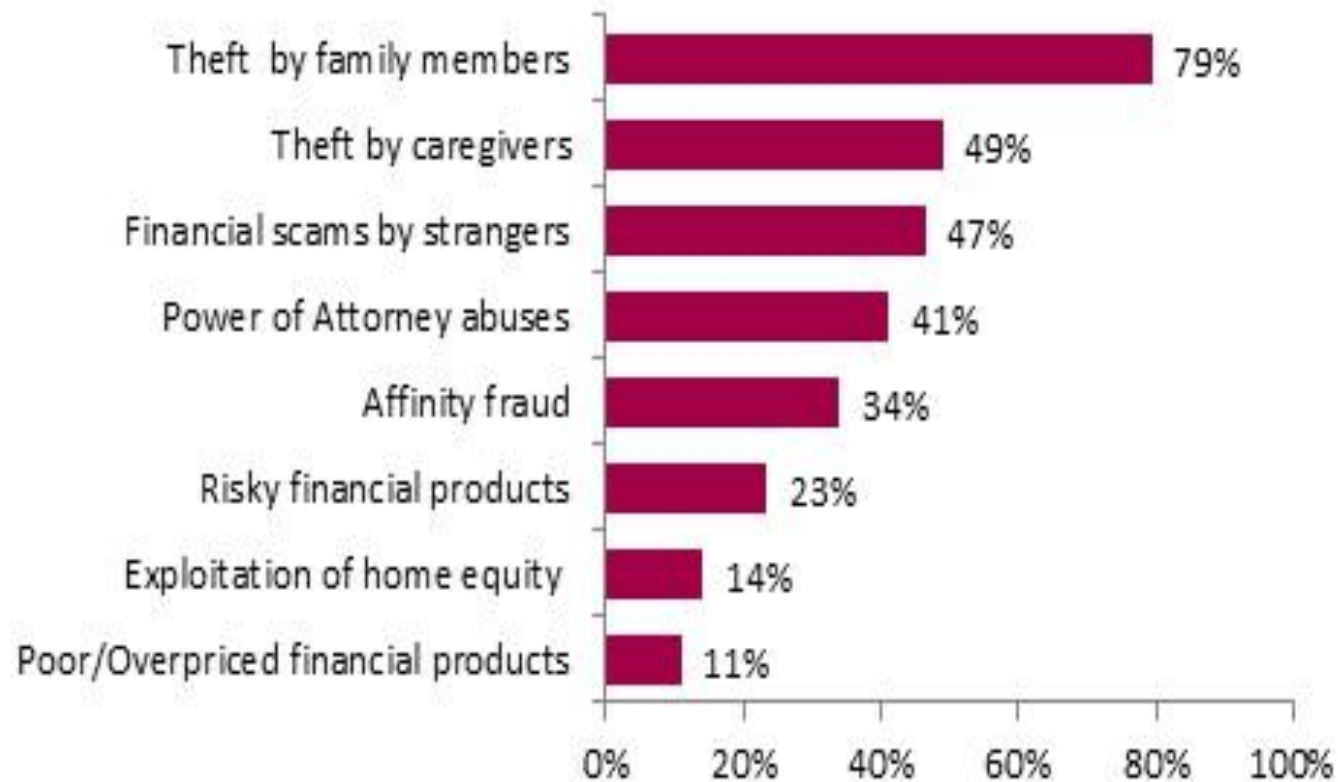
- Most common abuse of elderly
- National prevalence of 5.2%
 - Risk factors are nonuse of social services and assistance with ADLS
- Loss to victims of \$2.8 billion per year
- Associated with other types of abuse
- Theft of cash, bank accounts or investment accounts most common
- Elderly had \$18.1 trillion in assets in US in 2009

Acierno et al., 2010; Met Life 2010



Fraud Against Elderly in US

Common Types of Fraud Targets Americans 62+



Source: Investor Protection Trust, Elder Investment Fraud and Financial Exploitation,

Oregon Legal Definition of Financial Exploitation

OAR 411-020-002—Financial Exploitation

- Wrongfully taking, by means including but not limited to deceit, trickery, subterfuge, coercion, harassment, duress, fraud or undue influence the assets, funds, property or medications belong to or intended for the use of an adult
- Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult would reasonably believe that the threat conveyed would be carried out
- Misappropriating or misusing any money from any account held jointly or singly by an adult or
- Failing to use income or assets of an adult for the benefit, support and maintenance of the adult



Financial Abuse in Oregon—2011 Report

- 2782 allegations reported to Oregon Adult Abuse and Prevention Investigations
- Age
 - 78% over age 65 years
 - 22% under age 65 but with disability
- 18% with previous investigation
- Mostly common perpetrators are children of victim or nonrelative caregiver
- 37% had fiduciary role (POA, guardian, trustees, personal representatives, conservators)

Signs of Need to Assess Financial Capacity or Financial Abuse

- Diagnosis of dementia
- Change in appearance and hygiene
- Loss of partner who may have been managing finances
- Family reports of difficulty with common financial skills
- Failing to pay rent or bills
- New family members or caregivers accompanying patient to clinic visits
- Concerns regarding missing funds in bank accounts
- Unusual gifts or withdrawals
- Accusations that people are stealing or mismanaging the patient's funds
- Newly unable to afford food or medications

When to Assess for Financial Capacity for Conservatorship

- Patient is impaired, lacks insight, resists help
- Family conflict
- Suspected financial abuse



CASE #1: FINANCIAL ABUSE

64 y/o, single CM, developmental delay & memory difficulties.
Concern for financial abuse by housemates.



CASE #1: FINANCIAL ABUSE

History/Exam	Signs of Need to Assess
Mother died 2002	<ul style="list-style-type: none">• Loss of figure who had been managing finances
>5 housemates, no background check, \$50 in rent	<ul style="list-style-type: none">• New “caregivers”• Poor judgment
Filed for reverse mortgage \$30,000	<ul style="list-style-type: none">• Unusual financial decision
Owes City of Portland	<ul style="list-style-type: none">• Unable to manage household
\$1700 Electric bill past due	<ul style="list-style-type: none">• Failing to pay bills
Wallet & checkbook accessible	<ul style="list-style-type: none">• Poor judgment
$\$5 - \$3.25 = \cancel{\$2.25}$ $100 - 7 = \cancel{92}$	<ul style="list-style-type: none">• Unable to perform simple calculations

CASE #1: FINANCIAL ABUSE

1) Diagnoses:

Dementia (Major Neurocognitive Disorder) without reversible cause.

Suspected Mental Retardation (Intellectual Developmental Disorder)

- 1) Lack of financial capacity secondary to inability to manage simple and complex financial tasks and ongoing undue influence
- 2) Recommendation for guardianship

CASE#2: FAMILY CONFLICT

81 y/o Mandarin-speaking woman w/ an advanced degree in finance. Now widowed w/ cognitive impairment. Lives with son. Conflict within her family regarding her assets.



CASE#2: FAMILY CONFLICT

History/Exam	Signs of Need to Assess
Believes her daughters are misusing her funds. Revoked her financial POA.	<ul style="list-style-type: none">• Family conflict
Allows daughters access to credit card and manage checkbook/account from bank she cannot recall.	<ul style="list-style-type: none">• Poor judgment
Able to identify and count money and make small cash transactions.	<ul style="list-style-type: none">• Able to manage simple financial tasks
Son manages all bills, rent, groceries local bank account.	<ul style="list-style-type: none">• Unable to manage complex financial tasks
Son deposits rental income into his account.	<ul style="list-style-type: none">• No accountability
Denies debt. Owes IRS sum of money.	<ul style="list-style-type: none">• Memory impairment• Unable to manage simple tasks
Donating money to several “charities”	<ul style="list-style-type: none">• Undue influence/financial abuse

CASE#2: FAMILY CONFLICT

- 1) Dementia with no clear reversible cause.
- 2) Lack of Financial Capacity as she has been subject of financial abuse and is unable to perform complex financial tasks.
- 3) Lacks Contractual Capacity
- 4) Recommendation for Conservatorship, someone with fiduciary responsibility over her funds

CASE#3: IMPAIRED INSIGHT

60 y/o single, residential home, EtoH dependence, TBI, significant short-term memory loss. Complex psychiatric history. Difficulty engaging in care. Has long had a payee, requesting financial independence.



CASE#3: IMPAIRED INSIGHT

History/Exam	Signs of Need to Assess
Severely impaired vision.	<ul style="list-style-type: none">Functionally impaired
Makes cash transactions w/out difficulty. Very quick and accurate calculations.	<ul style="list-style-type: none">Able to perform simple financial tasks.
Memory severely impaired. Retells history, changing facts each time. Misplaces important documents. Cannot track conversations.	<ul style="list-style-type: none">Unable to perform complex financial tasks
“God put me here to be the bush-leagued version of Carl Sagan.”	<ul style="list-style-type: none">GrandioseImpaired reality-testing
Unable to describe why he was allotted a payee	<ul style="list-style-type: none">Poor insight into illness/memory
Spends entire allowance on beer. H/o severe alcohol dependence.	<ul style="list-style-type: none">Poor judgmentRisk for relapse
Past h/o “helping out” others, placing his housing in jeopardy	<ul style="list-style-type: none">Poor judgmentRisk for financial abuse

CASE#3: IMPAIRED INSIGHT

- 1) Continue with payee

Mental Health Professional's Role

- When diagnosing cognitive impairment, educate patient and family
- Look for warning signs
- Assess financial capacity if comfortable, or refer
- Mandatory reporters of financial abuse
- Enlist social work to help support
 - Nonprofits can assist with bill pay
 - Refer to attorney for DPOAF
- Recommend/support conservator or guardianships for at-risk patients