

ASSESSMENT OF MENTAL CAPACITY FOR PART II ORDER

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Part II Mental Health Ordinance

- Relates to Management of Property and Affairs in Mentally Incapacitated Persons
 - Court decision
 - Appointment of a Committee
- Can be used to help a Mentally Incapacitated Person apply for a reverse mortgage or make changes to an existing reverse mortgage

Mentally Incapacitated Person

- For the purposes of Part II, a person who is incapable, by reason of mental incapacity, of managing and administering his property and affairs
- For other purposes, a patient (a person suffering or appearing to be suffering from a mental disorder) or a mentally handicapped person

Capacity to Handle Property and Affairs

- 'PROPERTY AND AFFAIRS' means business matters, legal transactions, financial matters
- Depends on
 - the value and complexity of the property and affairs
 - The extent to which the patient may be vulnerable to exploitation

(BMA/The Law Society: Assessment of Mental Capacity A Practical Guide for Doctors and Lawyers)

Financial Capacity

- Financial capacity can be defined as the ability to independently manage one's financial affairs in a manner consistent with self interest
- Has
 1. Clinical
 2. Psychological
 3. Economic
 4. Legal

Implications

Assessment of Financial Capacity

- Needed for **Part II applications**
- Needed for **Guardianship applications**
- Sometimes needed for **general financial decisions**.
Especially helpful in potentially controversial decisions
 - Depriving certain people
 - Very large donations
 - Unusual choice of benefactor
 - If patient has a history of mental illness, medical illness, impaired alertness/communication

Concerns re Financial Capacity

- Aging Population
- Cognitive decline with age
- Care is expensive
- Financial abuse
- Complicated families
- Wealth
- More likely to litigate

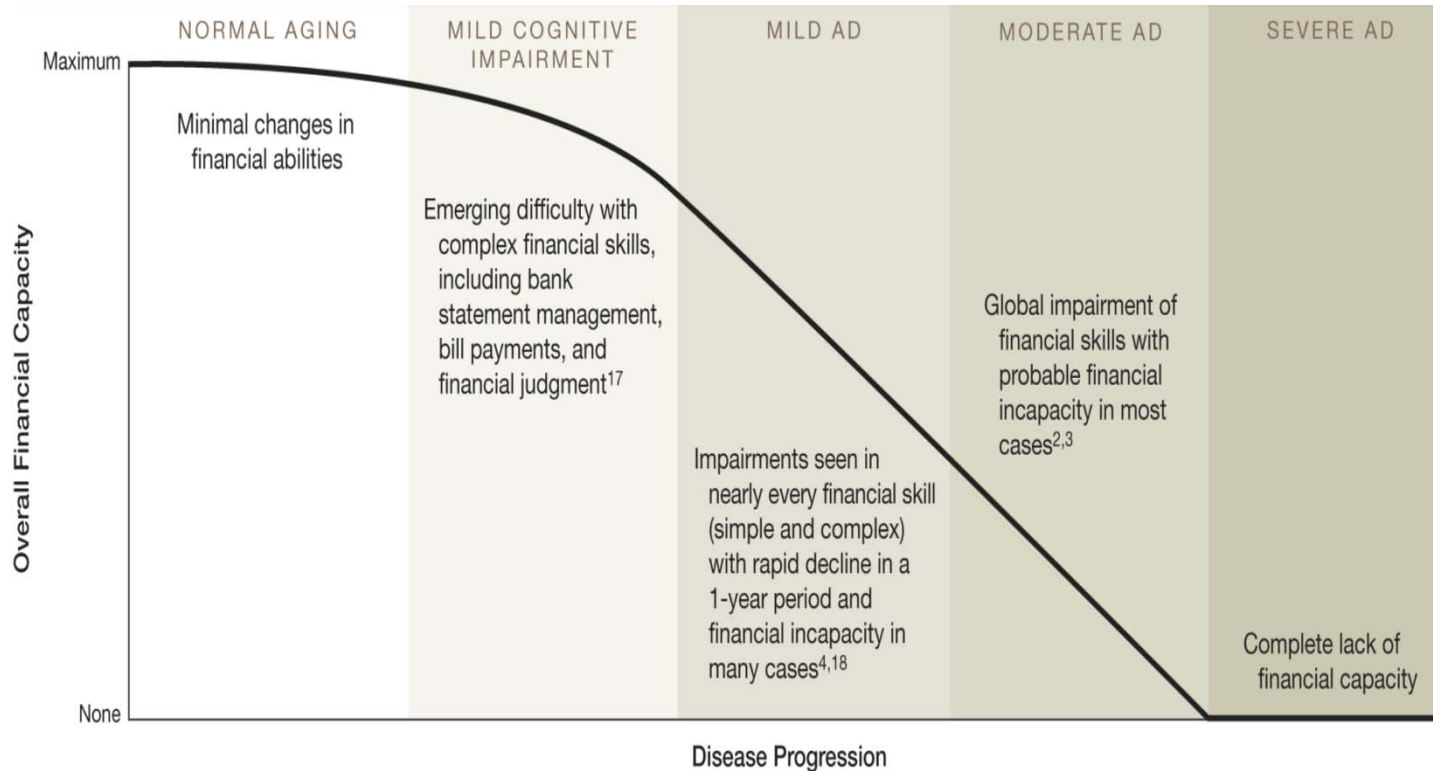
Guardianship Figures

(HK Guardianship Board Report 2006-2008)

	2006	2007	2008
FINANCE	63.3%	68.6%	72.3%
CONSENT TO TREATMENT	17.1%	11%	11.3%
RESIDENCE	8.5%	13.7%	5.2%

From: **Finances in the Older Patient With Cognitive Impairment: “He Didn't Want Me to Take Over”**

JAMA. 2011;305(7):698-706. doi:10.1001/jama.2011.164



Conceptual Schematic of Progressive Decline in Financial Capacity in a Person with Alzheimer's Disease (AD)

Financial Capacity

- Multidimensional: declarative knowledge, procedural knowledge, judgement
- Wide scope: identifying and counting money, understanding debts and loans, conducting cash transactions, cheques, paying bills, avoiding financial abuse, conducting business transactions

So we need **INFORMATION** in
order to do the assessment!!!

We need information on:

- The extent of the person's property and affairs
 - How much?
 - What kind?
 - How complex?
- Personal information
 - Family
 - Health: physical and mental
 - Level of support
- A person's vulnerability
 - own impaired decision-making
 - risk of exploitation by others

Medical Reports for Part II

- Medical certificates are ESSENTIAL.
- At least one of the medical certificates must be given by a medical practitioner approved for this purpose by the Hospital Authority within the meaning of the Hospital Authority Ordinance (Cap. 113) as having the relevant special experience (See s.2(2) of the MHO).

How to Assess?

- General psychiatric assessment
- Cognitive assessment
- Specific assessment of capacity to handle finances

General Psychiatric Assessment

- Any diagnosable mental disorder?
- Any treatable mental disorder?
- Severity of symptoms e.g. mood symptoms, psychotic symptoms
- Psychiatric symptoms may impact upon financial decision-making.
- Treatment of active symptoms may enhance financial capacity.

Cognitive Assessment

- Ability to communicate
- Orientation
- Memory
- Mini-Mental State Examination

Capacity to handle finances

- How much money?
- What kind of assets?
- Who manages?
- Basic tasks
 - Recognising bank notes, coins
 - Calculating simple change
- Higher level tasks
 - Living expenses
 - Handling of business/higher value assets
 - Judgement

Part II of the Mental Ordinance

HCMP No. [] / 200 []

IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
MISCELLANEOUS PROCEEDINGS NO. [] OF 200 []

IN THE MATTER OF Part II of the Mental
Health Ordinance, Cap. 136 ("the Ordinance")

and

IN THE MATTER OF an alleged mentally
incapacitated person [*Add initials of MIP*]

**MEDICAL CERTIFICATE IN SUPPORT OF AN APPLICATION
UNDER PART II OF THE MENTAL HEALTH ORDINANCE, CAP.136**

I, [name of medical practitioner] hereby certify as follows:-

1. I have the following professional qualifications:-

[

]

I [am/not] on the List of Approved Doctors for the purposes of section 2(2) of the
Mental Health Ordinance, Cap.136.

2. At the request of [] I examined [*full name of MIP*]
on the [] and in my opinion [*add initials of MIP*] is incapable by reason of
mental incapacity as defined in the Mental Health Ordinance Cap.136 of managing and
administering [his/her] property and affairs.

3. I based my opinion on the following grounds :-

[

]

4. How long has the present mental incapacity lasted?

[

]

5. Is [*add initials of MIP*] dangerous to [himself/herself] or others in any way?

[

]

6. Is [*add initials of MIP*] capable of appreciating [his/her] surroundings?

[

]

7. Does [*add initials of MIP*] need anything to provide additional comfort?

If so, what recommendations do you make?

[

]

8. [*Where the MIP is living in a hospital/nursing home*] Is there a reasonable prospect of [*add initials of MIP*] being discharged to a nursing home/own home? If so, in approximately how many months/years?

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MEDICAL CERTIFICATE
IN SUPPORT OF AN APPLICATION

Filed this [] day of [] 200 []

Part II Assessment

- Doctor has to certify that he/she has **examined** the 'Mentally Incapacitated Person' (MIP)

AND

- **Confirms that the MIP is incapable** by reason of mental incapacity as defined in the Mental Health Ordinance of managing and administering his/her property and affairs.

I based my opinion on the following grounds:

Why and What?

- Cause of Mental Incapacity?
- What are the impairments as a result of the Mental Incapacity?

How?

- How the Mental Incapacity impacts upon the MIP's decision-making abilities?
- More specifically: financial capacity

Financial Decision-making for the Mentally Incapacitated Person

- When the person still has capacity (pre-emptive)
 - Enduring power of attorney
 - Trust
 - Will
- When the person no longer has capacity
 - Informal
 - Guardianship
 - Part II application

**PREVENTION IS
BETTER THAN
CURE!**