



Writing a Letter About a Patient's Capacity in California: Do's and Don'ts

Health care providers may be asked by patients, family members or others to provide a medical opinion about a patient's capacity. For instance, caregivers may need a letter stating that patient has lost capacity before they can start taking certain actions on patient's behalf. This handout provides some tips about responding to those requests.

Do	Don't
Do: Adhere to institutional policies about patient privacy.	Don't provide a letter to anyone about patient capacity unless you have consent.
Be sure that you have consent of the patient to provide information about their capacity. Or, if the patient is found to lack capacity to make healthcare decisions, be sure that you have consent of their healthcare agent or other legal representative. You can ask to see the advance directive or power of attorney form that gives an agent the ability to obtain this information from you.	
Do: Write only about the specific document or action in question.	Don't write a one-size-fits all letter.
For example, were you asked to write your opinion of the patient's ability to manage their own finances or manage their healthcare decisions? If you receive a document requesting information regarding a patient's capacity, look to the document for guidance in determining the specific domain of capacity to address.	
Do: Limit the amount of medical detail you provide to only what is necessary.	Don't recite detailed patient history within the letter.
Provide your medical opinion regarding capacity while refraining from exposing more of the patient's confidential medical history than necessary. Instead, indicate the date capacity was determined and identify the corresponding medical report (this may just be notes in the chart). This approach maintains privacy while creating a chain of identifiable information relied upon for the diagnoses if needed.	

Do: Address only the function in question as it relates to capacity. **Don't write general sweeping statements.**

Avoid making global assessments of capacity or incapacity, unless patient is wholly and permanently incapacitated (e.g. noncommunicative, nonresponsive) Absent this degree of incapacity, people may lack capacity for some decisions but have capacity for others. For example, a patient may retain the ability to name who they want to make financial decisions for them, but may be unable to manage their finances independently, resulting in two separate capacity evaluations and conclusions. Include a statement of what a patient can do functionally, in your opinion. For example, "Patient lacks capacity to manage finances."

Do: Stick to the facts and your medical opinion. **Don't feel the need to conduct a legal analysis or draw legal conclusions.**

State the facts and your medical opinion based on what you know. This can include any limitations on what you know. Allow lawyers to draw a legal opinion using, in part, the information you provide them.

Do: Appreciate that capacity is fluid and establish a plan for reassessment. **Don't assume that capacity is constant.**

State the date and time of your capacity assessment. State in the letter whether capacity should be reassessed within a specific period of time. Encourage the patient to participate in reevaluation.

Do: Use standardized screening and assessment tools and keep detailed notes in the chart. **Don't assume that a positive dementia screen or diagnosis is determinative of legal capacity.**

Use the Dementia Care Aware Cognitive Health Assessment (CHA) training on how to conduct screening and follow-on diagnosis, including self-reporting vs caregiver-reporting. Keep notes about how you assessed capacity. For example, have you used a standardized screening tool? Did you conduct additional assessments to reach a diagnosis? Try to note some of the exact responses that the patient is providing. Keep in mind that neither a positive cognitive screen nor a full diagnosis automatically means a patient lacks legal capacity for all decisions.

Do: Follow institutional policies regarding capacity assessments. **Don't rely on this handout for legal advice about a specific situation. Seek guidance from your institution.**

This guidance is not intended as a substitute for independent medical judgment or the advice of ethics committees or institutional counsel. Please consult your local standards and policies in conducting capacity assessments, including policies regarding scope of practice, privacy, elder abuse reporting, and others.