Reviewer’s report

Title: Conceptions of decision-making capacity in psychiatry: interviews with Swedish psychiatrists

Version: 2
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Reviewer: Wayne Martin

Reviewer’s report:

1. Discretionary Revision: At line 178, the authors refer to analysis "using qualitative content analysis." At line 194, the authors refer to "manifest content analysis." I assume that two terms are being used to refer to the same methodology. If so, then the variation in terminology is confusing. Suggest using "manifest content analysis" consistently throughout, with appropriate references.

2. Discretionary Revision: The evidence provided in the interview extracts suffers in several instances from a recurring ambiguity. The research subjects mention a particular feature of the presentation of a particular patient, but the decontextualised extract leaves it unclear whether this factor is being reported as a factor that influenced the finding of (in)capacity. For example, at lines 303-305, and at line 314, the clinicians cite specific factors, but without indicating whether and how those factors played a role in the capacity finding. Neither the extracts themselves, nor the surrounding text, make it clear whether these were simply features of patient presentation that were discussed or whether they were presented as factors in the assessment of capacity. Contrast this to other extracts (e.g., 294-6, 317-318) where there is not this ambiguity in the data. Selection and/or presentation of the transcript data might be improved to avoid this ambiguity.

3. Discretionary Revision: The term "effectuate one's decision" is ambiguous. In places (e.g., line 410-11), the authors seem to be using this term (which is not standard in the literature, to the best of my knowledge) to refer to the process whereby a patient communicates a choice (or perhaps communicates a consistent choice?). But there is also a separate issue about "effectuating a choice" (i.e., about putting one's decisions INTO EFFECT): in some patient populations (esp., e.g., addictions, eating disorders, dementia), patients may make a decision and communicate it, but then, through weakness of the will, lack of retention, impulsivity, etc., fail to stick to the treatment plan that has been agreed. This can present difficulties both in theory and in practice, insofar as legal definitions of capacity tend to focus on the decision-making and decision-communicating process, rather than on the ability of a patient actually to (re)shape her behaviour in light of the decision that has been taken. The term "effectuate one's decision" should be replaced or disambiguated or clarified.

4. Discretionary Revision: line 420: What is meant by saying that there is "a certain AMBIVALENCE in the material." Is the claim that the data is
AMBIGUOUS (admitting of two interpretations?) or that the research SUBJECTS themselves were ambivalent (torn between two findings or conceptualisations of capacity)? Insufficiently clear claim.

5. Discretionary Revision: lines 442-470. I wonder if this section (two paragraphs) of the analysis might be tightened up a bit. In particular the second paragraph reads a bit like a catalog of the hard issues around non-cognitive components of decision-making capacity, rather than like a close analysis of the data from the study. Greater clarity might be introduced here, for example, between formal and substantive volitional elements. A substantive volitional element might involve, for example, so-called "pathological values" or a "medically inappropriate" desire. Formal volitional elements might be something like impulsivity or disinhibition, where the concern is not so much about the specific content of the volition but about the patient's ability to control impulses and desires.

6. Discretionary Revision: I found that the sentence that runs from lines 474-6 (beginning "Conversely..") did more to confuse than to clarify the point that is being made in that paragraph. As I read it, the very important result being reported there (arguably the most important result in the paper) concerns a contrast between psychiatric cases (where imprudent decisions were characteristically taken to reflect incapacity) and somatic cases (where they were not). I find that the inclusion of the sentence at 474-6 serves to obscure rather than clarify that contrast. In addition to obscuring the sharp contrast between the sentence that comes before it and the one that follows, it also introduces a regrettable ambiguity in the unspecified reference to "criteria of capacity," without indicating whether the criteria in question were necessary or sufficient criteria.

7. Discretionary Revision: At line 503, I suspect that the use of the expression "risk of incapacity" is used incorrectly. There is nothing unjust or incorrect about assuming a RISK of incapacity among patients with mental illness. That there is such a risk is simply a fact -- a fact about the prevalence of incapacity in that patient population, perhaps together with some evidence about the relevant aetiology. What is unjust and incorrect is not the presumption of a RISK of incapacity, but rather the presumption OF INCAPACITY!

Level of interest: An article of importance in its field

Quality of written English: Acceptable

Statistical review: No, the manuscript does not need to be seen by a statistician.

Declaration of competing interests: I declare that I have no competing interests.