

# Diminished Capacity: Overview role of forensic mental health professionals

**Emile Risby, MD, JM**

**Medical Director**

**Director of the Division of Hospital Services**

**Diminished Capacity CLE: Chief Justice's Commission on Professionalism**

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**D·B·H·D·D**

Georgia Department of Behavioral Health  
& Developmental Disabilities

# Diminished Capacity

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## Role of forensic mental health professionals

- Conduct the appropriate clinical assessments
- Educate and advise attorneys
- Help the trier of fact understand the clinical issues

# Diminished Capacity in Georgia

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In Georgia:

- diminished capacity is not a standalone legal defense.
- evidence of diminished capacity may be relevant to understanding a person's intent and/or level of culpability.
- the focus is whether a mental disease or defect significantly diminished the capacity of the person to make informed decisions.

# Diminished Capacity

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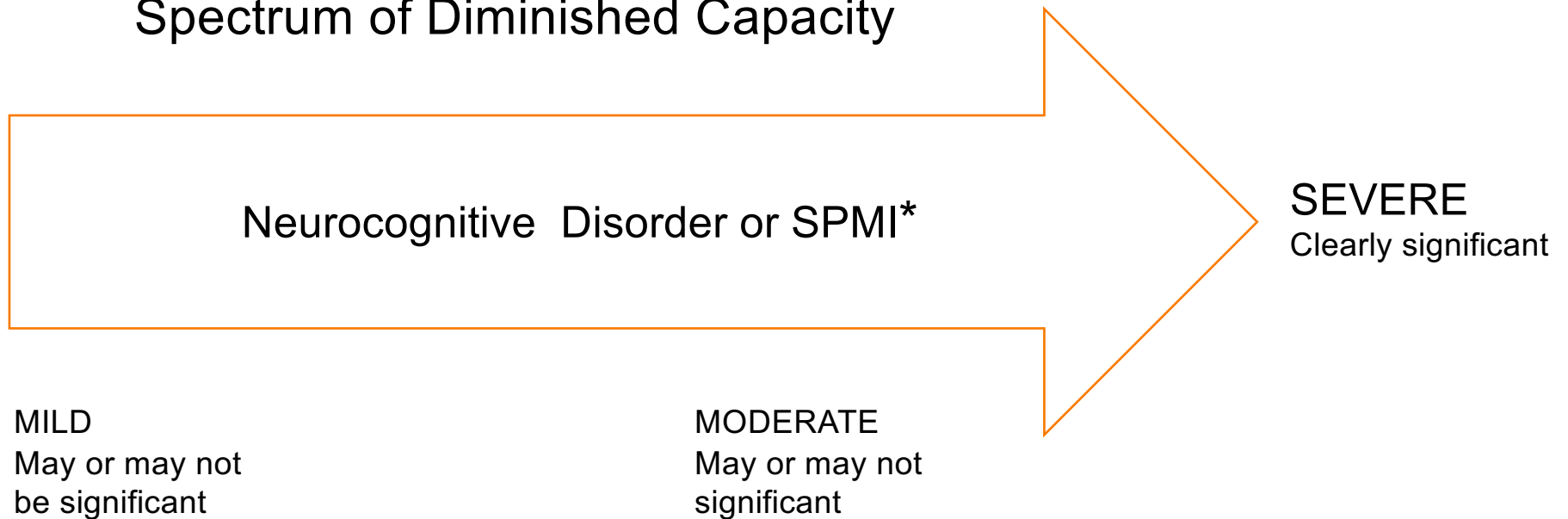
- Criminal proceedings – not same as incompetent or NGRI
- Civil proceedings – not same as lack of capacity

Significance of the diminished capacity depends on:

- (1) Level (severity) of impairment
- (2) The issue being assessed

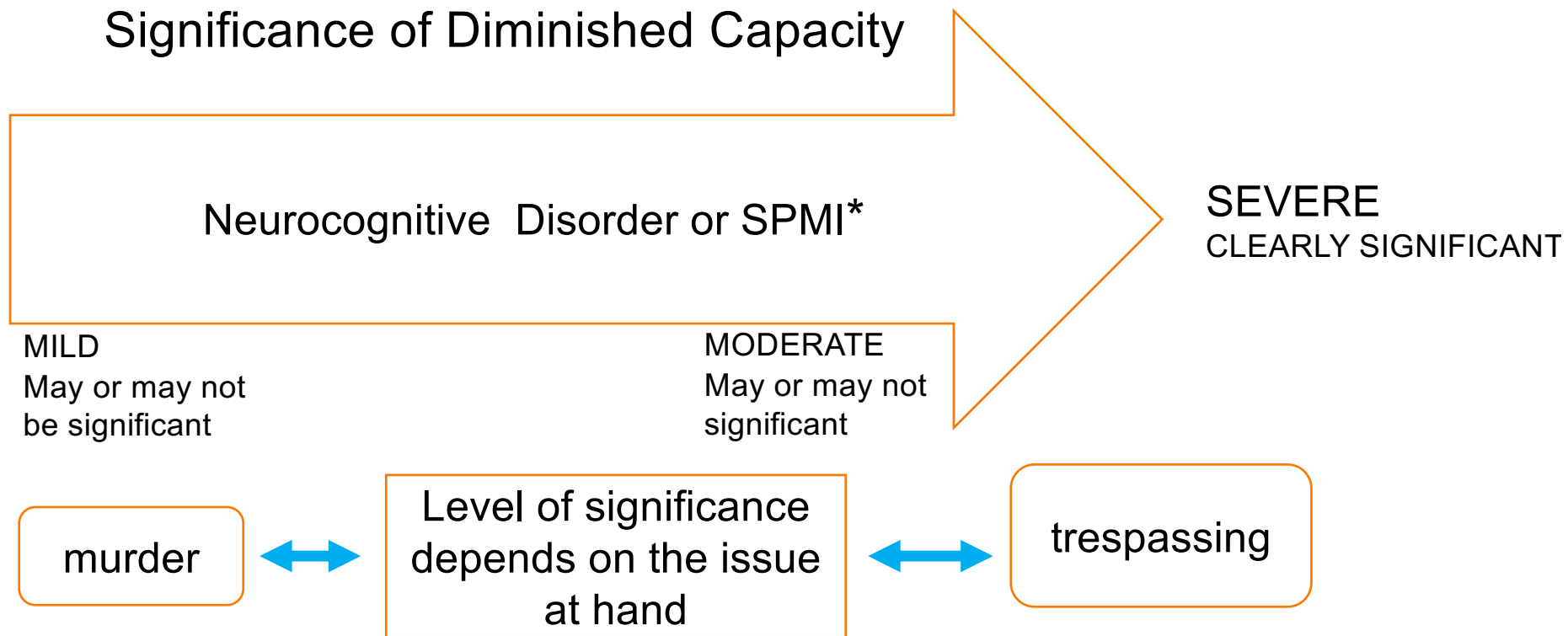
# Diminished Capacity

## Spectrum of Diminished Capacity



\*SPMI = Severe and Persistently Mentally Ill

# Criminal Matters



\*SPMI = Severe and Persistently Mentally Ill

# Civil Matters

## Significance of Diminished Capacity

Neurocognitive Disorder or SPMI\*

**SEVERE**  
CLEARLY SIGNIFICANT

**MILD**  
May or may not  
be significant

**MODERATE**  
Likely to be significant

Simple will  
Simple  
contract

Level of significance  
depends on the issue  
at hand

Complex contract  
Estate planning

\*SPMI = Severe and Persistently Mentally Ill

# Diminished Capacity

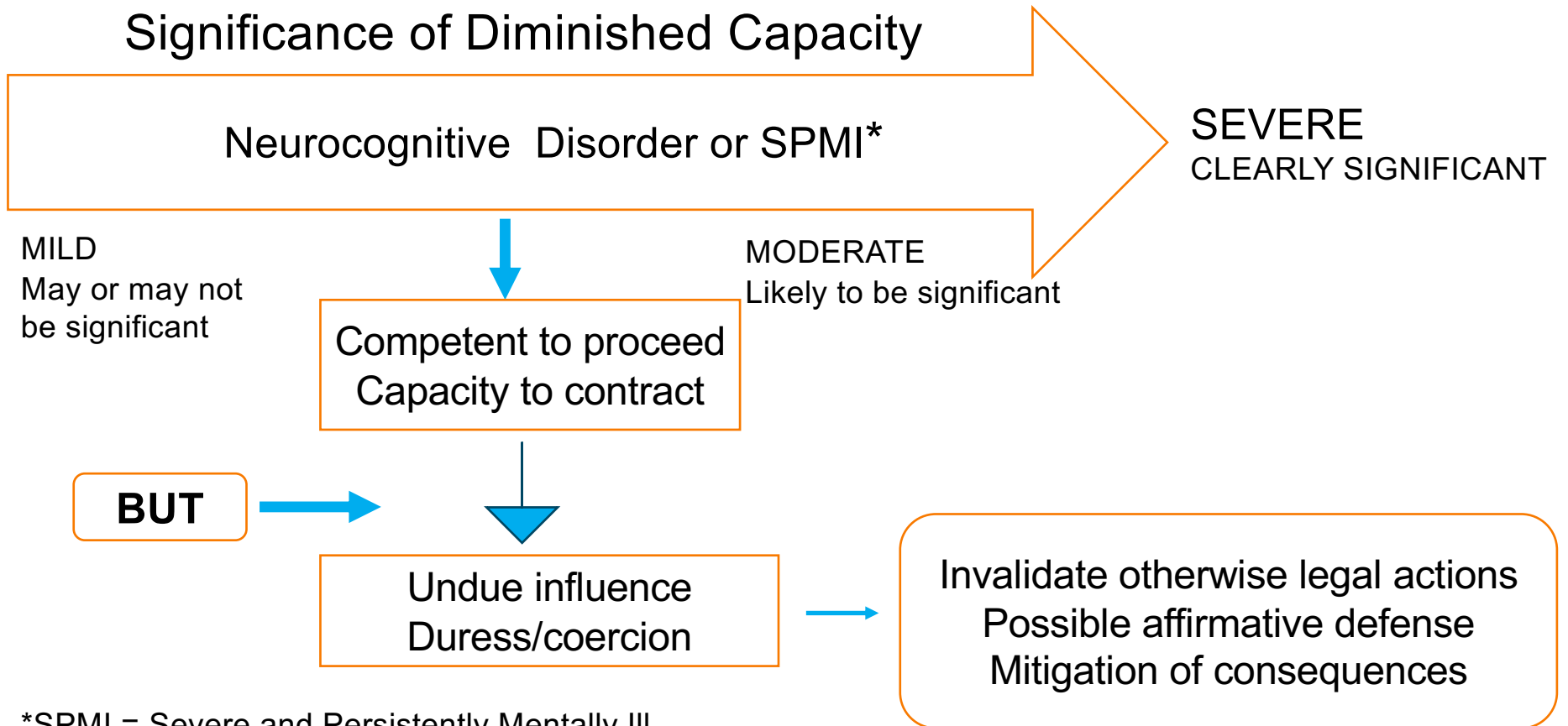
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- Diminished Capacity falls on a spectrum and is circumstance-specific (just like capacity and competency)
- Important area to assess - individuals with Diminished Capacity are more vulnerable to:
  - (1) Undue influence
  - (2) Duress/coercion

Concerns of undue influence or duress/coercion only apply if the person is 'competent' to do what he/she has done or wants to do.



# Diminished Capacity



\*SPMI = Severe and Persistently Mentally Ill

# Undue influence

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- O.C.G.A. §53-4-12 – Undue influence pertaining to wills
- “Undue influence which overturns an otherwise legal contract is the exercise of sufficient control over the person, the validity of whose act is brought in question, to destroy one's free agency and constrain the person to do what the person would not have done if such control had not been exercised.” *Cobb v. Garner*, 158 Ga. App. 110, 279 S.E.2d 280 (1981) (*emphasis added*)

# Duress

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O.C.G.A. § 13-5-6 in pertinent part,

“Since the free assent of the parties is essential to a valid contract, duress, either by imprisonment, threats, or other acts, by which the free will of the party is restrained and his consent induced, renders the contract voidable at the election of the injured party....”

(emphasis added)

# Coercion

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O.C.G.A. §16-3-26 -Coercion as a defense

“A person is not guilty of a crime if the act committed was done under such coercion that the person reasonably believed that performing the act was the only way to prevent their imminent death or great bodily injury.” (emphasis added)

# Undue Influence vs Duress

## Diminished Capacity

### Undue Influence

- Persuasive
- Invokes empathy
- Tries to reward
- Desire to please
- Influencer profits

### Coercion/Duress

- Fear
- Threat
- Imminent Danger
- Imminent consequences

## Diminished Capacity: Undue Influence/Duress vs. Insanity

	<u>Undue Influence</u> <u>Duress</u>	<u>Insanity</u>
<u>Act</u>	Affirms	Affirms
<u>Intent</u>	Affirms	Affirms
<u>Act is Wrong</u>	Yes - but (avoid harm) (reward another)	No

# Diminished Capacity & Capacity to Consent to Treatment

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- REQUIREMENTS OF INFORMED CONSENT
- Nature and extent of problem
- Proposed treatment
- Risks and benefits of treatment
- Risks of not treating
- Alternative course of treatment
- Capacity to consent
- DOES THE PERSON WITH DIMINISHED CAPACITY UNDERSTAND ALL OF THE ABOVE?

# Georgia Law And Informed Consent

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- “A consent to surgical or medical treatment which discloses in general terms the treatment or course of treatment ... and which is duly evidenced in writing and signed by the patient or ... persons authorized to consent ... shall be conclusively presumed to be a valid consent in the absence of fraudulent misrepresentations of material facts in obtaining the same.” O.C.G.A. § 31-9-6(d)(emphasis added)
- **BUT: DID DIMINISHED CAPACITY IMPAIR THE PERSON’S ABILITY TO UNDERSTAND WHAT WAS SAID OR SIGNED**



# Diminished Capacity & Capacity to Consent to Treatment

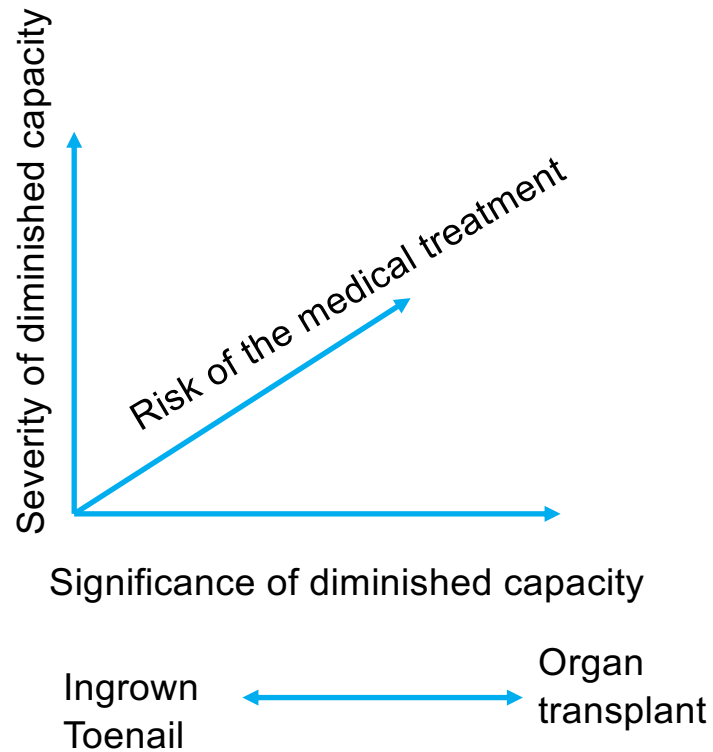
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The issue is:

- Does a person with diminished capacity have enough capacity to *consent to XXXX*?
- Diminished capacity does not equal no capacity
- If the person lacks the capacity to consent, who can?

See O.C.G.A. § 31-9-2 (persons authorized to consent to medical or surgical treatment)

# Diminished Capacity & Capacity to Consent to Treatment



# Diminished Capacity & Refusal to Consent

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Refusal to consent to *what*?

- Medical treatment:
  - What medical treatment?
- Legal Counsel (*Faretta* assessment):
  - What are the consequences?

Like the ability to consent, the significance of diminished capacity on the ability to refuse to consent is circumstance-specific.

## CONCLUSION: Diminished Capacity

- The significance of diminished capacity is based on the severity plus the specific legal circumstances.
- In Georgia, diminished capacity is a relevant consideration:
  - in various civil proceedings, including testamentary capacity and contract disputes
  - in criminal proceedings, as a possible mitigation factor