

Determining Capacity on the Frontlines

Is this in your wheelhouse?

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Autonomous Choice

Adequately informed

Voluntary

Based on reasoning

Elements of Informed Consent

Preconditions

1. Capacity
2. Voluntariness

Information

1. Disclosure
2. Recommendation
3. Understanding

Consent elements

1. Decision
2. Authorization

Awake,
alert,
oriented



Comatose

Ten Myths About Decision-Making Capacity

Linda Ganzini, MD, MPH, Ladislav Volicer, MD, PhD, William A. Nelson, PhD, Ellen Fox, MD, and Arthur R. Derse, MD, JD

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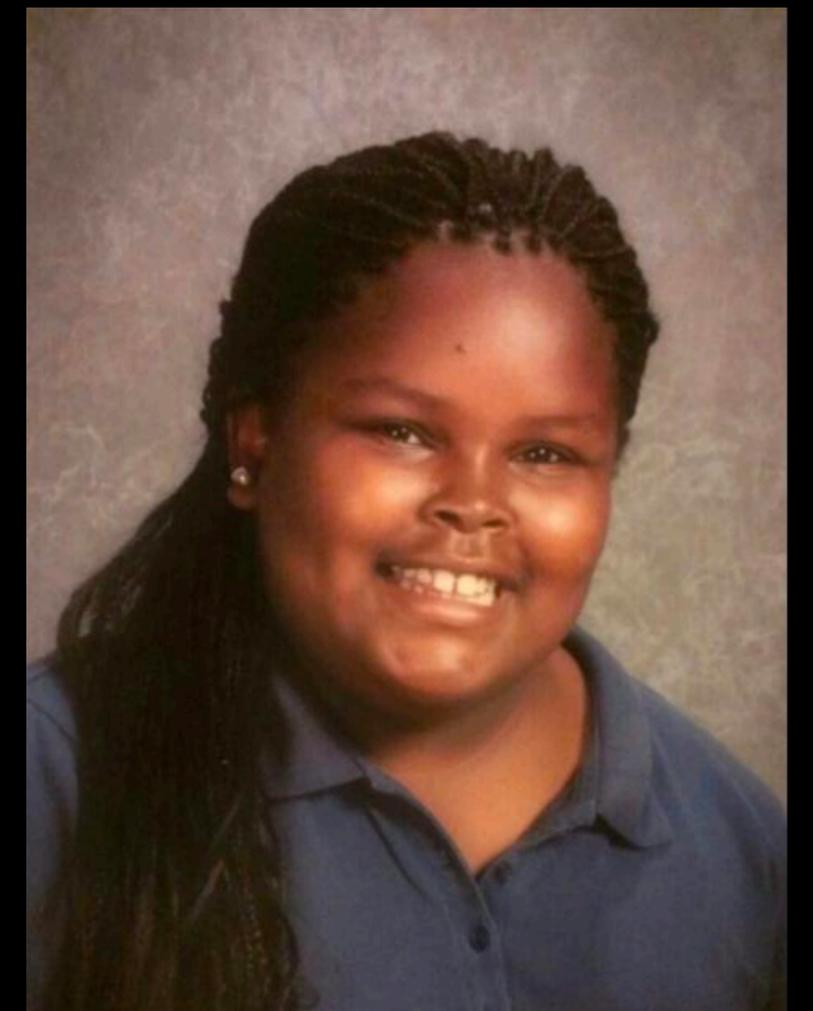
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Capacity
vs
Competence

Myth 1

Capacity and competency are the same

Competency = legal capacity
Made by a judge



Capacity
Made by a clinician

1. Identify and address barriers to communication
2. Ensure communication of treatment and evaluation options
3. Ask appropriate, open-ended questions to determine that all 4 criteria of decisional capacity are satisfied

Understanding

what brought you to the emergency department today?

Appreciation

what could happen if we did not perform this test or therapy?

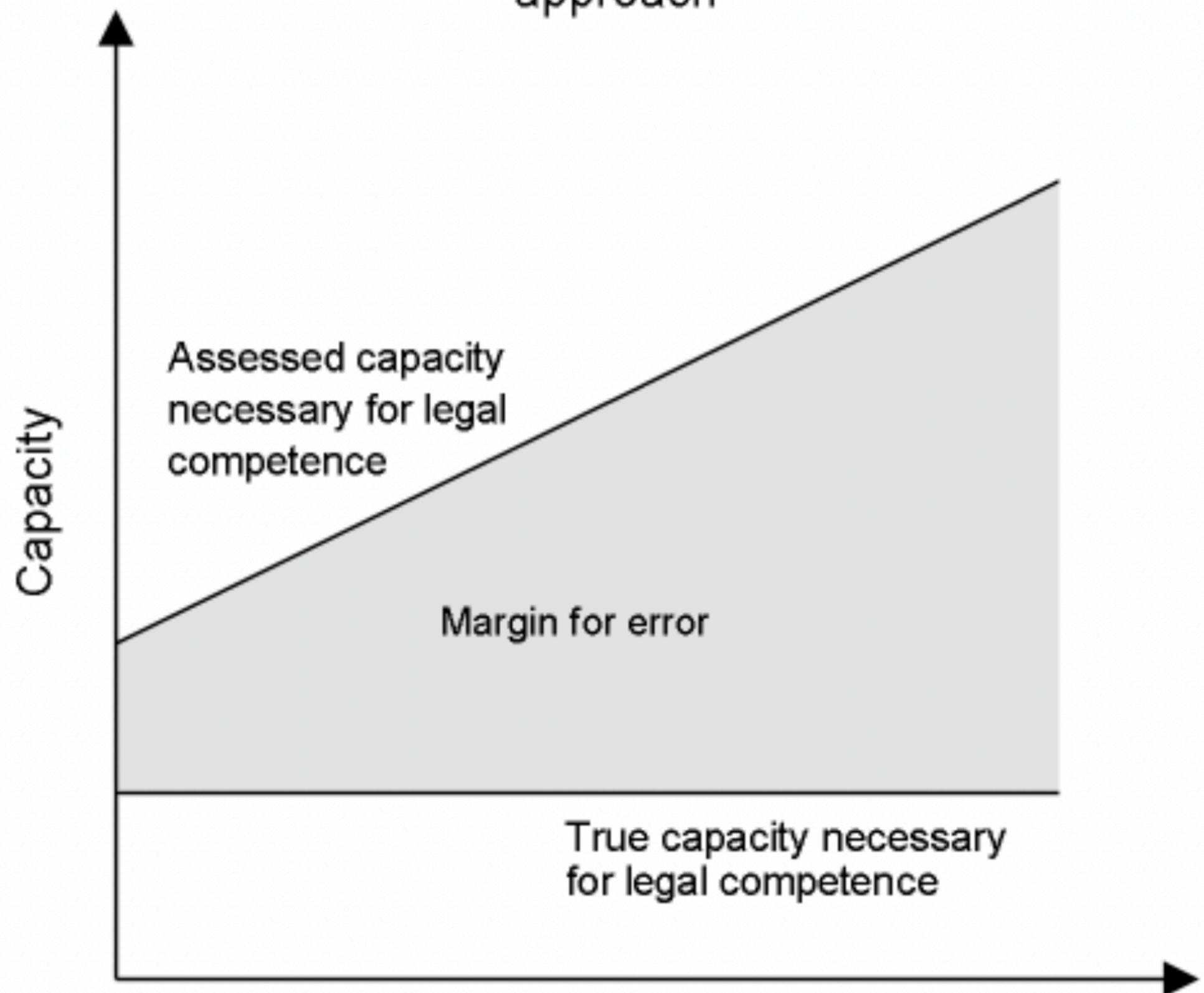
Reasoning

why are you choosing to have or not have this test or therapy?

Expressing a choice

may I provide you with this test or therapy?

The 'margin for error' approach



Assessed capacity
necessary for legal
competence

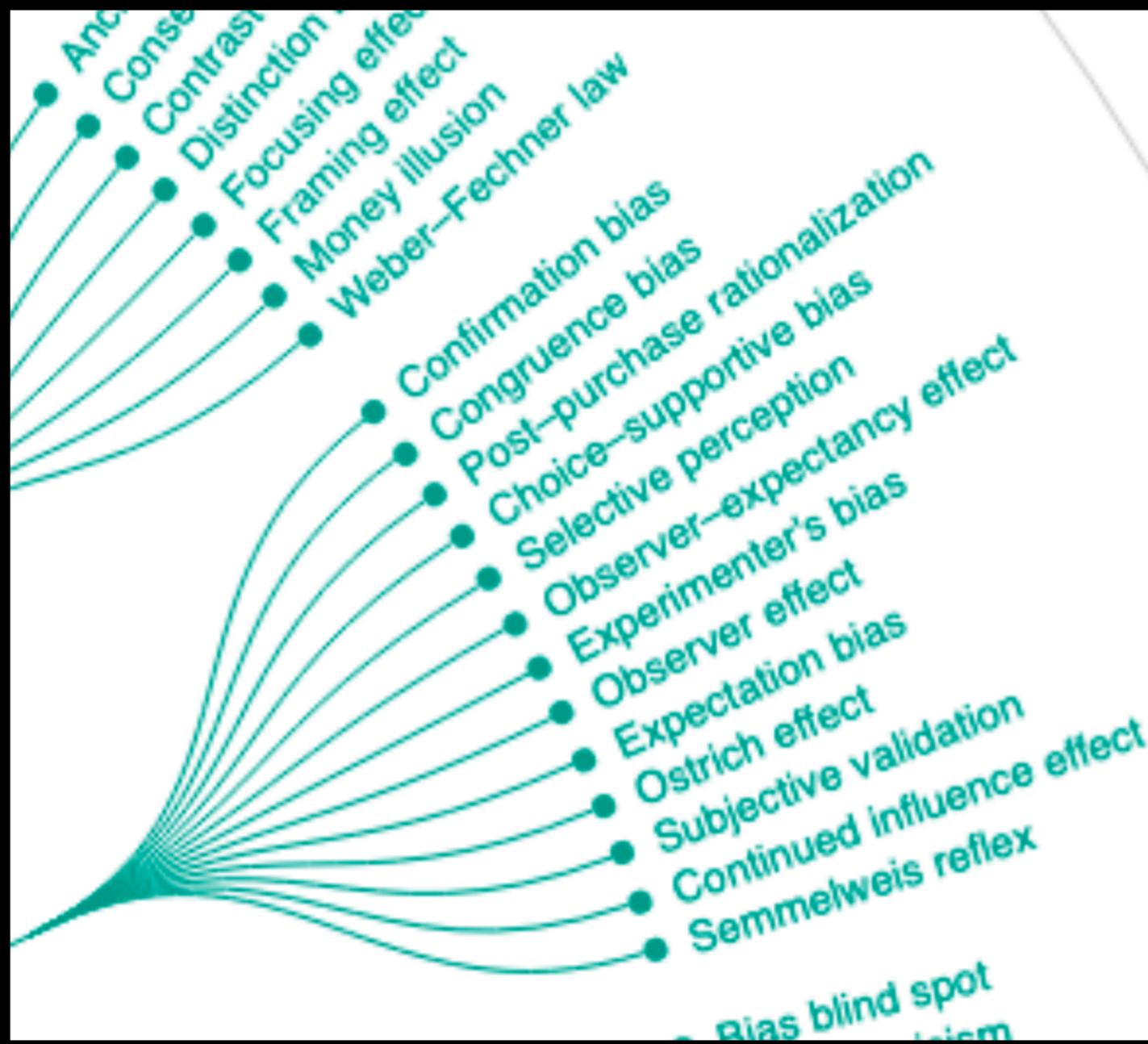
Margin for error

True capacity necessary
for legal competence

Gravity of decision

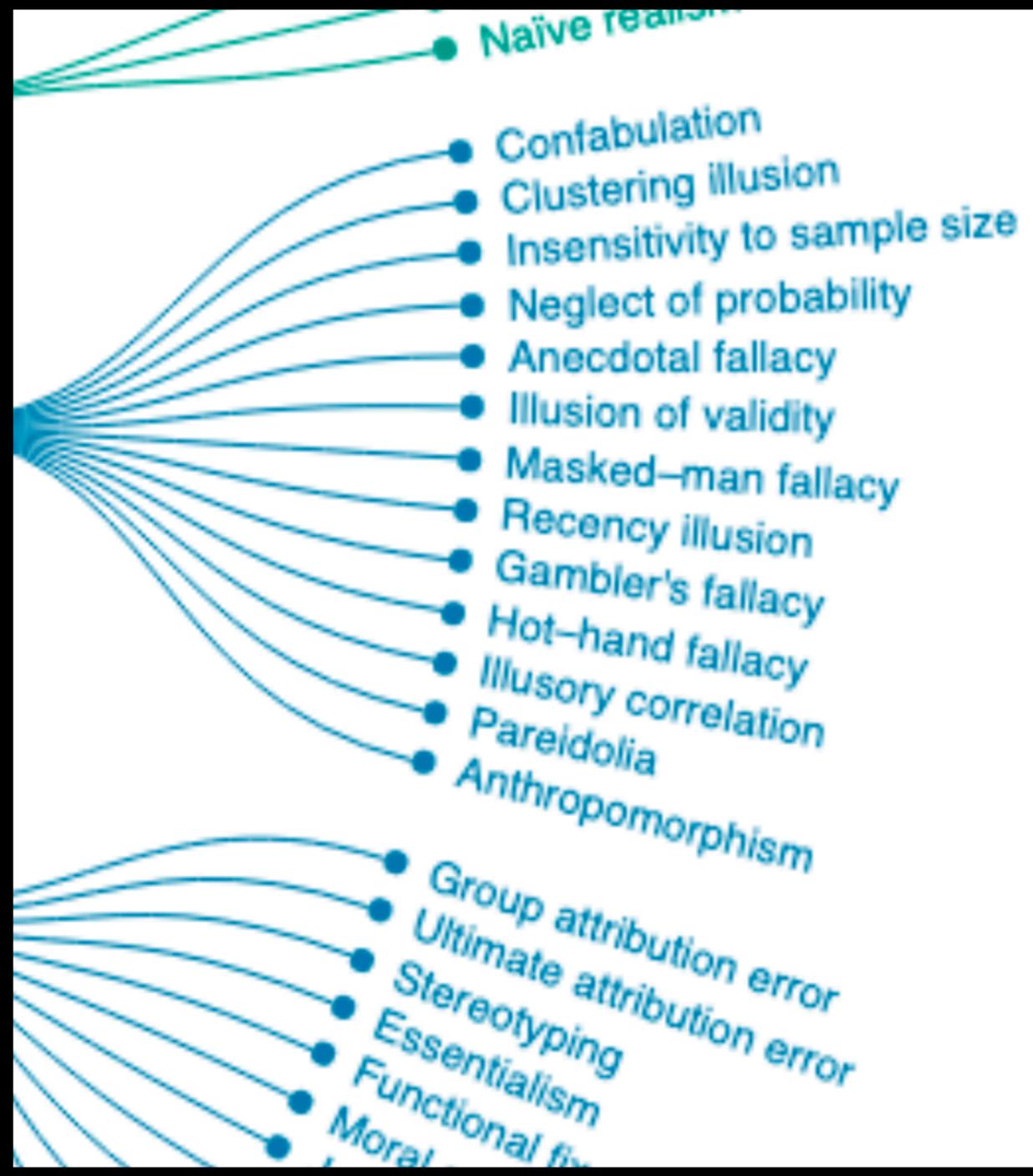
Myth 2

The patient is wrong when he doesn't agree with medical advice

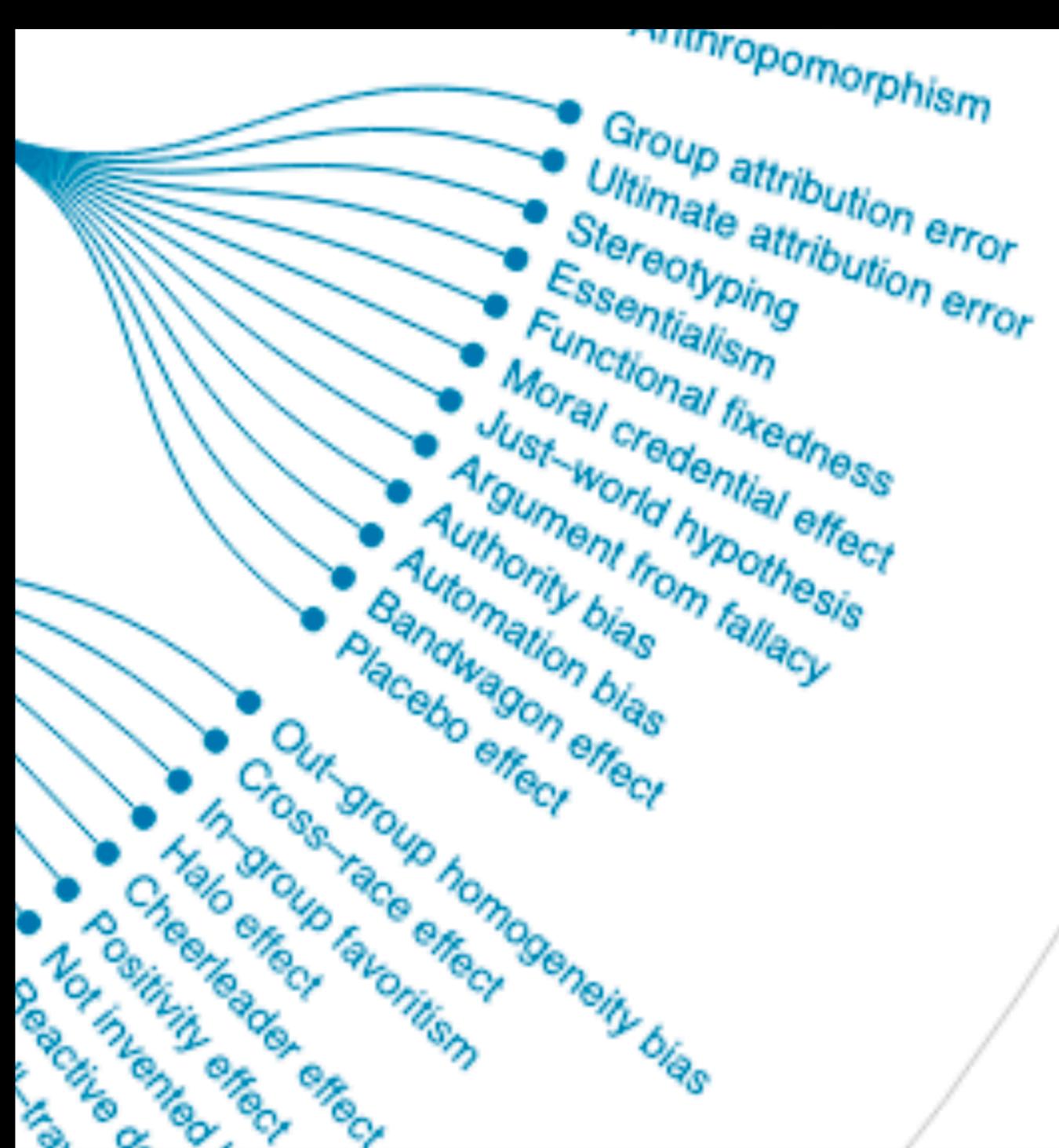


We are drawn to details
that confirm our own existing beliefs

We notice flaws in others
more easily than we
notice flaws in ourselves



We tend to find stories and patterns even when looking at sparse data



We fill in characteristics from stereotypes, generalities, and prior histories



Capacity Determination

Ability to choose

Ability to understand relevant information

Ability to appreciate the situation and its consequences

Ability to reason

Myth 3

There is no need to assess decision-making capacity unless the patient goes against medical advice

Myth 4

Decision-making capacity is an 'all or nothing' phenomenon

Myth 5

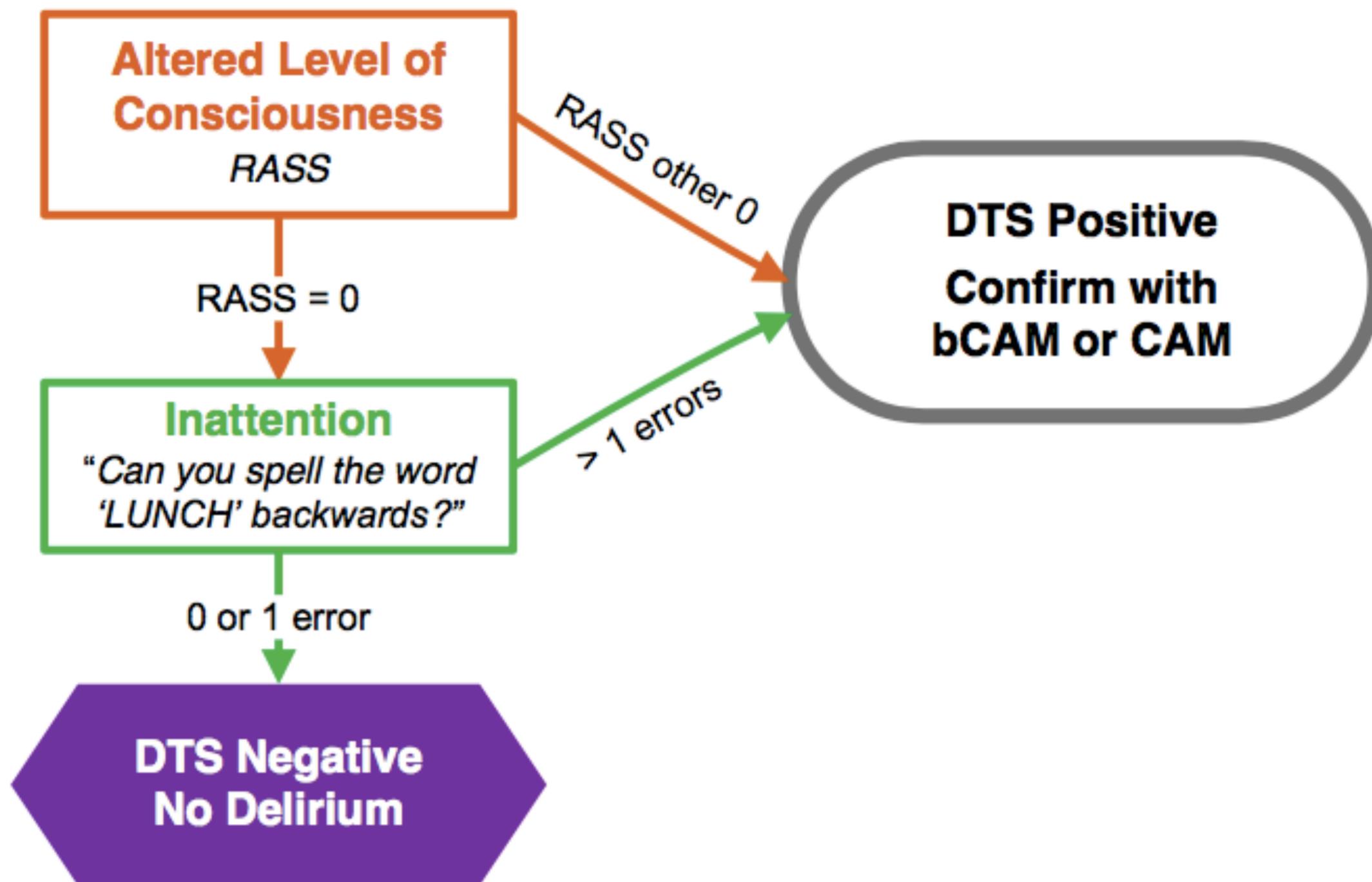
Cognitive impairment equals lack of decision-making capacity

Myth 6

Lack of decision-making capacity is a permanent condition

Delirium vs Dementia

Delirium Triage Screen (DTS) Flow Sheet



-1

**Slightly
Drowsy**

Responds
to voice
and can
make eye
contact
for >10
seconds

0

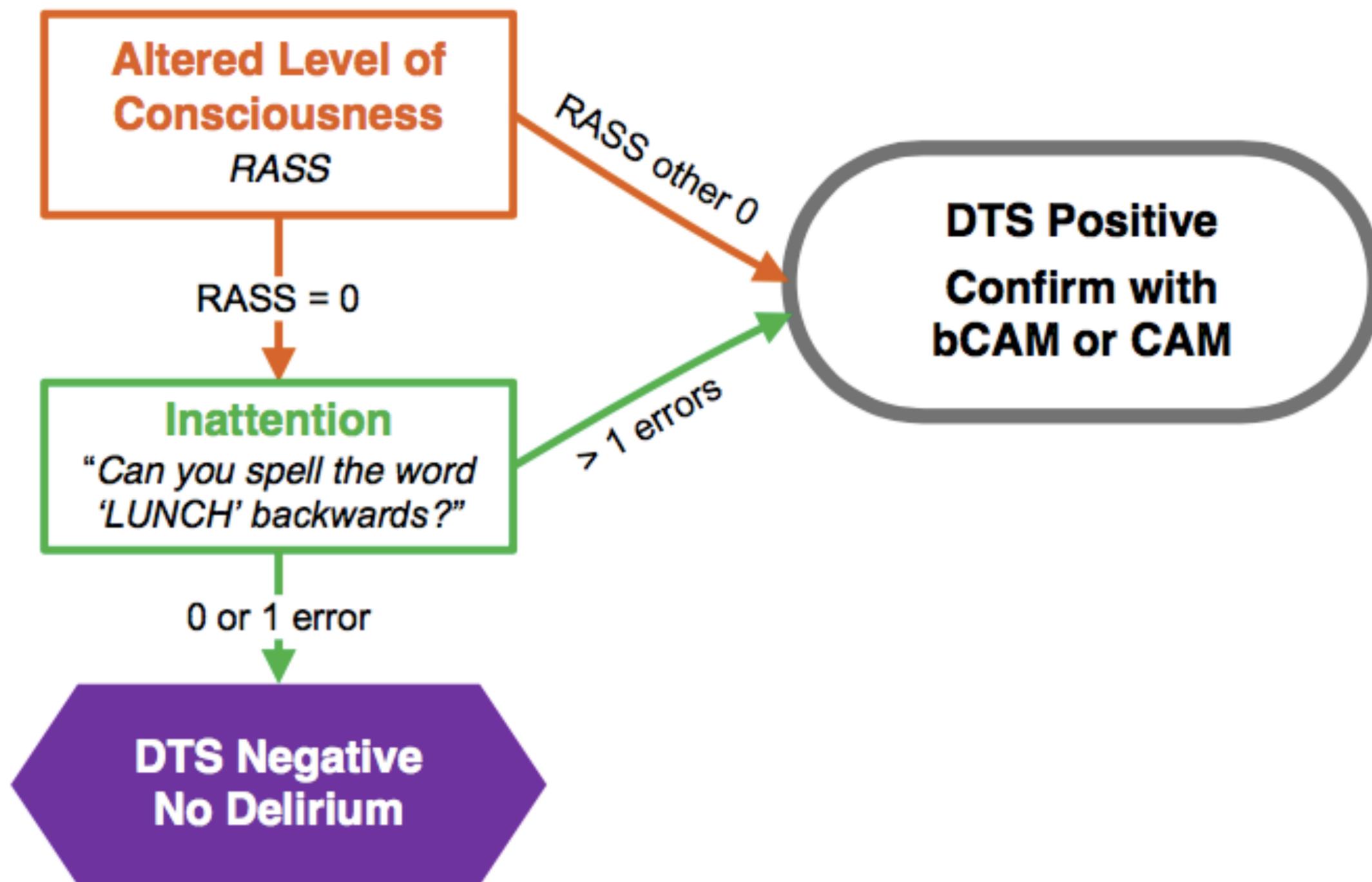
**Alert
and
calm**

+1

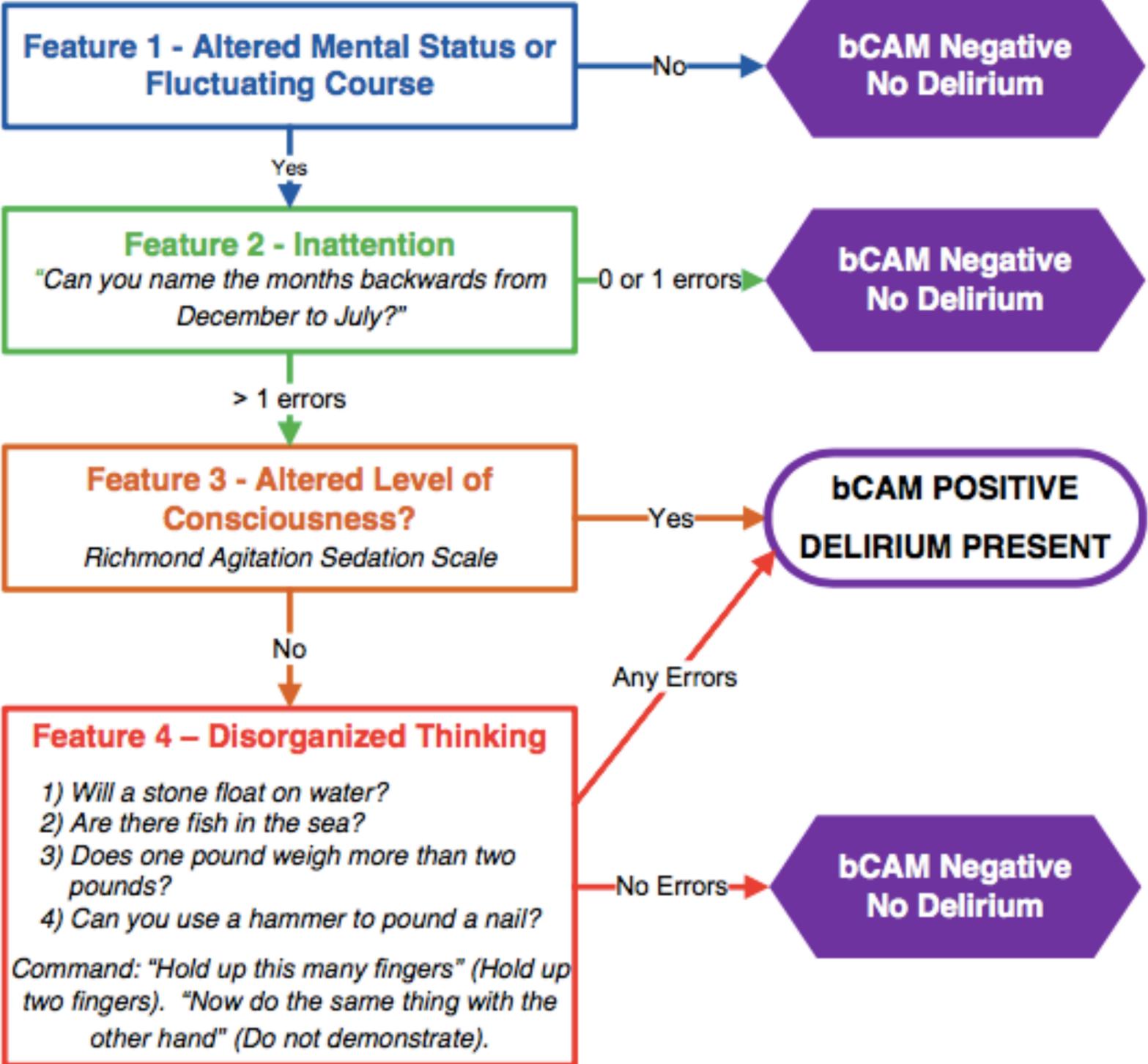
Restless

Anxious
but
movements
not
aggressive

Delirium Triage Screen (DTS) Flow Sheet



Brief Confusion Assessment Method (bCAM) Flow Sheet



Set A

1. Will a stone float on water?
2. Are there fish in the sea?
3. Does 1 pound weigh more than more than 2 pounds?
4. Can you use a hammer to pound a nail?

Command: Say to patient: "Hold up this many fingers" (examiner holds 2 fingers in front of patient). "Now do the same thing with the other hand" (do not demonstrate). If patient is unable to move both arms, for the second part of the command, ask to patient: "Add 1 more finger."

If the patient makes any error, then he or she is considered to have disorganized thinking.

Set B

1. Will a leaf float on water?
2. Are there elephants in the sea?
3. Do 2 pounds weigh more than 1 pound?
4. Can you use a hammer to cut wood?

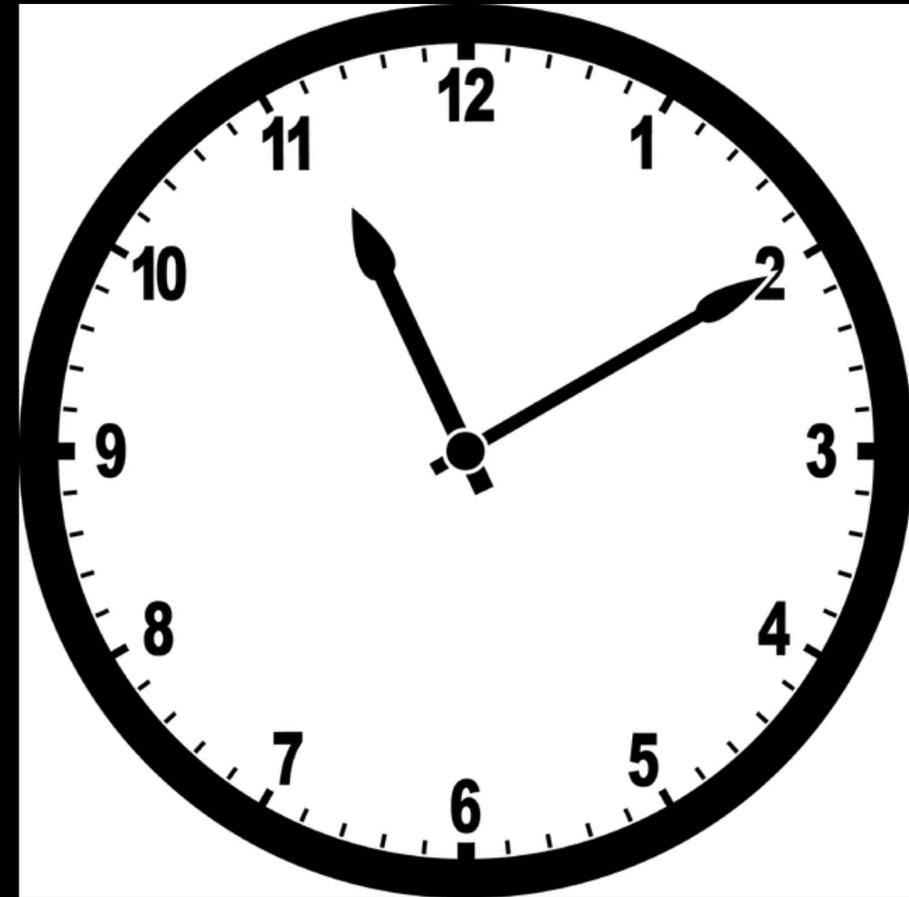
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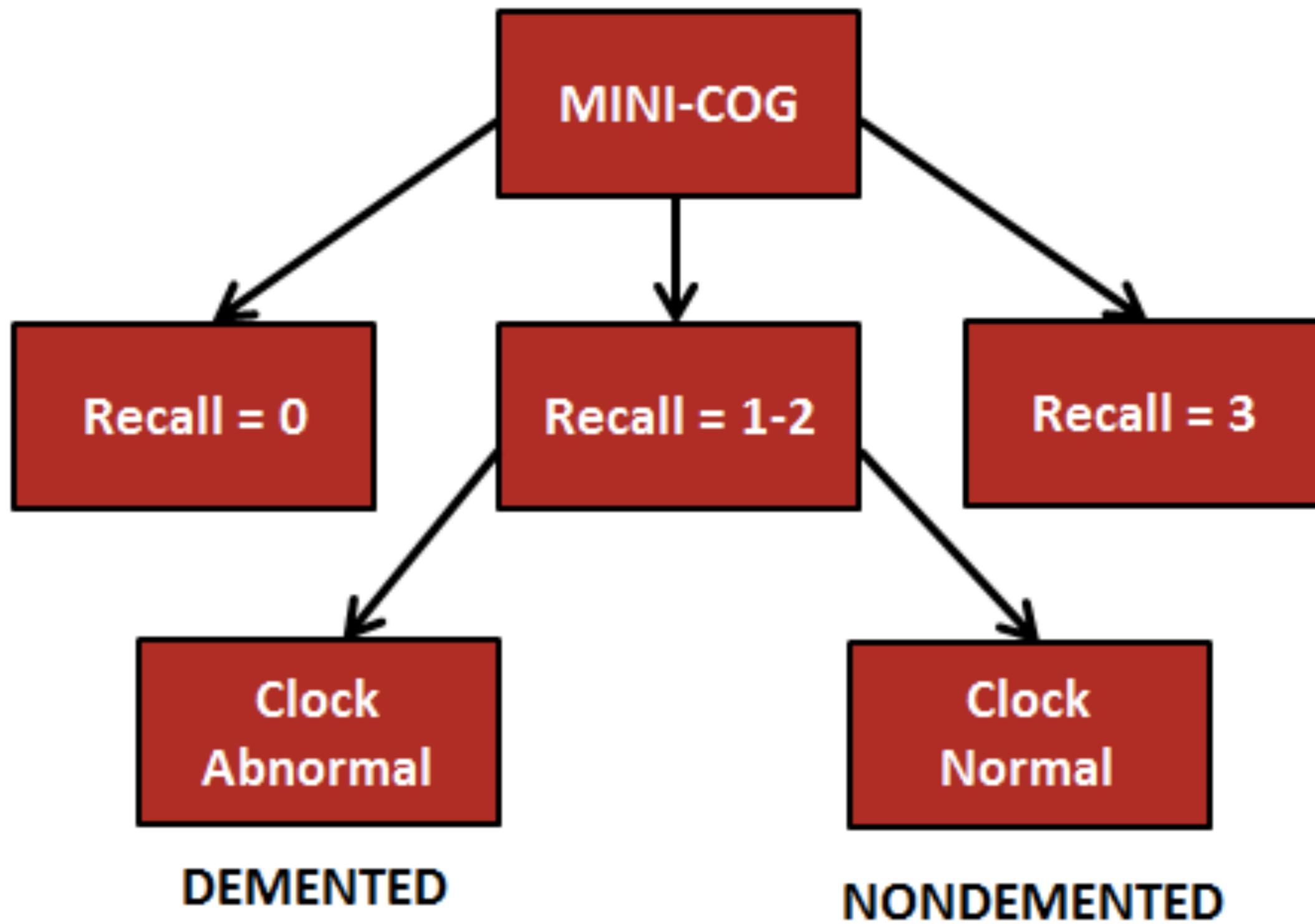
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Mini-Cog™

**Banana
Sunrise
Chair**

+





Key Points about Dementia

Longer period of time

Memory issues

Pain can be underestimated

Differentiate from delirium

Myth 7

Patients who have not been given relevant and consistent information about their treatment lack decision-making capacity



Myth 8

All patients with certain psychiatric disorders lack decision-making capacity

Myth 9

Patients who have been involuntarily committed lack decision-making capacity

Myth 10

Only mental health experts can assess decision-making capacity



