

Consent – those unable to give consent



For medicolegal advice
please call on:
800 616 7055
or email us at:
querydoc@mps.org.uk

Valid consent is just as important when treating children and young people, or adults with diminished capacity, as it is with competent adults. This factsheet sets out the basic information to enable you to obtain the appropriate consent from children and young people, and from those with diminished capacity.

Children

If a patient is a minor, information regarding their condition and treatment should be explained to their parent, guardian or person responsible for them for the purpose of consent on their behalf.

When caring for children, you have an overriding duty to act in the best interests of the child. When making decisions regarding treatment, the child or young person should be involved in the decision as much as possible, depending on their level of understanding. If the child is not capable of consenting themselves, you will need the consent of a person with parental responsibility.

Age and capacity

It is up to the doctor to decide whether the child has the maturity and intelligence to fully understand the nature of the treatment, the options, the risks involved and the benefits. When the child has such maturity and intelligence, he/she would have the legal capacity to give consent to treatment.

In an emergency situation, when a person with parental responsibility is not available to consent, the doctor has to consider what the child's best interests are and then act appropriately. The treatment should be limited to what is reasonably required to deal with the particular emergency. Wherever possible, it is advisable to discuss the case with a senior colleague, if available. In all cases, it is important to document fully what decisions were made and why.

Diminished capacity

Patients who lack capacity should not be denied necessary treatment simply because they are unable to consent to it. The Mental Capacity Act 2008 applies where decisions have to be made on behalf of persons lacking capacity. A Lasting Power of Attorney (LPA) can empower a nominated person to make decisions regarding a patient's personal welfare. However, the LPA needs to be registered and the attorney can only make decisions when the patient lacks capacity.

The court can also make decisions on behalf of a person who lacks capacity in matters concerning their personal welfare.

The LPA or court-appointed deputy are not allowed to make decisions on the following:

- Receiving treatment for change of gender
- Sexual sterilisation
- Termination of pregnancy

This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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- Registering or withdrawing an objection under the Human Organ Transplant Act
- Making or revoking an advance medical directive
- Carrying out or continuation of life-sustaining treatment or any other treatment that a person providing healthcare reasonably believes is necessary to prevent a serious deterioration in the other person's (lacking capacity) condition.

Withholding information

A patient's relatives may ask that the patient is not to be told if he has a fatal or socially-embarrassing illness. The SMC states: "A doctor may not withhold this information from the patient unless the doctor determines that this is in the best interest of the patient." You should always put the patient first, but you should recognise the role of the family in the decision about whether to disclose a diagnosis to a patient and address their concerns adequately.

Advance medical directive

The Advance Medical Directive (AMD) Act 1996 allows Singaporeans who wish to make an advance medical directive to do so. It is signed in advance to advise the treating doctor that no extraordinary life-sustaining treatment is used. It is only valid when it is made voluntarily, and no-one can force another person to make an AMD.

Anyone who is aged 21 years old and above and is of sound mind can make an AMD. It is the doctor's responsibility to fully explain and discuss the matter with the person and to ensure that he/she fully understands what he/she is signing.

Documentation

It is important to record any decision made in the patient's notes when taking consent for treatment. This should include the information that was provided to the patient and those with parental responsibility or LPA responsibilities, and how the decision was reached.

Further information

- SMC, *Ethical Code and Ethical Guidelines* – www.smc.gov.sg
- Ministry of Health, Advance Medical Directive Act – www.moh.gov.sg/mohcorp/legislations.aspx?id=7120

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