

## Action to take if an adult with a Learning Disability is refusing immediate life saving/emergency treatment. (*Guidance for GPs and Paramedics*)

### Does the person have the mental capacity to validly refuse the treatment?

There is a legal presumption that adults have capacity to make decisions about treatment. Refusals of treatment by those who have capacity must be respected, or the healthcare professional may be guilty of an assault. It should never be assumed that just because a person has a learning disability they lack capacity to make a decision.

Where there is reason to doubt an individual's ability to make a decision, their capacity to make that particular decision should be assessed. A person's capacity may be impaired by a temporary or permanent condition eg a mental illness, learning disability, brain injury, fear, pain, shock, bereavement, the effect of alcohol or drugs. You have a duty to take steps to assist the person to make their own decision (see "Assistance" section below).

### The test for capacity

Can the person:-

- Understand the relevant information about the treatment they are refusing, including risks and benefits of the treatment and consequences of refusal?
- Retain that information for long enough to make a voluntary decision?
- Use that information in order to make a decision (weighing the pros and cons)?
- Communicate their decision? (provision of specialist aids where appropriate)



If the answer to any of the above is "no" proceed on the basis that they lack capacity at that time (keep this capacity under review so that if they regain capacity they can make their own decisions). If they make an "unwise" decision, this does not mean they lack capacity, provided the above test is satisfied.

Assistance (if time allows)

- Check if there is anyone the patient knows who could help in communicating with them eg carer, friend/ neighbour or a professional who works/worked with them e.g Support Worker, Social Worker, Community Nurse, Therapist.
- Check on the GP computer system if the person has a Read Code which is suggestive of a learning disability and/or included on the 'Learning Disabilities Register' (Read Code 918e)
- Check if known to Salford's Joint Learning Difficulty Service (New Directions) Tel 0161 607- 6988. If they are, their case worker may be able to provide support. If no-one actively involved seek advice from the 'duty worker' (8.30am – 4.30pm). If out-of-hours ring Emergency Duty Team (EDT) on 794 8888.

### What do you do if the person lacks capacity to refuse the treatment?

In an emergency it may not be possible to assess capacity or there may be limited time to do so.

If you have a reasonable belief that the person lacks capacity (as per above test) you have a duty to act in their "best interests". You can assume that it is in "best interests" to take someone to hospital (or other facility) against their will to have emergency treatment, unless there are good reasons to believe otherwise or you are aware of a valid and applicable 'advance decision' refusing the treatment in question (see notes below). You can use reasonable force to take them to hospital, in accordance with good practice restraint techniques. The police may be able to assist.

**NB: You could be found professionally negligent if a person without capacity does not receive the medical treatment which is in their best interests**

Consider the following points, if time allows:

### Discuss any concerns/refusal with patient

They may have fears/concerns that could be readily addressed e.g. fear of going in an ambulance or people wearing white coats. Provide appropriate reassurance.

### Consider Alternatives

Consider whether hospital admission is necessary. Can emergency treatment be given effectively elsewhere eg an alternative community setting or in the home? For health treatment at home consider contacting the following for advice/support:

- District Nurses (via GP Practice)
- Home & Outpatient Parenteral Therapy (HOPT) (0161 212-4256)
- Rapid Response / Intermediate Care Team (0161 212-4226)

### Try and get person's agreement to go to hospital

Explain that they are very ill and need to go to the hospital to get better. Reassure them that their parent/friend can go with them. As a last resort explain what would happen if they refuse treatment e.g. 'you could die' and link this to something important in their life e.g. 'that means you will never go to the social club again/see your friends again'

### Consider mental health needs/use of Mental Health Act 1983(MHA)

**DO NOT assume** that a person lacks capacity to consent to the treatment just because they have a mental illness/disorder. However, if there is a reasonable belief the person lacks capacity, they can be taken to hospital under the common law, in the same way as described above. Priority must be given to securing the emergency physical treatment, although the person's mental health needs should be assessed as soon as possible, to ensure appropriate care planning.

Approved Social Workers can be accessed via Cleveland House (0161 789 5234 or out-of-hours on 0161 794-8888). Assistance of a Social Worker from New Directions could be helpful owing to their experience 0161 607 6988.

**NB: The MHA does not authorise imposing treatment for a physical illness, unless it arises from the underlying mental illness and the criteria for compulsory treatment are met.**

### What if I cannot communicate with the person?

If treatment required urgently and you are either unable to communicate with the person (eg unconscious) or have doubts about their capacity but it is not possible to properly assess capacity (eg person distressed/incoherent) the common law doctrine of necessity makes it lawful to take steps to provide emergency treatment. This means you can take the person to the hospital/other setting for treatment against their will and using reasonable force, if necessary. The police may be able to assist.

**IMPORTANT - Once the emergency situation is averted, steps should be taken to assess capacity properly and the general consent to treatment principles contained in the common law/Mental Capacity Act 2005 should be applied – [please refer to the MCA 'Code of Practice' for further information]. Consider whether it is necessary to instruct an IMCA (Independent Mental capacity Advocate).**

**ADVANCE DECISION** - will be valid and applicable if made when the person had capacity (18 or over), and provided it is a clear refusal of the specific treatment now required, and it was clearly intended to apply in the specific circumstances that have arisen. Consider whether there is any evidence to suggest that it should no longer apply eg the person acted contrary to that decision while they had capacity/unforeseen change in life circumstances/medical science. If in doubt about validity or applicability proceed to treat under common law of necessity (as above) until you can establish whether it is valid and applicable (consult with significant others).

**From 1<sup>st</sup> October 2007 all advance refusals of life-sustaining treatment must be made in writing, be signed, and witnessed by a third party and must expressly state that the advance decision applies "even if life is at risk". If in doubt seek legal advice.**

**LASTING POWERS OF ATTORNEY (LPA)** -From 1<sup>st</sup> October 2007, adults can make LPAs that empower the named Attorney(s) to make decisions about care and treatment, once the person making the LPA has lost capacity. The LPA is only valid if registered at the Court of Protection (check for Court's seal and that it covers decisions about treatment).

Inform Senior Manager On-Call (PCT) of situation at earliest opportunity: Tel: 07659-581787.

**Document all actions.**

**For further information contact Cath Rotherham (Healthcare Facilitator LD) Tel: 0161 212 4590**

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