

Assessment of capacity to consent to medical treatment

Introduction

In England, every adult has the right to make decisions regarding their medical care, even if the reasons appear irrational and the outcome of the decision is likely to be detrimental. Therefore, for example, a Jehovah's witness can refuse a blood transfusion, even if the outcome of refusal is fatal. However, the individual must be well informed, have the ability or capacity to make that decision and should be able to decide without coercion. The Mental Capacity Act 2005, which will come into effect in 2007, states that all adults should be assumed to be capable of making decisions unless proven otherwise, which includes giving or withholding consent to medical intervention (*Table 1*).

Law

The Law Commission states that adults who do not have a 'mental disorder' cannot be considered to be lacking capacity. However, a patient who is suffering from a mental disorder does not necessarily lack competence to consent to treatment. Mental disorder is defined as 'any disability or disorder of the mind or brain, whether permanent or temporary, which results in a disturbance or impairment of mental functioning'. Decision-making capacity should also not be considered as a stable or global characteristic as it depends on the subject of the decision and may vary over time.

An adult has the capacity to consent, or refuse consent, to medical treatment if he or she can:

- Understand and retain the information relevant to the decision in question

- Believe that information
- Make a decision on the information provided.

Assessment of capacity

Consent should be obtained on every occasion before an intervention (examination, treatment) is initiated, except in emergencies, or where compulsory treatment is authorized by the Mental Health Act 1983. Consent may be verbal, written or implied, and should be a continuing process rather than a one-off decision. It is recommended that the doctor who proposes the treatment should have the responsibility for providing an explanation to the patient and obtain his or her consent. The assessment of a patient's capacity to make a decision about a medical intervention is subject to clinical judgment guided by professional practice and law. To demonstrate capacity, British Medical Association guidelines (2003) recommend that individuals should be able to:

- Understand in simple language what the treatment is, its purpose and nature and why it is being proposed
- Understand the main benefits, risks and alternatives
- Understand broadly what the potential consequences of not receiving treatment will be
- Retain the information long enough to make an effective decision and be able to make a decision without coercion.

It is important to provide the patient with sufficient information (*Table 2*) about his/her condition and treatment, and to respond honestly to direct questions. If the procedure involves a general anaesthetic, consent should be obtained in advance for any necessary treatment which may be required should a problem emerge.

A lack of capacity to make a decision about treatment is only one explanation for a patient refusing consent. The individual may not want treatment, might have been

Table 1. Principles of the Mental Capacity Act 2005

Every adult is assumed to be capable of making their own decisions unless proven otherwise
As much support as possible should be provided to enable people to arrive at their own decision, before they are judged to be incapable of doing this
People should be able to make 'eccentric' or 'unwise' decisions as long as they have the capacity to do so
Anything administered for or on behalf of people without capacity must be in their best interests
Anything done for or on behalf of people without capacity should be the least restrictive of their basic rights and freedoms

Table 2. General Medical Council guidelines on the provision of information

The following should be clearly explained:
The purpose of the investigation or treatment
Details and uncertainties of the diagnosis
Options for treatment and the option not to treat
The benefits and likelihood of success for each option
Known possible side effects
The name of the doctor who will have overall responsibility
The patient should be informed that he or she can change his or her mind and withdraw consent at any time

From General Medical Council (1998)

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poorly informed or may have anxiety about the treatment. Therefore every attempt should be made to explore the reasons why a person may be refusing treatment.

If a person is considered not to have capacity to consent or refuse treatment, the presence or absence of a mental disorder should be established. If a mental disorder is suspected, the assessment should concentrate on how and whether the features of the disorder impinge on his or her capacity. In a patient with dementia, poor concentration and memory may affect the ability of the individual to retain information, thus affecting capacity. In a patient with depression or delusional beliefs, the situation may be more complex and open to different interpretations. The delusional beliefs should be shown to directly affect the ability of the person to understand the different features of the treatment and the consequences of not receiving treatment. In some cases this may be more obvious, such as a patient refusing surgical treatment because he believes that the doctors are conspiring against him and planning to harm him.

Re C [1994] was a landmark case. Mr C was a patient with chronic schizophrenia at Broadmoor Hospital, with grandiose delusions of being a world famous physician. He developed gangrene in his right foot and refused to consent to an amputation of his right leg below the knee. The court ruled that Mr C had sufficiently understood the nature, purpose and effects of the proposed amputation, and therefore had the capacity to consent to/or refuse treatment.

Strategies to improve capacity

If an individual is considered to have a mental disorder causing incapacity, where the treatment is not urgent, treatment of the mental disorder may be required in the first instance. If the patient has difficulties with hearing or vision, then communication aids should be used to assist the process, such as sign language or the use of written information and visual aids. Advice from a speech and language therapist may be useful. An interpreter may be required if the patient's first language is not English.

People with capacity who refuse treatment

If a person who has the capacity to make a decision regarding medical care refuses an intervention, it is good practice to provide

a follow-up appointment with the team so that the individual has the opportunity to change their mind. Written information should be provided and the GP should be informed of the decision. The option of symptom relief should be offered where definitive treatment has been refused.

Treatment of patients lacking capacity

In an emergency, and where consent cannot be obtained, doctors may act in the best interests of the patient to institute treatment that is immediately necessary to save life or to avoid significant deterioration in the patient's health. However, it is good practice to consult with relatives and to consider what is known about the individual's prior wishes.

Before proceeding, the clinician must be satisfied that it is the least invasive and restrictive alternative (Table 3). If there is clear evidence of a valid advance directive stating that treatment should not be given, then this should be adhered to. An advance directive enables an adult with capacity to make future decisions about medical treatment, where it is clearly specified that certain treatments should not be given in the event that the individual loses capacity. In the new Mental Capacity Act, it is made clear that an advance decision will have no application to any treatment which a doctor considers necessary to sustain life unless strict formalities have been complied with. The decision must be in writing, signed and witnessed. The patient must also state that the decision stands 'even if life is at risk'.

It is important to remember that the Mental Health Act 1983 is only applicable to the treatment of mental disorders. A

Table 3. Factors determining the patient's 'best interests'

The individual's own wishes and values and any advance directives
The patient's religious and cultural views
The views of relatives, partners and carers
The likely effectiveness of any proposed treatments
If more than one option is available, the least restrictive should be selected
If treatment is administered, the likely degree of improvement

patient with schizophrenia presenting in a medical emergency will need to provide consent to treatment. Where the patient refuses consent and is considered not to have the capacity to consent, emergency and life-saving treatment may be given.

Obtaining legal advice may also be necessary, particularly in difficult situations. In some cases, the High Court can make a decision, such as the need for sterilization in a person with a learning disability.

Conclusions

All clinicians should understand the concept of capacity and be able to assess an individual's capacity to make decisions about medical care. It is important to consult colleagues regarding the findings of the assessment. Obtaining legal advice may also be necessary. The decision of an adult who has the capacity to consent should be respected, and will become more significant with the introduction of the Mental Capacity Act. **BJHM**

Conflict of interest: none.

British Medical Association (2003) *Consent Tool Kit*. British Medical Association, London (www.bma.org.uk)
 General Medical Council (1998) *Seeking Patient's Consent: the Ethical Considerations*. General Medical Council, London (www.gmc-uk.org)
 Re C (Adult refusal to treatment) [1994] 1 WLR 290

Further reading

Bellhouse J, Holland A, Clare I, Gunn M (2001) Decision making capacity in adults: its assessment in clinical practice. *Adv Psychiatr Treat* 7: 294–301
 Department of Health (2005) *Mental Capacity Act 2005 – Summary*. Chief executive bulletin (ref 4840). Department of Health, London (www.dh.gov.uk)

KEY POINTS

- The assessment of capacity is decision specific and may change over time.
- The assessment of capacity requires the identification of whether a mental disorder is present and whether this impairs capacity.
- In a medical emergency, where it is not possible to obtain consent or where the patient lacks the capacity to consent, doctors may administer life saving treatment in the patient's best interest
- The decision of patients who do have capacity should be respected, no matter how irrational it may seem.