

## VULNERABLE PATIENTS

### ADULTS WITH INCAPACITY ACT 2000

**If you are confronted with a patient who you think may lack capacity:**

- Assess their capacity.
- Give life-saving treatment immediately if they lack capacity.
- Otherwise issue a certificate of incapacity before providing treatment.
- Find out (eg from patient or next of kin) if there is a proxy decision maker – if so gain consent prior to delivering non-emergency treatment.
- If there is no proxy decision maker you are authorised to provide treatment under the general authority to treat.

**A person lacks capacity** if he or she is incapable of acting, making decisions, communicating decisions, understanding decisions or retaining the memory of decisions due to either a mental disorder or a physical disability which prevents communication.

It is dynamic and specific to the decision to be taken – therefore it is possible to lack capacity for one decision but to be fully capable of making a different decision. **It is not an all or nothing concept.**

**In order to make a decision, a person must be able to:**

- Understand what the treatment is, its purpose & nature and why it is being proposed.
- Understand its benefits, risks and alternatives.
- Understand the consequences of not receiving the treatment.
- Retain this information long enough to use it to arrive at a decision.
- Communicate their decision.

Note that to aid understanding information must be provided in a way in which the patient can understand. This might mean using simple language or diagrams.

Memory impairment, eg in dementia does not necessarily prevent the patient from making the decision. If the information can be retained for long enough to make the decision this is sufficient.

**Interventions in the affairs of incapacitated adults must abide by the principles of the act:**

- It must be of benefit to the patient.
- The patient's wishes must be taken into account.
- The views of relevant others must be taken into account as far as reasonable.
- It must restrict the adult's freedom as little as possible.
- The patient must be encouraged to exercise residual capacity.

### **Certificates of Incapacity**

- **In emergencies you may provide medical treatment** that is immediately necessary to save life or prevent significant deterioration under **common law**.
- **In all other cases a certificate of incapacity must be issued** to provide treatment.
- Once the certificate is issued doctors may rely on consent from a **proxy decision maker** or, if there is no proxy, the **general authority to treat**.

### **Proxy Decision Makers**

- Proxy decision makers include welfare attorneys, persons authorised under an intervention order or welfare guardians with powers relating to medical treatment.
- **They must abide by the general principles of the act.** If you think the proxy is acting contrary to the interests of the patient this should be drawn to the attention of the authorities.
- **If there is disagreement between the doctor and the proxy decision maker** regarding a person's treatment a second opinion from a medical practitioner from the Mental Welfare Commission must be obtained. If this practitioner agrees with the treating doctor then treatment can be given unless the proxy makes an application to court. If there is disagreement between medical practitioners then the treating doctor can make an application to court but must only give emergency treatment in the meantime.

### **Advanced Health Directives**

- These are not covered in the act but one of the principles of the act is to take into account the past and present wishes of the patient.
- You should comply with an unambiguous advanced health directive.
- Emergency treatment should not be delayed to look for an advanced health directive if there is no indication that one exists.
- Proxy decision makers cannot override a valid advanced health directive.