

## Decision-making and Consent

– Supporting decision-making in the absence of a legal framework

## **The Medical Council Guide to Professional Conduct and Ethics for Registered Medical Practitioners**

The Medical Council Guide sets out the principles of professional practice and conduct that all doctors registered with the Medical Council are expected to follow and adhere to, for the benefit of the patients they care for, themselves and their colleagues. The guide is written in plain English.

Chapter 3, sections 9 and 10 address the matters of consent and capacity to consent. The subsequent sections address the following related areas: 11) Information for patients 12) Timing of Consent Process 13) Responsibility for seeking consent 14) Emergency situations 15) Refusal of Treatment 16) Advance Healthcare Directives.

### **Section 10 - Capacity to consent**

“10.1 Every adult patient is presumed to have the capacity to make decisions about their own health care. As their doctor, you have a duty to help your patients to make decisions for themselves by giving them information in a clear and easy-to-understand way and by making sure that they have suitable help and support. Patients have the right to have an advocate of their choice during discussions about their condition and treatment.

10.2 Adults who are considered not to have the capacity to make a decision are entitled to the same respect for their dignity and personal integrity as anyone with full capacity. You should seek and listen to their views and involve them in decisions about their healthcare to the extent that they are willing and able to be involved.

10.3 A lack of capacity may arise from a long-term or permanent condition or disability, or from short-term illness or infirmity. A person lacks capacity to make a decision if they are unable to understand, retain, use or weigh up the information needed to make the decision, or if they are unable to communicate their decision, even if helped. In assessing patients' capacity, you should consider:

- Their level of understanding and ability to retain the information they have been given
- Their ability to apply the information to themselves and come to a decision and
- Their ability to communicate their decision, with help or support, where needed.

10.4 An assessment that a patient lacks the capacity to make a particular decision does not imply that they are unable to make other decisions or will be unable to make this or other decisions in the future.

10.5 If an adult patient lacks capacity to make a healthcare decision, you must take reasonable steps to find out if anyone else has the legal authority to make decisions on the patient's behalf. If so, you should seek that person's consent to the proposed treatment.

10.6 If there is no-one with legal authority to make decisions on the patient's behalf, you will have to decide what is in the patient's best interests. In doing so, you should consider:

- Which treatment option would give the best clinical benefit to the patient?
- The patient's past and present wishes if they are known

- Whether the patient is likely to regain capacity to make the decision
- The views of other people close to the patient who may be familiar with the patient's preferences, beliefs and values and
- The views of other health professionals involved in the patient's care."

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