

## GUIDANCE FOR GPs: PROTECTION FROM LIABILITY

The Mental Capacity Act 2005 (MCA) Section 5 provides you with protection from liability if you act in your patient's best interest in connection with your patient's care or treatment regarding actions you take at a time when your patient lacks capacity to make a decision regarding the particular matter.

This does not exclude your liability in negligence.

## CHECKLIST

Take care to make a written record to show objective reasons to support your decision making process.

1. Is the action in connection with the care or treatment of your patient?
2. Does your patient lack capacity to give consent to that act?
  - a) Does it involve major life changes for your patient?
  - b) If so, it will need special consideration and record the factors taken into account
3. Have all possible steps to assist your patient in making his or her own decision been taken?
4. Has the two stage test of capacity been applied?
5. Are there reasonable grounds to believing the person lacks capacity to make the decision?
6. Have the best interests of your patient been considered?
7. Is a less restrictive option available?
8. Is it reasonable to believe that the act is in your patient's best interests?
9. The actions covered are not defined in the MCA and will include medical care given by the GP and nursing care.

## SPECIAL CASES

Major health care and treatment decisions will need special consideration e.g. major surgery or "DNR" decisions.

Check whether or not there is an applicable advance decision to refuse specific treatment.

## BEST INTERESTS

Decide what would be in your patient's best interests and consider (where practicable and appropriate).

1. Past and present wishes and feelings, beliefs and values of the patient lacking capacity to make the particular treatment decision in question, including any advanced statement written by your patient when they had capacity.
2. Consult with any persons named by your patient.
3. Consult with carers.
4. Consult with persons interested in your patient's welfare.
5. Consult with any attorney or deputy.
6. If there is no one to consult and independent mental capacity advocate must be appointed.
7. Hold a multi-disciplinary meeting and record objective reasons to support your decision regarding best interests.
8. Note some treatment decisions are so serious that the Court of Protection must be asked to make the decision e.g.
  - i) Proposed with holding or withdrawal of ANH from patient in a PVS
  - ii) Where there is a dispute regarding best interests, eg between family and medics

## EMERGENCY

1. Emergency medical treatment will involve saving a person's life or preventing serious harm.
2. **"In emergencies, it will almost always be in the person's best interests to give urgent treatment without delay". (MCA Code of Practice paragraph 6.35).**
3. One exception is if you are satisfied that an advanced decision to refuse treatment exists and is applicable to the situation but note that you are still protected if you did not know about the advanced decision or if you are not satisfied that the advanced decision is valid and applicable.

**Good record keeping is essential.**

This information is provided for guidance only and does not purport to be a definitive statement of the law.

Please contact me in relation to specific matters arising.

## FURTHER INFORMATION

Naomi Pinder  
Head of Wills & Probate Department  
npinder@jacksoncanter.co.uk  
0151 282 1700