



# Consent – capacity

**MPS**



Putting members **first**

Advice correct as of November 2014

Unless there are good reasons to believe otherwise, it is assumed that adult patients are competent to make decisions about their affairs themselves. This includes the assumption that they have the capacity to give or withhold their consent to medical treatment.

A patient cannot be automatically considered incompetent or lacking in capacity just because they do not agree with a doctor's recommendation or make a decision that appears irrational to others.

In deciding whether a patient has capacity, consideration must be given to whether the patient understands the implications of accepting or rejecting the proposed treatment options and can thereby arrive at an informed choice. If so, then the patient is competent and entitled to decide what treatment to accept or reject, even if that decision may result in permanent injury or death.

Competence is not an all or nothing phenomenon and the capacity to give valid consent will depend on the nature and complexity of the proposed treatment or procedure and the ability of the patient to understand its specific implications.

## Incompetence

Incompetence may be temporary or permanent. Shock, confusion, pain, drugs or panic induced by fear may all erode a patient's capacity to decide whether to consent to or refuse treatment.

Some patients may exhibit fluctuating competence or have difficulty retaining information. In such a situation you would be expected to provide any assistance they might need to reach an informed choice, recording any decision made while the patient was competent. You should then review any decision made at appropriate intervals before treatment starts, to confirm that the patient's views are consistently held and can be relied upon.

## Incompetent patients

In the case of an incompetent adult patient, no-one is entitled to give consent on their behalf. It would of course be intolerable for them to be denied appropriate treatment just because they were unable to consent for themselves however, and in such circumstances a doctor would be expected to treat the patient in accordance with their best interests, as judged by a responsible body of medical opinion.

In the case of minors, unless they can be judged themselves to have capacity consent can be obtained from any person with parental responsibility for the patient. However, again, the emphasis is on acting in the best interests of the patient.

A medicolegal adviser would be happy to discuss an individual case with any of our members

**For medicolegal advice please call our:**

**24-hour helpline on +44 113 243 6436**

**or email us at: [medical.wi@mps.org.uk](mailto:medical.wi@mps.org.uk)**