

MIDNIGHT LAW

Managing adult patients who refuse life-saving treatment (England and Wales)



SITUATION

Managing patients who present to hospital with self-harm including overdose, who require life-saving medical treatment and who refuse treatment due to an underlying mental health condition.

SCOPE

This may cover patients with a formal diagnosis of personality disorder (ICD-10 code F60), but can also be used to guide the management of patients with PD traits and no formal diagnosis at time of intervention.

CONSIDERATIONS

1. Is there an immediate threat to life i.e. airway compromise, catastrophic bleeding, evidence of clinically significant overdose (as per Toxbase/ senior clinician opinion)? If yes, then treatment can be initiated alongside formal assessment of capacity.

2. Have you considered the patient's capacity to make decisions about the intervention required to meet the threat?

- Careful assessment of capacity applying the principles of the MCA 2005 will be required as in these situations presumption of capacity cannot be relied upon.
- Remember that a patient only has a right to make an unwise decision if they have capacity to do so.

3. If the patient lacks capacity, are you aware of an advance decision to refuse treatment?

- If a valid advance decision to refuse treatment (ADRT) exists which applies directly to the treatment in question, it must be followed.
- If medical treatment is withheld based on an ADRT, then it is paramount the requirements for validation of that ADRT are met in full, without doubt or contention.

- If in doubt, seek legal advice, and provide the necessary life-saving treatment in the interim.

4. Treatment can be provided under the MCA 2005 where you reasonably believe that the patient lacks capacity and the treatment is in their best interests.

- Remember to re-evaluate best interests as you get more information about the patient and their circumstances.

5. Will the patient need to be restrained to receive the treatment?

- It is possible to restrain someone to provide treatment where you reasonably believe that they lack capacity to consent to the restraint, it is in their best interests, and necessary and proportionate to the risk of harm they would be at otherwise: s.6 MCA 2005.
- Restraint lasting more than a short period is likely to give rise to deprivation of liberty, which will require authorisation either under the DoLS framework or by admission under the Mental Health Act 1983. Immediately necessary treatment should be provided whilst such authorisation is being sought.

6. Is detention under the Mental Health Act 1983 appropriate?

- Forced treatment under section 63 of the MHA can only be used for treatment of a mental health disorder.
- Careful consideration should be given before detaining a patient solely to rely upon section 63, but it may be appropriate where you properly consider that the patient has capacity to make decisions about medical treatment, but where their refusal is a manifestation of mental disorder.

7. What can be done clinically to de-escalate the situation?

- Continue to explore and alleviate potential factors which may be contributing to the patient's refusal of treatment, e.g. fear, anxiety, environment, misinformation.

GUIDING PRINCIPLES

- Careful consideration of the patient's capacity to make decisions about necessary medical treatment is required, as the presumption of capacity cannot be relied upon in these situations.
- Life-saving treatment can be provided using a 'best interests' approach if there is a reasonable belief the patient lacks capacity to make a relevant decision, unless there is a valid and applicable advance decision.
- If in doubt, seek legal advice, but provide life-sustaining treatment in the interim under the least restrictive circumstances possible.

KNOW THE LAW

1. Mental Health Act 1983
2. Mental Capacity Act 2005

FURTHER READING

1. Re C (adult refusal of treatment) [1994] 1 All ER 819
2. P v an NHS Foundation Hospital [2014] EWHC 1650 (Fam)
3. Kings College NHS Foundation Trust v C and V [2015]

