

PROCEDURE FOR CLINICAL DECISION MAKING

Approved by:

Date of approval:

Originator: Medical Director

Aim and scope of procedure

To provide instructions to staff regarding the appropriate way to make decisions for patients who lack capacity.

Policy Area

Clinical.

Staff responsibilities

Director of Nursing
(Registered Manager)

To ensure compliance with all necessary legislation and guidance, including the Mental Capacity Act (2005); Standard C2.6 of the National Minimum Standards for Independent Health Care; the Department of Health Reference Guide for Examination and Treatment; the BMA code of practice; The Nursing and Midwifery Council's Code of Practice; and any guidance issued by the Lord Chancellor on the subject.
To ensure that all staff are sufficiently skilled to contribute to the decision-making process for patients who lack capacity, in compliance with the hospice's procedure for decision making for patients who lack capacity.
To receive periodic reports regarding decision-making activity for patients who lack capacity.

Clinical staff.

To follow the procedure for decision making for patients who lack capacity and demonstrate this in their clinical documentation. To seek advice where necessary or appropriate.

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Method

Establishing the decision-making framework

1. When first introduced to the services of Katharine House Hospice, each patient should be issued the sheet entitled called “Helping us to follow your wishes”, along with the other introductory literature for the hospice. This sheet asks the patient to indicate whether:
 - They have any particular wishes regarding their future care that it would be helpful for the hospice to know about.
 - They have drawn up an advanced refusal document.
 - They have bestowed anybody with power of attorney with medical decision making responsibilities.

The patient is also invited to find out more on these matters or to share details of existing arrangements with a member of the hospice staff if they so wish.

2. When the patient lacks capacity, the sheet entitled “Helping us to follow your wishes” should be given to their next of kin.
3. It is hoped that the patient will choose to answer the questions on the sheet and then return it to the most appropriate member of staff at the hospice, which might be:
 - The patient’s Palliative Care Clinical Nurse Specialist.
 - The Day Centre Manager.
 - The patient’s named nurse on the inpatient unit.
 - A member of the medical team.
4. Upon receipt, a copy is made of the sheet so that it can be filed in both the nursing and medical sections of the clinical record. If the responses on this sheet indicate that the hospice is invited to discuss things in more detail then this should be done by the staff member to whom the sheet is given. The following forms exist to help in the documentation of the further information:
 - Staff Sheet for documenting the existence of an Advanced Decision to Refuse Treatment for a patient.
 - Staff Sheet for documenting the Lasting Power of Attorney arrangements made by patients.
 - Staff Sheet for documenting the verbal wishes of patients regarding their future treatment.

Decision making for patients with mental capacity.

5. Doctors are required to offer their clinical opinion and the therapeutic options they consider appropriate for any clinical situation. However, the only person able to make the final decision out of the available clinical options for a patient with mental capacity is the patient themselves. Mental capacity can fluctuate over time and can also vary regarding the subject matter. Every effort must be made to allow patients to make decisions for themselves when they are found to have the capacity to do so.

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Uncertainty regarding capacity to make a particular decision

6. If there is uncertainty regarding the capacity of a patient with regard to a particular decision, the conversation during which this is investigated is documented on the hospice form entitled "Sheet for the documentation of capacity or non-capacity". Correct use of this form can establish whether the person has capacity to make the decision in question. Furthermore, if the person does indeed have capacity to make the decision, the form can also document what that decision is.
7. It would be good practice for such interviews to be conducted in the presence of witnesses so that the findings are corroborated. It is recommended that a doctor, nurse and close relative are present at any such discussion although, in order to minimise confusion for the patient, it is recommended that the lead person for conducting the interview is established amongst these people before initiating the discussion with the patient. As the medical consultant is ultimately responsible for the medical care of any hospice inpatient, it is usually appropriate for them or their nominated deputy to assume this role in the inpatient unit.
8. When witnesses are present and the lead person has completed their interview with the patient, the other parties must be given an opportunity to ask questions of the patient or of the lead interviewer if they disagree with the capacity verdict or if they feel that an ambiguous decision was made by a patient with capacity. However, at no point during the whole procedure should any party attempt to influence the actual decision made by the patient, unless the patient specifically asks for that person's opinion. If anyone tries to unfairly prejudice the patient's decision then the other parties should point this out. If such behaviour persists then the interview should be terminated, with a view to rescheduling it once all parties have had an opportunity to agree the ground rules once more. If a satisfactory interview cannot be made then legal advice may be required.

Definite lack of capacity to make a particular health care decision

9. Even when an enduring lack of mental capacity has been clearly established for a patient in the past, it is good practice to check that this is still the case whenever a new clinical decision has to be made.
10. When a patient definitely lacks capacity for a particular decision the following decision-making authorities should be considered in the following order:
 - a. In acute lifesaving or resuscitative matters, decision-making responsibility lies with the clinical team and is the ultimate responsibility of the consultant in charge of the patient's care.
 - b. For other healthcare matters, the following hierarchy of authority should be followed:
 - i. The decision of one or more individuals with lasting power of attorney that definitely includes power to make clinical decisions on behalf of the patient and which the patient did not

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rescind during any earlier moment in which they had the mental capacity to make such a decision.

- When two or more such people have such authority, the Instrument will indicate whether they can make individual decisions or whether their decision must be a joint one.
 - If the patient had a previous advanced refusal, then the decision reached by those with power of attorney should not obviously be at odds with any relevant wishes that the patient had formerly expressed in the advanced refusal.
- ii. The presence of a valid advance refusal that clearly pertains to the clinical situation.
 - iii. The collective decision of the family and professional carers of the patient. In reaching this decision, what is known of the wishes, values and beliefs of the patient must be respected, and the final decision must be considered in the best wishes of the patient. Ultimate responsibility for the decision rests with the consultant in charge of the patient's care (or their deputy when they are absent).

11. Any such decision must be carefully documented in the clinical notes.

12. When there is dispute about any such decision, the aggrieved party has the right to appeal in court.

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Helping us to follow your wishes

Some people make legal arrangements to ensure that their wishes regarding health care decisions can be respected in the future, even if they lose the ability to express those wishes themselves at the time they are actually needed. These arrangements can take the form of:

- Expressing your wishes for the future in an “Advanced Decision to Refuse Treatment”, sometimes referred to as a “living will”.
- Conferring a named person or named people with “Lasting Power of Attorney that includes clinical decision making”.

Such arrangements only become valid if you are no longer able to make or express decisions for yourself at the very time that they are required.

Some other people have strongly-held wishes regarding future care that they would not like to receive, but they have not taken either of the steps described above.

It would help us to know whether any of these situations apply to you, so that we are in the best position to respect and observe your wishes. We therefore invite you to either tell us directly of these arrangements or to complete the following questionnaire and then return it to a member of the hospice staff.

Do any of the following apply to you?

	YES	NO
Have you written a document that describes treatments that you would not like to receive in the future, if they were considered appropriate to offer to you? (i.e. An Advanced Decisions to Refuse Treatment)		
Have you nominated one or more people to make medical decisions on your behalf if you become unable to make them for yourself? (i.e. Lasting Power of Attorney)		
Have you expressed a verbal wish not to receive certain treatments in the future, if they were considered appropriate to offer to you?		
Would you like to find out more about writing an Advanced Directive or arranging for someone to have lasting Power of Attorney?		
If you have an Advanced Directive or have nominated someone with lasting Power of Attorney, then it would be very helpful for us to know more details. Are you happy for us to discuss this with you?		

Please advise us if any of these arrangements change.

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Staff Sheet for documenting the existence of an Advanced
Decision to Refuse Treatment for a patient

Patient Name: _____

Please can you provide us with a copy, so that we can
be aware of your wishes? **YES / NO**

Are you still happy with the wishes it describes? **YES / NO**

Are you happy that clinical scenarios have been described
sufficiently well? **YES / NO**

Can we seek clarification if we think this would help us? **YES / NO**

Is the written advanced decision document still valid
and unrevoked by you? **YES / NO**

Since writing this advanced decision document, have you
granted anybody power of attorney? **YES / NO**

This form was completed by _____ on _____.

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Staff Sheet for documenting the Lasting Power of Attorney
arrangements made by patients

Patient Name: _____

Please could you advise us:

The name(s) of the people with lasting power of attorney

Does this power of attorney arrangement extend to
general healthcare decisions? **YES / NO**

Does this power of attorney arrangement extend to
decisions about life-saving treatments? **YES / NO**

If more than one person has been given power of attorney that extends
to decisions about health, which of the following statements is true?

A. Any person with power of attorney can make
an independent decision about my health care. **YES / NO**

B. Decisions about my health care can only be made
by all of the nominated people acting together **YES / NO**

Have you revoked the power of attorney arrangement? **YES / NO**

Is the power of attorney arrangement invalid for any other reason? **YES / NO**

Please could you provide us with a copy of the agreement? **YES / NO**

This form was completed by _____ on _____.

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Staff Sheet for documenting the verbal wishes of patients
regarding their future treatment

Patient Name: _____

Please could you advise us:

The wishes you have verbalised?

To whom have they been verbalised?

Would you like us to write them down for you so that
they become readily available for the whole team looking after you? **YES / NO**

It might help to safeguard your wishes in a document
known as an Advanced Decision to Refuse Treatment.
Would you like some advice on how to do this? **YES / NO**

This form was completed by _____ on _____.

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KATHARINE HOUSE HOSPICE

Sheet for the documentation of Capacity or Non-Capacity

This sheet can be used by any member of the clinical staff when they wish to document the capacity of a patient regarding a particular matter. Please refer to the notes on the back of this sheet. Completed sheets must be filed in the hospice health records.

Patient Name:

Date and time:

Names of those present:

Problem for which a decision was being sought:

	Yes	No	Comments/Evidence
The patient understood the information relevant to the decision, including: <ul style="list-style-type: none"> • The problem. • The available options. • The potential risks and benefits of each option. 			
The patient retained and used that information as part of the decision making process at the time that the decision was made by the patient.			
The patient communicated their decision by any understandable means.			
The patient understood the consequences of making or not making a decision.			

A negative answer to any of these questions indicates that the patient lacked mental capacity to make a decision regarding the problem at the time that it was being sought.

Please note:

1. It is capacity at the specific moment a decision is sought or made that matters.
2. It is only capacity regarding the matter for which a decision is being sought or made that is relevant.
3. In law, all people are assumed to have capacity unless it is established otherwise, and all possible steps must be taken to help people reach their own decisions.

Therefore, there is no need to complete one of these sheets every time a patient decision is sought. Use of this sheet should be limited to documentation of:

- Occasions when capacity was in doubt at the time a clinical decision was required.
- Instances when an attempt was made to help a patient make their own decision but it was found that the patient lacked the capacity to do this.
- Decisions made by patients whose capacity to have done so at that time might subsequently be challenged by a third party.

Please tick the “yes” or “no” box as appropriate. It might prove helpful to provide written evidence to support your answers in the box provided, just in case a future challenge is ever mounted.