

# Taking 'no' for an answer: when a patient declines medical treatment

Medical professionals must respect a patient's decision to decline treatment even if they disagree with that decision, or consider it unwise or likely to lead to serious harm to the patient, writes **Maria Campbell**

**A DOCTOR'S INSTINCT** is to provide care to their patient. Every adult with capacity is, however, entitled to decline medical treatment and a patient's wishes should be respected in this regard.

Navigating a patient's decision to decline treatment presents ethical and practical challenges for clinicians. This article will examine the guidance on this issue provided in the updated Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024 (the 'Guide') which came into effect on January 1, 2024.<sup>1</sup>

## Medical Council Guide

The Guide is clear that the starting point must be to respect a patient's decision to decline treatment even if their doctors do not agree that it is the correct course of action. Paragraph 18 states: *"Every adult with capacity is entitled to decline medical treatment. You must respect a patient's decision to decline treatment even if you disagree with that decision, or you consider it unwise or likely to lead to serious harm to the patient. In these circumstances, you should explain clearly to the patient the possible consequences of their decision and offer them a second medical opinion."*

Doctors must also be aware that a patient is entitled to change their mind, and that consent can be withdrawn while treatment is ongoing, in accordance with paragraph 19 of the Guide. The Guide dictates that a patient's wishes must be respected, provided the criteria of age and capacity are met.

## How do I know if my patient has the capacity to decline treatment?

As a doctor, you must presume that every adult patient has the mental capacity to give or withhold consent to any examination, investigations or treatment unless the contrary is proven.

Most of the time, assessing a patient's capacity to make decisions is part of every encounter with the patient and the process is generally spontaneous and straightforward. During a consultation, it is likely you will form a view on the ability of your adult patient to understand their medical condition and options for care. For some patients, however, the assessment may not be straightforward, and you may have to assess a patient's decision-making capacity more carefully than usual.

The Guide states at 18.3 that: *"If you have doubts or*

*concerns about the patient's capacity to decline treatment, you must comply with the provisions of the Assisted Decision Making (Capacity) Act 2015 or the Mental Health Act 2001."*

There are a number of clinical scenarios where this may occur in practice including where:

- The patient has an abrupt change in mental status. This change may be due to infection, medication, an acute neurologic or psychiatric process, or other medical problem
- The patient has a known history of impaired decision-making such as a chronic neurological or psychiatric condition, or an intellectual disability.

The ability of a patient to make a decision may depend on the nature and severity of their condition, or the difficulty or complexity of the decision. Some patients may be able to make simple decisions but may have difficulty if the decision is complex or involves a number of treatment options. Other patients may be able to make decisions at certain times but because of fluctuations in their condition, they may be unable to make decisions at other times. Assessment of mental capacity, therefore, should always be a 'time specific and decision-specific' test, that is whether a person lacks capacity to make a particular decision at a particular point in time. You must not assume that because a patient lacks capacity to make a decision on a particular occasion, they lack the capacity to make decisions at all, or will not be able to make similar decisions in the future. These patients may require careful assessment but may still be able to make their own decisions or may be able to do so with appropriate support.

It is important to remember that assessments of mental capacity should only be carried out where there is a legitimate doubt about a patient's capacity and not because you disagree with the patient or think their particular decision unwise.

## Children and young people

The Guide states the patient must be an adult. What do I do if my patient is a child? The patient's age will determine how to proceed in these difficult situations. In the Guide, a 'child' refers to a person aged under 16 years and 'young person' refers to a person aged 16 or 17 years.

### Child

If a patient is under 16 year of age, in general, the consent of parent(s) or legal guardian(s) should be obtained before providing treatment. It is good practice to involve

the child in the discussion, as appropriate to the situation and the child's level of maturity.

Paragraph 22.4.4 of the Guide outlines that in general, where a patient aged under 16 years refuses treatment, but where the parent(s) or legal guardian(s) consents, you may proceed with treatment in the best interests of the child, taking account of the age and maturity of the child, and the urgency of treatment being proposed.

If there is a refusal of treatment by the parent(s) or legal guardian(s), you should act in the child or young person's best interests while making all reasonable efforts to reach a consensus with the parent(s) or legal guardian(s). If it is not possible for you and the parent(s) or legal guardian(s) to reach consensus, it may be necessary to seek legal advice as to whether an application to the court is required to determine what is in the best interests of the child.

If the treatment is not urgent, it is good practice to allow time for discussion with the child and parent(s) or legal guardian(s) with a view to achieving consensus.

#### **Young person**

The legal definition of an adult is anyone over the age of 18. For the purposes of medical treatment however, in line with current practice, a young person aged 16 years and over can give consent to medical, surgical and dental treatment.

The position regarding refusal of treatment for young people is not as straight forward and intervention by the court may be necessary in some circumstances. Paragraph 22.3.4 of the Guide states that: *"The law relating to refusal of treatment by young people aged 16 and 17, against medical advice and against parental wishes, is uncertain. If this situation arises, you should consider obtaining legal advice as to whether a court application is necessary."*

If this situation occurs, you should seek legal advice having regard to the specific circumstances.

#### **Documentation**

Keeping detailed, accurate, contemporaneous records is essential in situations where a patient declines treatment as outlined in Paragraph 18.2 of the guide. You should document your discussion with the patient, the information you gave and the patient's decision to decline treatment in the patient's medical notes. This includes:

- History, examination, findings and management plan
- Details of the consent process if you undertake a capacity assessment or discussed care with a relative/family member
- Outcomes of capacity assessment and follow-on actions
- Details of conversations held with third parties, including any decision-making supporters if relevant
- Safety netting advice and follow-up arrangements.

#### **Planning for the future**

If you have an ongoing professional relationship with a patient, it is good practice to engage in discussions about

planning for their future healthcare (Paragraph 20 of the Guide). This is also the case in situations where your patient does not wish to undergo treatment.

The Assisted Decision-Making (Capacity) Act which came into effect in April 2023, provides a mechanism for a person to set out their wishes regarding medical and healthcare treatment in case they are unable to make these decisions in the future. This is done by making an advance healthcare directive (AHD).

The person making an AHD (known as the donor) can appoint someone they know and trust as their designated healthcare representative to act on their behalf within the scope of the AHD. A designated healthcare representative can agree to, or refuse, treatment on the donor's behalf, based on the AHD. 'Basic care', which includes warmth, shelter, oral nutrition and hydration and hygiene measures, cannot be refused under an AHD.

An AHD may include details of what treatment a patient would like to receive or refuse. 'Treatment' includes all diagnostic, therapeutic, life-saving and palliative interventions. Where a donor lacks capacity and their AHD sets out a refusal of treatment, that refusal shall be complied with if:

- The treatment to be refused is clearly identified; and
- The circumstances in which the refusal is intended to apply are clearly identified and applicable.

Having such a plan in place can assist medical professionals, as well as persons close to the patient, to ensure that the patient's will and preferences are followed, in so far as they can be, in circumstances where the patient does not have the ability to communicate their wishes or is deemed not to have capacity to make decisions at a particular time.

#### **Conclusion**

Making decisions about medical care is a personal choice for each adult patient with capacity, and those decisions might not always accord with medical opinion or advice. The expanded guidance in the 9th edition of the Guide reflects that these can be challenging situations for doctors who ultimately want the best for their patients.

The Guide confirms that every adult with capacity is entitled to decline medical treatment. You must respect a patient's decision to decline treatment even if you disagree with that decision, or you consider it unwise or likely to lead to serious harm to the patient. If you have doubts or concerns about the patient's capacity to decline treatment, you must comply with the provisions of the Assisted Decision-Making (Capacity) Act 2015 or the Mental Health Act 2001.

Please do not hesitate to contact Medisec for further advice on any of the above.

#### **Reference**

1. Medical Council 2024. Guide to Professional Conduct and Ethics for Registered Medical Practitioners, 9th Edition, 2024

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