

Case 22 – Sally

Sally is asking for a DNR order to be written on her mother’s chart without her mother’s knowledge. Her mother has chronic congestive heart failure and her health has deteriorated over the past 5 years.

Best Practice Response

Material facts

- The relevant facts are:
 - Sally is asking for a Do Not Resuscitate order to be written on her mother’s chart without her mother’s knowledge.
 - Sally’s mother has chronic congestive heart failure and her health has deteriorated over the past 5 years.

Ethical considerations and medico-legal issues

- Doctors have an ethical duty to communicate effectively with the patient and obtain their consent before undertaking any tests, treatments or procedures (there may be an exception in emergency circumstances).
- Doctors have an ethical duty to presume an adult patient has decision-making capacity, the ability to make and communicate a decision, unless there is evidence to the contrary.
- Doctors have an ethical duty to recognize that some patients may have limited, impaired or fluctuating decision-making capacity. As such, any assessment of capacity for health care decision-making is relevant to a specific decision at a specific point in time.
- Some of the issues to consider when assessing capacity include:
 - Can the patient understand the facts of the situation?
 - Can the patient understand the main choices available (what, where, when, how)?
 - Can the patient weigh up those choices, including benefits and risks?
 - Can the patient make a decision and be able to communicate this?
 - Can the patient understand the ramifications of the decision?

MDA’s recommendations

- We are not provided with any information about the patient’s decision making capacity, so you are required to presume she has decision-making capacity unless there is evidence to the contrary. In the circumstances, we would recommend that the DNR order is discussed with the patient and consent is obtained from the patient.
- You may decide that it is necessary to undertake an assessment of the patient’s capacity.

- If the patient does not have capacity to consent, even with support or the provision of additional resources such as an interpreter or alternative communication methods, and consent is required, you should firstly consider whether there is an Advance Health Care Directive in place. If there is not one in place, you should then consider who can act on the patient's behalf. Options include:
 - a guardian
 - someone with an enduring power of attorney
 - a person recognised by other relevant laws, for example in NSW, a 'person responsible' under the *Guardianship Act 1987* (NSW) (this may be an individual's spouse, partner, carer, family member or close friend), or
 - a person who has been nominated in writing by the individual while they were capable of giving consent.
- If the patient lacks the capacity to consent, they should nevertheless be involved, as far as practicable, in any decision-making process.

Links to resources:

<https://ama.com.au/media/new-code-ethics-doctors>

Assessment of Capacity - DU - 2015.pdf

<https://www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-b-key-concepts>