

Case 27 – Woman patient with MS.

A woman patient with MS, has been found after attempting suicide and brought to the hospital by her husband where she refuses treatment. Her wish to die can be understood, but her competence may be compromised. What course of action would you follow?

Best Practice Response

Relevant ethical considerations and medico-legal issues

- The law presumes that an adult has decision-making capacity, unless there is evidence to the contrary.
- It is a fundamental tenant of ethical medical practice, that adult patients have the right to make their own health care decisions. An adult patient (aged 18 years or over) who has capacity can refuse any medical treatment, even if the refusal will result in his or her death.
- Where a patient's competence may be compromised, management of the patient should be approached sensitively and have regard to the following considerations:
 - Is the patient capable of consenting to an assessment of her capacity to refuse medical treatment?
 - Does the patient require specialist review given her presentation and underlying medical condition?
 - In the absence of an enduring guardian and where it is found that the patient lacks capacity, can the patient's husband act as a substitute decision maker?
 - Is an involuntary treatment order necessary?
 - Can life-saving treatment be given in the absence of the patient's consent?
- In assessing a patient's capacity, doctors should consider:
 - The patient's ability to weigh up options and assess risk.
 - Capacity may vary when the patient suffers from a fluctuating impairment in their mental processes that may be caused by an underlying disease, the effects of drugs or a mental illness. Assessment of capacity may therefore be limited to a specific decision at a specific point in time.
 - Where a patient refuses an assessment, discuss the consequences of refusal and, if necessary, seek a second opinion.
 - In circumstances where a patient is at risk of serious physical harm, does the patient satisfy the criteria for involuntary detention under mental health legislation? Specialist psychiatry review may be necessary.

- Where a patient lacks capacity, consider the mechanisms available for determining what (if any) treatment can be administered:
 - Under guardianship legislation, medical treatment may be carried out on an incompetent patient without their consent if the treatment is considered necessary to either save the patient's life or prevent serious damage to the patient's health.
 - For non-urgent treatment, and in the absence of an enduring guardian, a patient's spouse may consent to treatment as the "person responsible" for the patient under Guardianship legislation.
 - Treatment provided to a mentally ill or disordered person under an involuntary treatment order.

MDA's recommendations

- In this case study, it is first necessary to establish if the patient lacks capacity to make healthcare decisions. Specialist review may be indicated, particularly in light of the patient's current medical condition.
- Approach with sensitivity any refusal by the patient to have her capacity assessed and ensure that the patient's decision is given freely and without undue influence from others.
- Treat the patient's family members and carers with respect and recognise that they too may need support, particularly where the patient's condition is serious or life-limiting.
- Depending on the outcome of the assessment of capacity, consider what mechanisms are available for either administering or withholding treatment.
- Seek advice from your MDO on the applicable law in your State.

Links to resources:

- Assessment of Capacity, *Defence Update MDA National*, Spring/Summer 2015.
- AMA Code of Ethics (Revised 2016)