

# The process for making best interest decisions in serious medical conditions in patients over 18 years

V16 © 2008. Regnard C. From: Regnard, Dean & Hockley; A guide to Symptom Relief in Palliative Care 6th ed, Oxford: Radcliffe Publishing

Start by assuming that the patient has capacity. If there is doubt, proceed to the two stage test of capacity:

**Stage 1:** Does the person have an impairment of, or a disturbance in the functioning of, their mind or brain?

**Stage 2:** Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to? Their capacity for this decision can be assessed by four functional tests:

1. **Can they understand the information?** *NB. this must be imparted in a way the patient can understand*
2. **Can they retain the information?** *NB. This only needs to be long enough to use and weigh the information*
3. **Can they use or weigh up that information?** *NB. They must be able to show that they are able to consider the benefits and burdens of the alternatives to the proposed treatment*
4. **Can they communicate their decision?** *NB. The carers must try every method possible to enable this*

The result of each step of this assessment should be documented, ideally by quoting the patient.

Does the patient have the capacity to make this decision for themselves?

YES

Ask the patient.  
*NB. An eccentric or unwise decision does not imply a lack of capacity*

NO

Is there an Advance Decision to Refuse Treatment (ADRT) and/or a Personal Welfare Lasting Power of Attorney (PW-LPA)?

YES

- **If the ADRT is the most recent decision:**
    - check that the circumstances of the ADRT match the current circumstances and that the ADRT is valid and applicable,
    - this ADRT then overrides any previous ADRT or LPA appointment
    - follow the decision(s) stated in the ADRT
  - **If the appointment of a PW-LPA is the most recent decision:**
    - check with the Office of the Public Guardian that it has been registered and includes the authority to decide on serious medical conditions
    - this PW-LPA then overrides any previous ADRT or LPA appointment
    - fully inform the PW-LPA of the clinical facts
    - ask the PW-LPA for their decision
- NB. there may be more than one LPA*

NO

Is the patient without anyone who could be consulted about their best interests?

YES

- In an emergency, act in the patient's best interests (see below).
- For any other serious medical decisions, involve an Independent Mental Capacity Advocate (IMCA) which are available locally

NO

- **Appoint a decision maker** (usually after an interdisciplinary team discussion) who should
  - Encourage the participation of the patient
  - Identify all the relevant circumstances
  - Find out the person's views (ie. wishes, preferences, beliefs and values): these may have been expressed verbally previously, or exist in an ADRT or Advance Care Plan made when the patient had capacity
  - Avoid discrimination and avoid making assumptions about the person's quality of life.
  - Assess whether the person might regain capacity
  - If the decision concerns life-sustaining treatment, not be motivated in any way by a desire to bring about the person's death.
  - Consult others (within the limits of confidentiality): this may include an LPA, IMCA or Court Appointed Deputy
  - Avoid restricting the person's rights
  - Take all of this into account, ie. weigh up all of these factors in order to work out the person's best interests.
- **Record the decisions**
- **Agree review dates and review regularly.**

If there unresolved conflicts, consider involving
 

- the local ethics committee
- the Court of Protection, possibly through a Court Appointed Deputy (CAD)