Section 4: Patients with communication and support needs, or who may lack capacity

Overview

4.1 Where a patient has particular communication or support needs, you must consider additional factors when providing your expert opinion.

4.2 Where there is an issue as to whether a patient had the capacity to consent to treatment, you will need to consider whether the doctor dealt with that in accordance with the law and our guidance.

4.3 It is essential that you stay up to date with all relevant legislation, guidance and GMC policy.

What do I need to consider?

4.4 Where a case involves a patient with particular communication and support needs or a patient who may lack capacity to consent, you will need to consider whether:

- the care and treatment provided met their clinical needs
- the doctor adequately and appropriately considered and met the patient’s communication and support needs so as to support them in making decisions about their treatment
- whether the doctor adequately assessed whether the patient had capacity to make decisions about their treatment
if the patient was assessed as lacking capacity, whether:

- the doctor adequately consulted with team members and those close to the patient
- the doctor adequately considered, if relevant, the patient’s previously expressed wishes
- the doctor acted in the patient’s best interests
- the doctor took appropriate steps to resolve any dispute about what was in the patient’s best interests
- the doctor made an adequate record of any assessment
- the doctor obtained informed consent for the treatment provided
- the doctor fulfilled their legal obligations under the Equality Act 2010 to make ‘reasonable adjustments’ for disabled patients
- the doctor acted in accordance with GMC guidance.
- the doctor acted in accordance with mental health legislation

**What guidance should I consult and reference?**

4.5 You will need to be familiar with, and reference where appropriate, the following materials:

- [Good Medical Practice](#) (Nov 2006) or (April 2013)
- [Consent: patients and doctors making decisions together](#) (June 2008)
- [Treatment and care towards the end of life: good practice in decision making](#) (July 2010)

4.6 Where a patient has a learning disability you should consult the reference materials available on the GMC learning difficulties website.

4.7 Where you think a patient may have lacked capacity, the GMC mental capacity flowchart tool.

**Which Legislation should I consult and reference?**
Mental Capacity & Mental Health

4.8 If you think a patient may have lacked capacity to make decisions, you must consider, and reference:

- The Mental Capacity Act 2005 (England and Wales)
- The Adults with Incapacity (Scotland) Act 2000.
- The Mental Capacity Act (Northern Ireland) 2016.

4.9 The Mental Capacity Act Code of Practice is an accessible guide which may assist you in interpreting and referencing the law.

4.10 You must also consider, and reference, the Mental Health Act 1983 (amended in 2007) which sets out the limited circumstances in which a patient can be hospitalised for assessment and/or treated against their wishes.

4.11 These laws set out a number of safeguards to promote and protect the welfare of people aged 16 and over when their capacity is either lacking or impaired when making decisions about financial, health and welfare issues. Each Act makes clear who can take decisions on a patient’s behalf, how they should do this, who they must consult and involve, and the legal principles that guide decisions.

4.12 For further information, see para 62 and the Legal Annex to our Consent guidance.

The Equality Act 2010

4.13 Where relevant, you must also consider whether a doctor met the requirements of the Equality Act 2010. This Act protects nine groups of people from discrimination, known as ‘protected characteristics’. There is a specific requirement to make ‘reasonable adjustments’ for people with disabilities.