CLINICAL IMPLICATIONS

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Information

Department of Health & Human Services Vic – ACP Section

Office of the Public Advocate Victoria
Can your adult patient consent?

Process from 12 March 2018

Office of the Public Advocate

Is there an emergency?

No

Yes

Proceed with treatment unless aware of refusal of medical treatment

Does the patient have capacity to make a decision?

No

Yes

Patient can consent to or refuse treatment

Has the patient refused the treatment in a directive or certificate?

No

Yes

Do not proceed with treatment

Is there a medical treatment decision maker?

No

Yes

Medical treatment decision maker can consent to or refuse treatment

Is the proposed treatment significant treatment?

No

Yes

Proceed with routine treatment without consent. There are record keeping requirements.

Public Advocate can consent to or refuse treatment. Form on the CPA website (from 12/3/18).

Emergency treatment

Medical treatment that is necessary as a matter of urgency to save a person’s life, prevent serious damage to the person’s health, or prevent the person from suffering or continuing to suffer significant pain or distress. A health practitioner may administer emergency treatment to a patient without consent, unless they are aware that the patient has refused the treatment in a directive or certificate (see below).

Decision-making capacity

The patient is able to understand the information relevant to the decision, retain that information to the extent necessary to make the decision, use or weigh that information as part of the process of making the decision, and communicate their decision in some way. Sometimes a relevant specialist may be required to make a capacity assessment.

Directive or certificate refusing treatment

Treatment must not proceed if:
- there is a valid refusal of medical treatment certificate made prior to 12 March 2018 in accordance with the Medical Treatment Act 1998
- the patient has refused the particular medical treatment in an instructional directive (in an advance care directive) in accordance with the Medical Treatment Planning and Decisions Act 2009.

A health practitioner must make reasonable efforts in the circumstances to ascertain if the person has an advance care directive. There are some circumstances where they can refuse to comply with a directive.

Significant treatment

Medical treatment that involves any of the following:
- a significant degree of bodily intrusion
- a significant risk to the person
- significant side effects
- significant distress to the person.

See the CPA website for clinical guidelines.

Medical treatment decision
New legislation is about **consent**

Focus is on the **person who lacks capacity** to consent to their own treatment

- or **may lose capacity** in the future
New documents

- Appointment of a Medical Treatment Decision Maker
- Appointment of a Support Person
- Completion of an Advance Care Directive
Medical treatment decision maker hierarchy

1. The patient’s appointed medical treatment decision maker. 
   • Includes MEPOA appointed < 12th March 2018

2. Guardian appointed by VCAT who has the power under that appointment to make medical treatment decisions.

3. The first of the following persons who is in a close & continuing relationship:
   
   (a) the spouse or domestic partner of the patient
   (b) the primary carer of the patient
   (c) an adult child of the patient
   (d) a parent of the patient
   (e) an adult sibling of the patient.

* If more than one person in the same position, the eldest is the MTDM
NO Medical Treatment Decision Maker

Significant treatment

➢ Consent is provided by Office of Public Advocate who will ask about known preferences & values
  - excludes urgent treatment or Palliative Care

Significant treatment

▪ a significant degree of bodily intrusion
▪ a significant risk to the person
▪ significant side effects
▪ significant distress to that person.
NO Medical Treatment Decision Maker

Significant treatment

➢ Consent is provided by Office of Public Advocate who will ask about known preferences & values
  ➢ Complete Section 63 form

Routine treatment

➢ No consent required to treat
➢ Treatment must be consistent with any known patient preferences & values
➢ Clinician must document non-availability of MTDM and reasons for decision

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Significant treatment clinical guidelines for the Medical Treatment Planning and Decisions Act 2016

For health practitioners
Downloads

- Guide to the Medical Treatment Planning and Decisions Act 2016
  (DOCX, 94 KB)

- Summary of the Medical Treatment Planning and Decisions Act 2016
  (2nd edition)
  (DOCX, 52 KB)

- Significant treatment clinical guidelines for the Medical Treatment Planning and Decisions Act 2016
  (DOCX, 2 MB)

- Advance care directives and attempted suicides
  (DOCX, 47 KB)
Support Person

Appointed by the patient with capacity

- To assist and support the patient to make their own decisions

- To advocate for the patient once they have lost capacity and to help the MTDM understand the person’s preferences and values.

- The Support Person does not make medical treatment decisions for the patient.
Clearer obligations for health practitioners when a person lacks medical decision-making capacity

1. To provide treatment consistent with the person’s preferences and values
   - NOT best interests

2. Obligation to make reasonable efforts to discover an ACD or MTDM appointment
   - need to ASK

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Advance Care Directives

One form; two directives –

1. Instructional Directive
2. Values Directive

…to document the person’s medical treatment preferences and values
Instructional Directive

Provides legally binding consent &/or refusal
- For current and hypothetical future conditions

One witness must be a medical practitioner

☆ Will need to be completed with caution not to rule out treatments that the person might actually want.

Good medical/ethical practice would still require communication of the decision with MTDM & others

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Values Directive

Provides information about the preferences and values that the person wants taken into consideration in any future medical decisions - should they lose capacity.

Consent (or refusal) is given by the Medical Treatment Decision Maker who, as far as possible, should make the same decision as the patient.
- ACDs can only be completed by a person with capacity
- ACP concept will be applied only to those with capacity to complete their own documents

- What about those who lack capacity?
1. Instructional Directive => consent or refusal

Then MTDM must consider -

2. Valid and relevant Values Directive

3. Other preferences expressed by the person

4. (i) Values expressed by the person in VD or other
   (ii) Values inferred from the person’s life

If no identifiable preferences and values

5. Decision that promotes personal & social well-being

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Medical treatment decision-making

(i) A medical assessment & a medical decision about treatment and what is clinically feasible

...then within those constraints

(ii) A decision-making discussion between clinician & Patient +/- Support Person/Others

...leading to shared understanding of

- A medical treatment plan including:
  - Overall medical treatment goals &
  +/- Specific emergency medical treatments / limitations
Medical treatment decision-making

(i) A medical assessment & a medical decision about treatment and what is clinically feasible

...then within those constraints

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- A medical treatment plan including:
  - Overall medical treatment goals &
  - +/- Specific emergency medical treatments / limitations
Medical treatment decision-making

(i) A medical assessment & a medical decision about treatment and what is clinically feasible

...then within those constraints

(ii) A decision-making discussion between clinician & Medical Treatment Decision Maker +/- Support Person / Others

...leading to shared understanding

➢ A medical treatment plan including:
  - Overall medical treatment goals &
  +/- Specific emergency medical treatments / limitations

Apply relevant Instructional Directive or RTC

Applies Values Directive, other ACP documents, known preferences & values

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Medical treatment decision-making

(i) A medical assessment & a medical decision about treatment and what is clinically feasible

...then within those constraints

(ii) A decision-making discussion between clinician & Patient and/or Medical Treatment Decision Maker

...leading to shared understanding of

➢ A medical treatment plan including:
  - Overall medical treatment goals &
  +/− Specific emergency medical treatments / limitations

ie. GOALS OF PATIENT CARE

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Advance Care Planning is

Patient directed

- In consultation with the clinicians
- Planning for when the patient can't speak for themselves
Goals of Patient Care/ Resuscitation Plans are

**Doctor directed (a medical treatment order)**

- In consultation with patient or MTDM +/- Support Person

- Planning for urgent situations or for when clinicians who know the patient are not around
The person who has lost capacity

... and no Advance Care Plan
Learning about the person

The story… of the person and the illness experience

➢ Establish the illness trajectory
➢ How did they respond at significant points?
➢ How have they been coping with the illness?
➢ What is the worst part of the illness?
➢ What matters most?
➢ Have they said anything about this sort of situation?
➢ What do they fear most?
➢ What do they hope for?
Learning about the family

Families are often responding emotionally rather than cognitively

✓ Acknowledge emotions and distress and fatigue
✓ Acknowledge love and caring

➢ It sounds like it has been really difficult recently
   …how are you coping / feeling?