Assessing Capacity

Possible stations

- Schizophrenic requires surgery for appendicitis but refuses
- Intelligent man decides to stop all active treatment for metastatic cancer

The rules

- Patient has capacity until proven otherwise
- Capacity is decision-dependant (i.e. a patient may not have capacity to make one decision but have capacity to make another)
- If a patient lacks capacity, you must act in their best interests
- If a patient makes a strange or irrational decision, this does not mean they don’t have capacity

Two-Step test to assess capacity

The patient only lacks capacity if the answer to both steps is YES:

1. Does the patient have impairment / disturbance of brain function?
   - If NO, then the patient has capacity (and you do not need to move on to step 2)
2. If YES, does this mean they are unable to make a decision as a result?
   - To assess this you must perform the consent test (i.e. if they can do all of the following, then they still have capacity):
     1. Understand information relevant to the decision (e.g. consequences, risks, benefits, alternatives)
     2. Retain the information (for long enough)
     3. Weigh up/ use the information to make a decision (pros and cons)
     4. Communicate the decision (by any means)

Best interests

If a patient over 18 years old lacks capacity, it is the doctor’s duty to make the decision on their behalf, acting in their best interests under the mental capacity act. The relatives/friends have no legal right to make the decision unless they have power of attorney. To decide their best interests, you must:

- Persuade the patient to be involved in decision
- Take into account any of their beliefs/views
- Consult anyone named by patient / carers to help determine what is in their best interests (but not make the decision)
- Check for any Lasting Power of Attorney
- Consider if they may regain capacity

Forms and documentation

- You must clearly document all parts of your capacity assessment and why the patient does not have capacity for the decision in question
- If you are stopping a patient without capacity from doing things they want to (e.g. leaving hospital), you are ‘depriving them of their liberties’ and must fill in a Deprivation of Liberty Safeguards (DoLS) form

Mental health act

- This allows you to detain a patient with a mental disorder who is at risk of harm to themselves or others (nothing to do with capacity)
- It only allows you to treat that mental illness without their consent
- Although, it can be cautiously extended to treat disorders closely related to the mental disorder, for example an overdose or self-harm lacerations
- Types of section
  - Section 2: 28 days for assessment (by 2 doctors but one must be MHA approved)
  - Section 3: 6 months for treatment (by 2 doctors but one must be MHA approved)
  - Section 4: 72 hours for emergency assessment (by 1 doctor, and an approved mental health practitioner or closest relative)
  - Section 5(2): 72 hours detention for assessment of patient already in hospital (by doctor in charge of patients care)
  - Section 5(4): 6 hours detention for assessment of patient already in hospital (by approved mental health nurse)
  - Common law: may be used in the emergency department to keep patients from leaving and treating them