

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 detainment for assessment of patient already in hospital (by doctor in charge of patients care)
 - Section 5(4): 6 hours detainment 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