

Impaired Decision-Making Factsheet

A clear path to care

What is impaired decision-making capacity and how is it assessed?

The Advance Care Directives Act 2013 and the Consent to Medical Treatment and Palliative Care Act 1995 now specify when a patient is unable to consent/refuse. This is called impaired decision-making capacity. Assessing decision-making capacity is not a global assessment but decision specific and should be determined at the time consent is being obtained.

In respect of a particular decision, impaired decision-making capacity means the person is not capable of:

- > understanding any information that may be relevant to the decision, including the consequences
- > retaining such information, even for a short time
- > using information to make decisions
- > communicating the decision (in any way).

When determining if a person has decision-making capacity you may want to consider the following questions:

Does the person understand the nature and effect of the treatment at the time that the medical or dental decision is required, not hours or days before or after it is made?

Does the person know the 'nature' of the treatment? That means, do they understand broadly and in simple language:

- > What the medical or dental treatment is?
- > What the procedure involves?
- > Why it is proposed?
- > That there are other options? If choosing between options, the person must understand what each option is, what it involves, the effect of each option, and the risks and benefits of each option.
- > What it will mean if they don't have the treatment?

Does the person understand the 'effect' of the treatment? Are they aware, in simple terms, of the main benefits and risks of the treatment?

Does the person have the ability to indicate whether they want the treatment? Can they communicate any decision made, with assistance if necessary?

Has the person made the decision freely and voluntarily?

A person has a right to refuse treatment. If they have refused, consider the following:

- > Is refusal of treatment consistent with the person's views and values?
- > Is this behaviour usual for the person?
- > Has all the relevant information been given to the person in a way they can understand?

Tips on Questioning

Remember, when assessing whether a person has the capacity to make medical or dental decisions, it is important you:

- > ask open-ended question
- > do not ask leading questions
- > try to quickly identify whether a person needs support or help to make the decision or requires a Substitute Decision-Maker to make a decision for them. In some circumstances the person may need support from a neutral person such as an advocate or an interpreter.
- > ensure it is the person being assessed who answers the questions.

Questions to ask the patient

Here are some specific questions you may ask as part of the assessment process to determine if the person has capacity to make medical and dental decisions.

- > Tell me about your health or teeth and why you need medical or dental treatment?
- > What is the medical or dental treatment that you might be having? Can you explain it to me?
- > Where will you be having the treatment? How long will it take?
- > How will the treatment help you? What are the good things about the treatment?
- > Will there be any bad things about the treatment? What are they?
- > How do you think you will be able to deal with these?
- > What are the risks of having the treatment?
- > Is there any other treatment you might be able to have? Can you tell me about it?
- > How would this other treatment help you?
- > What are the risks of having this other treatment?
- > Which do you think is the best treatment? Why?
- > What would happen if you didn't have any treatment at all?
- > What do your family and friends think of the treatment?
- > What do they want you to do? Why?

Case Study

Medical Decisions

'Jovesa and I were visiting the doctor because he had developed tremors and a very fast heartbeat. The doctor explained that the problem was actually because of a part of his body in his neck called his thyroid. He needed medication and regular blood tests to monitor whether his new medication was working.

The blood tests showed that things were not settling down. The doctor then talked about what he could do next to stop the thyroid from causing these things to happen. He gave Jovesa a pamphlet to explain:

- > why the thyroid was playing up and why the medication wasn't working
- > the different things that he could do to stop the thyroid causing problems
- > the treatment he recommended for Jovesa and why
- > the risks of having or not having the treatment
- > that Jovesa has a right to decide whether or not to have the treatment.

The pamphlet used really simple language and photos to explain everything. When I took Jovesa home we went through the pamphlet together on a few occasions. I asked him various questions to work out whether he understood the information or not. Then we went back to the doctor. Jovesa told the doctor that he had decided to have the treatment, even though he was scared about it.

The doctor asked Jovesa some questions about how the treatment worked and why he had decided to have it, and came to the conclusion that he had the capacity to make the decision about the treatment himself.'

Felise, carer

Other health decisions

There may be a need to assess the capacity of a person to make other health decisions, such as whether to:

- > have a non-intrusive examination by a doctor or dentist, for example, having the mouth, teeth, throat, nose, ears or eyes looked at
- > take over the counter chemist medication
- > have alternative therapies.

The person needs to understand the nature and effect of the type of examination, medication or therapy that they are deciding upon.

You can use the capacity test (checklist and questions) above, as a guide to capacity assessment for other health decisions.

For more information

SA Health
Policy and Commissioning Division
Email: policy&legislation@health.sa.gov.au
Subject line: Advance Care Directive

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