

Assessment of Mental Capacity: Key Points

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Doctors are caring for more patients who are older and/or are living with disabilities in an increasingly complex medico-legal environment. A significant proportion of these patients, who often have complex medical problems, will have some impairment of their mental capacity or may require to have it assessed by a doctor. Such assessments could be used to (a) make a Lasting Power of Attorney (LPA); (b) apply for the appointment of deputies by the Court; or (c) determine mental capacity in other more specific areas (eg, consent for treatment).

The Mental Capacity Act (MCA) provides the statutory framework to address issues relating to the mental capacity to make decisions.¹ It covers individuals who have an underlying impairment of or a disturbance in the functioning of the mind and/or brain. The code of practice lists stroke, brain injury, dementia, mental health problems and intellectual disability as some of the conditions.

The five statutory principles that underpin the MCA are: (a) a person must be assumed to have capacity unless it is established otherwise; (b) a person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success; (c) a person is not to be treated as unable to make a decision merely because he makes an unwise decision; (d) an act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests; and (e) before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

For the purposes of the Act, a person is unable to make a decision for himself if he is unable to (a) understand the information relevant to the decision; (b) retain that information; (c) use or weigh that information as part of the process of making the decision; or (d) communicate his decision (whether by talking, using sign language or any other means).

When undertaking an assessment of mental capacity for a particular individual, information and history should be gathered from multiple sources, including interviews with caregivers, in addition to interviewing the person with possible impaired mental capacity (who should always be involved in the process). It is advisable to have a structured approach to performing the assessment and the use of structured tools will aid in the process. The Mental Capacity Assessment Tool that SMA devised covers various domains of functioning and can be used by doctors undertaking the assessment of mental capacity.

Following the assessment of mental capacity, for the purposes of applying for an LPA, the LPA Form 1 or Form 2 needs to be certified by a certificate issuer who could be a practising lawyer, a psychiatrist or an accredited doctor.² For the application of a Court-appointed deputy, the Court requires the completion of Form 224³ comprising both the affidavit and medical report that includes assessment of the person's mental capacity in relation to personal welfare, property and affairs.

Patients with impaired mental capacity may not have sufficient mental capacity to make a specific decision. Doctors undertaking an assessment of mental capacity for this group of patients need to bear in mind the

requirements under the MCA, be aware of and address potential barriers to an effective assessment and apply good practice guidelines to ensure that they perform the assessment to a reasonable standard. To gain a more in-depth understanding, join us at the Caring for Persons with Diminished Capacity (Temporary/Fluctuating) seminar, jointly organised by the SMA Centre for Medical Ethics and Professionalism and College of Psychiatrists, Academy of Medicine, Singapore, on 12 October 2019. ◆

References

1. Singapore Statutes Online. *Mental Capacity Act (Chapter 177A)*. Available at: <https://sso.agc.gov.sg/Act/MCA2008>.
2. Office of the Public Guardian. *The Lasting Power of Attorney*. Available at: <http://bit.ly/31PKICa>.
3. Family Justice Courts. *Forms: Form 224 Doctor's Affidavit*. Available at: <http://bit.ly/31RjwDm>.

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