



THE MENTAL CAPACITY ACT

Understanding the Legal Concepts in Providing Medical Care for Persons Lacking Capacity

INTRODUCTION

In 2015, it was estimated that one in ten persons over the age of 60 in Singapore suffers from dementia. Around 500,000 persons were hospitalised in Singapore in 2014, of which 35% (>170,000 persons) were over 65 years old. As such, doctors in clinical practice will be managing an increasing number of patients with reduced mental capacity. A good working knowledge of the Mental Capacity Act would enable doctors to better serve their patients with reduced mental capacity, and not only in medical decision-making.

ABOUT THE MENTAL CAPACITY ACT

The Mental Capacity Act was passed in Parliament in 2008 to allow Singaporeans to appoint persons whom they can trust to make decisions on their behalf in the event that they are mentally incapacitated. The Act came into effect in 2010, when the Office of the Public Guardian was set up and the Code of Practice completed.

This Act enables individual Singaporeans to appoint trusted persons to make decisions on their behalf if they lose their mental capacity in the future. The Act also allows parents of those with intellectual disability to apply to court for appointment of a trusted person as deputy to make decisions for their children when they pass on.

Under the Act, Singaporeans who wish to make advance plans for themselves can do so through a statutory mechanism called the **Lasting Power of Attorney (LPA)**. With the LPA, an

individual (known as the “donor”) can appoint a proxy (known as a “donee”) to make decisions relating to his property and financial affairs, personal welfare and/or healthcare when he loses his mental capacity. The donee appointed can be a family member, relative or a trusted friend.

The Act sets out who can make decisions for persons who lack mental capacity, in which kind of situations and how they should do so. Family members and caregivers making decisions on behalf of persons lacking mental capacity will be guided by a framework that spells out how they should discharge their duties. A **Code of Practice** has been drafted and published to provide guidance to caregivers and professionals.

An **Office of the Public Guardian** has also been set up to perform a range of functions that enhances the protection of those who are mentally incapacitated, whether or not they had earlier appointed donees. These functions include establishing and maintaining a register of Lasting Powers of Attorney, dealing with complaints about how a donee or court-appointed deputy is exercising his powers, and supervising court-appointed deputies.

PERSONS WITH INABILITY TO MAKE DECISIONS

A person is unable to make a decision for himself if he is unable to do all or any one of the following:

(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).

A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means). The fact that a person is able to retain the information relevant to a decision for only a short period does not prevent him from being regarded as able to make the decision.

PROVISIONS TO PROTECT PERSONS WHO LACK CAPACITY

The Five Statutory Principles

The following principles apply for the purposes of this Act.

(1) A person must be assumed to have capacity unless it is established that he lacks capacity.

(2) 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.

(3) A person is not to be treated as unable to make a decision

merely because he makes an unwise decision.

(4) An act done or decision made under this Act for or on behalf of a person who lacks capacity must be done, or made, in his **best interests**.

(5) 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.

DETERMINING THE BEST INTERESTS OF A PERSON

In determining, for the purposes of this Act, what is in a person's best interests, the person making the determination must not make it merely on the basis of the person's age or appearance, or a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests. Use facts and do not work on assumptions. The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.

(1) He must consider whether it is likely that the person will at some time have capacity in relation to the matter in question, and if it appears likely that he will, when that is likely to be. He should postpone making a decision if it is likely the person would regain capacity in the near future.

(2) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate (enhance the capacity), as fully as possible in any act done for him and any decision affecting him. For instance, one can correct metabolic factors and drugs that may be impeding capacity or use interpreters and hearing aids to enhance communication.

(3) Where the determination relates to life-sustaining treatment, he must not, in considering whether

the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

(4) He must consider, so far as is reasonably ascertainable, the person's past and present wishes and feelings (and, in particular, any relevant written statement and advanced care planning made by him when he had capacity); the beliefs and values that would be likely to influence his decision if he had capacity; and the other factors that he would be likely to consider if he were able to do so.

He must take into account, if it is practicable and appropriate to consult them, the views of anyone named by the person as someone (significant others) to be consulted on the matter in question or on matters of that kind; anyone engaged in caring for the person (caregivers) or interested in his welfare; any donee of a lasting power of attorney granted by the person; and any deputy appointed for the person by the court, as to what would be in the person's best interests.

The determining of the best interest also applies in relation to the exercise of any powers which (a) are exercisable under a lasting power of attorney; or (b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.

In the case of an act done or a decision made by a person other than the court, there should be sufficient compliance with the above requirements and he must reasonably believe that what he does or decides is in the best interests of the person concerned.

CONCLUSION

When doctors are faced with patients with reduced mental capacity, they must be able to make a mental assessment for capacity to make that medical decision. The threshold for mental capacity to making personal medical decision is kept low and all efforts must be made to enhance the capacity. Where it is clear that the

patient lacks the capacity to make medical decisions, doctors must always act in the best interests of the person. Such decisions must be appropriately documented.

References

1. Singapore Statutes Online. Mental Capacity Act. Available at: <http://statutes.agc.gov.sg/aol/home.w3p>.
2. Office of the Public Guardian. Code of Practice. Available at: <https://www.publicguardian.gov.sg/opg/Documents/CSC.MSF.OPGWebsite/Documents/CodeOfPractice.pdf>.

PROFILE



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