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| Consent to pharmaceuticals by a medical treatment decision maker |
| For health practitioners |

# Background

To provide medical treatment to a person, a health practitioner must obtain consent (except in an emergency). The prescription of pharmaceuticals is a medical treatment.

If a person does not have decision-making capacity to make a decision about a medical treatment, consent must be obtained through an advance care directive or a medical treatment decision maker.

When writing a prescription, the medical practitioner or nurse practitioner, is responsible for obtaining consent as the prescribing practitioner.

In order to obtain consent from a medical treatment decision maker, the medical treatment decision maker must be provided with the information needed to make a decision about treatment, including benefits, side effects and material risks.

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| **Emergency treatment**  Medical treatment may be administered without consent if it is necessary, as a matter of urgency to:  save the person’s life  prevent serious damage to the person’s health  prevent the person from suffering or continuing to suffer significant pain or distress. |

# Course of treatment

A medical treatment decision maker may be informed about, and consent to, a course of treatment.

When seeking consent for a course of treatment, health practitioners should consider whether the person giving consent has sufficient information to weigh the expected benefits and risks of the treatment proposed. This does not mean the health practitioner must provide intricate details about individual doses; what is important is that the medical treatment decision maker can make an informed decision about the expected benefits and risks of the proposed course of treatment. This is similar to the consent obtained to a surgical procedure, which generally does not involve the provision of information about each individual drug that may be provided during the procedure.

To avoid disruptions in treatment, health practitioners should consider a person’s likely treatment needs throughout their admission or their ongoing treatment needs when they are prescribing a course of treatment. While it is impossible to predict every treatment a person may need, having conversations with a medical treatment decision maker when they are present, may reduce the need to contact them later.

# When should further consent be sought?

If, during the course of treatment, the situation or the treatment is altered, health practitioners must consider whether the proposed treatment is still the treatment that was consented to. The key question is whether there has been a material change in the course of treatment being provided. For example, if consent was obtained to a course of treatment that included adjusting doses to ensure they would be effective in the manner described, it may not be necessary to receive additional consent from a medical treatment decision maker when doses are changed. However, altering the medication to one that has more severe side effects may require consent to be sought.

There are a number of events that should prompt consideration of whether further consent is required:

* a change in diagnosis or prognosis
* a determination that the medications being provided are not having the desired effect
* a review of the current course of treatment
  + a change in the setting in which care is going to be provided.

These triggers will not necessarily mean that consent must be sought from a medical treatment decision maker, but they are indicative of a potential material change in medical treatment being provided. Good clinical practice suggests that conversations with family or carers would be appropriate when these events occurred, regardless of whether consent to an additional or altered course of treatment is sought.

# Case studies

## Case study 1

| Scenario | Response |
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| Mr Singh, who has dementia, is a resident at an aged care facility. Dr Johnson is a general practitioner who attends the facility on a weekly basis. During an assessment of Mr Singh, Dr Johnson notes that he appears to have fallen and cut his leg. Whilst the cut is already beginning to heal, it is red and swollen and clearly infected. Dr Johnson determines that Mr Singh requires a course of antibiotics. | Dr Johnson must determine whether Mr Singh has decision-making capacity to make a decision about receiving antibiotics. Decision-making capacity is decision specific and although a person does not have capacity to make some decisions at some times, this does not necessarily mean that they cannot make any decisions. Dr Johnson must determine whether Mr Singh is able to:  understand the information relevant to the decision and the effect of the decision  retain that information to the extent necessary to make the decision  use or weigh that information as part of the process of making the decision  communicate the decision and the person’s views and needs as to the decision in some way, including by speech, gestures or other means. |
| Dr Johnson determines that Mr Singh does not have decision-making capacity. | Dr Johnson must make reasonable efforts to identify a medical treatment decision maker and advance care directive for Mr Singh. This may include asking Mr Singh, asking staff at the facility, and checking over Mr Singh’s records (including his My Health record). |
| Dr Johnson is informed by staff that Mr Singh does not have an advance care directive but that Mr Singh’s son visits him regularly. They provide Dr Johnson with a telephone number for Mr Singh’s son, whom he then contacts. | Dr Johnson needs to confirm that Mr Singh does not have a spouse or domestic partner and that he is Mr Singh’s primary carer, and that the son is Mr Singh’s oldest adult child reasonably available and willing to make a medical treatment decision. Dr Johnson then needs to explain to Mr Singh’s son that his father has had a fall and has an infected wound that requires antibiotics. Once Dr Johnson explains the effects of the medication, the length of the treatment and the possible risks, Mr Singh’s son may consent to the course of antibiotics, which will be administered orally 4 times a day for two weeks.  Dr Johnson should inform staff at the aged care facility and record this on Mr Singh’s medical record. Other health practitioners providing each dose of antibiotics to Mr Singh may rely on the consent obtained by the prescribing medical practitioner, Dr Johnson. |

## Case study 2

Ms Smith presents to hospital with various pelvic symptoms and after a biopsy a diagnosis of cervical cancer is confirmed. Ms Smith does not have decision-making capacity in relation to the proposed treatment for her medical condition. Ms Smith has appointed her friend, Ms Ding, as her medical treatment decision maker.

| Scenario | Response |
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| Appropriate treatment will include a combination of surgery (to reduce the tumour size), chemotherapy (administered as a day patient), and radiation therapy (performed off-site as the treating hospital does not have onsite facilities). Ms Smith must return to the treating hospital weekly for administration of cisplatin as a day patient. | A medical treatment decision-maker who can consent to Ms Smith’s medical treatment will need to be identified. This will be Ms Ding, as the appointed medical treatment decision maker. Ms Ding may consent to the course of treatment. This means it is not necessary to obtain consent each week when Ms Smith returns for treatment. Instead, the medical practitioner should describe the course of treatment proposed, including its likely benefits, risks and side effects. The medical treatment decision maker may consent to the course of treatment and further consent would only need to be sought if the medical practitioner believes it is necessary to make a material change to the course of treatment. |
| After a number of cycles over 6 months, the chemotherapy is stopped due to bone marrow suppression from the cisplatin (despite dose reductions). Having exhausted all forms of conventional chemotherapy treatment, there is a new clinical trial medication available for cervical cancer, and this patient fits the enrolment criteria, but the benefit of the drug to the patient is uncertain. | Cessation of chemotherapy due to bone marrow suppression is an important time to have further discussions with the medical treatment decision maker. Ms Smith’s condition has changed, as has her prognosis and treatment needs. Prior to commencing the trial, consent would need to be sought from Ms Ding as the medical treatment decision maker. |

## Case study 3

| Scenario | Response |
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| Ms Chan is in a car accident. When paramedics arrive at the scene she has a GCS of 4, a suspected subdural haemorrhage with potential spinal damage and is unconscious. | The paramedics may provide emergency treatment without consent. When Ms Chan arrives at the emergency department she may also be provided with emergency treatment without consent if necessary, (e.g.if she has not regained consciousness). |
| Ms Chan is stabilised in the emergency department but remains unconscious. Her domestic partner, Ms Hammond, is contacted and comes to the hospital immediately. Ms Chan is transferred to the intensive care unit (ICU). The ICU consultant determines that Ms Chan requires X course of treatment. | If Ms Chan has not appointed a medical treatment decision maker, Ms Hammond will be Ms Chan’s medical treatment decision maker as she is the first listed person who is available and willing in the hierarchy. Consent for X treatment must be obtained from Ms Hammond. Ms Hammond may consent to the course of treatment. This may include the medical practitioner explaining that doses for some medications may need to be varied to ensure they are effective in the manner intended and Ms Hammond may consent to these potential variations, at this time. |

## Case study 4

Mr Brown is an 88 year old year old man with Alzheimer’s dementia. He lives at home and normally manages well with support from his daughter, Anna. Anna is Mr Brown’s only immediate family member as his wife passed away several years ago and Anna is his only child.

Mr Brown is admitted to hospital with a urinary tract infection and delirium. As this is an emergency, he is treated with antibiotics and transferred to the geriatric evaluation and management (GEM) ward, where you are the treating doctor. On arrival to the ward Mr Brown is very confused but settled. Anna is also present during your review and you discuss Mr Brown’s current medications of which she is aware. Please consider the following scenarios that arise during your care of Mr Brown:

| Scenario | Response |
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| After Anna leaves the ward, the nursing staff inform you that Mr Brown has not opened his bowels for a few days and they request you prescribe an aperient for Mr Brown. You do not think that Mr Brown has capacity to consent to medications. | The prescription of an aperient is a medical treatment and requires the consent of a medical treatment decision maker if the person does not have decision-making capacity to consent themselves.  The scenario exemplifies the importance of having broad discussions with the medical treatment decision maker when they are available about potential treatments. When contacting the medical treatment decision maker, consideration should be given to future bowel management and other likely treatments required during the admission—this may avoid the need to call the medical treatment decision maker every time. |
| That night you are on call you receive a phone call at 3am to explain that Mr Brown is agitated, confused and wants to go home. He is hitting out at the attending nurses who are requesting an antipsychotic medication to help treat his agitation and prevent harm to himself and others. You did not specifically discuss the use of antipsychotic medications with Anna. | Medical treatment can be provided to a person who does not have decision-making capacity without consent, in an emergency. Emergency treatment includes medical treatment that is required, as a matter of urgency, to prevent the person suffering significant distress. Mr Brown is suffering significant distress and the antipsychotic is required urgently to prevent this.  You should review Mr Brown’s condition in the following days and if antipsychotics are required on an ongoing basis it would be necessary to have a discussion with Anna and seek her consent. |
| The following day, Mr Brown has a fever so you obtain a repeat urine sample. The result comes back the following day indicating that Mr Brown still has a urinary tract infection but unfortunately it is now resistant to all oral antibiotics and he will need intravenous antibiotics, which do have some potentially serious side effects. You try to contact Anna to discuss the new treatment but Anna’s son Michael answers the phone and indicates that Anna is away for the weekend and won’t have phone reception. Michael is happy to consent to any medications but he is not usually involved in the care of his grandfather. You are not sure whether Michael can consent to medications, as he is not on the list of potential medical treatment decision makers. | Michael cannot be a medical treatment decision maker for his grandfather without being appointed, because he is not his primary carer or otherwise eligible under the new legislation. There is therefore no medical treatment decision maker available for Mr Brown.  This means you must consider whether the treatment is significant or routine. If the treatment is routine, you may provide the antibiotics without consent. If the treatment is significant, consent will need to be sought from the Office of the Public Advocate.  It is likely that the antibiotics would be considered routine (but it is important to note this will always depend on the particular individual and their potential response to the treatment). A guide for identifying whether medical treatment is significant or routine for the purposes of consent by the Public Advocate is available at health.vic.gov.au |

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