

ABSTRACT

This article seeks to outline the key elements of the Code of Practice for General Practitioners (GPs). All GPs should be familiar with the guidance and case studies featured in the Code of Practice. This article is merely a starting point and GPs are encouraged to read the Code and ensure that they comply with its guidance.

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BACKGROUND

The Mental Capacity Act (MCA) was introduced to help Singapore's rapidly ageing population plan for their personal and financial wellbeing in the event they lose mental capacity in the future. To protect such persons, the MCA also criminalises the ill-treatment of persons lacking capacity. The MCA only covers decisions made on behalf of adults over the age of 21 who lack the capacity to make those decisions for themselves.

INTRODUCTION

In late 2009, the Mental Capacity Act (MCA) comes into force in Singapore. The MCA protects persons who lack capacity to make decisions for themselves. It provides a statutory framework for making decisions, a process that will affect all health professionals, including GPs, who are at the forefront of delivering health care services to the public. Basically, the MCA codifies the best practices to be applied when working with or caring for a person who lacks mental capacity.

IMPACTS OF MENTAL CAPACITY ACT**How will the MCA impact a professional like a GP?**

The MCA impacts all persons who work with or care for a person who lacks capacity, including GPs. It affects the GP as a professional when she treats or cares for a patient who lacks capacity to make such decisions. It also affects the GP as a caregiver when she cares for another person, e.g. her parent, who lacks capacity to make certain decisions.

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How will the MCA impact a patient who lacks capacity to make certain decisions and the GP who is treating her?

The MCA prohibits blanket decision-making on behalf of persons with capacity issues and introduces a functional test of capacity that is time and decision specific. It requires everyone who cares for or treats persons with capacity issues to respect their individual rights and to act in their best interests when making decisions on their behalf. For example, if a patient suffers from early stage dementia, and she needs to make a decision on whether to have the flu jab, the GP should make every effort to communicate to her the pros and cons of having the treatment at the time of day when she is most alert, so as to enable her to make a decision herself. If the patient lacks the capacity to make that decision when it needs to be made, and she has not made a Lasting Power of Attorney (LPA) granting the donee the power to make decisions about medical treatment, then the GP becomes the decision-maker and must make the decision for her in her best interests.

CODE OF PRACTICE**What is the Code of Practice and how does it apply to GPs?**

The Code of Practice is a set of guidelines for all individuals who care for or treat persons who lack mental capacity to understand their responsibilities and rights under the MCA, and to be aware of best practices in caring for such persons. It contains many medical scenarios to help GPs understand their professional obligations. The MCA states that professionals, such as GPs, have a particular duty to consider the Code when acting in relation to a person lacking mental capacity.

What happens if a GP does not comply with the Code of Practice?

Although the Code of Practice itself is not a law, the guidelines laid down in the Code should be followed. A failure to follow the Code can be used as evidence in court. For example, the court can use a GP's failure to follow the Code as evidence that she has not acted in the best interests of her patient that lacked capacity.

What are the 5 Principles?

The application of the MCA is guided by 5 statutory principles:

1. Always presume a patient has capacity. You should not assume a patient lacks capacity simply because of her age, appearance, condition or behaviour.

2. Take all practicable steps to help a patient make a decision herself. Walk a patient through the steps you intend to take to diagnose and treat her condition. Use simple language, diagrams or other means of communicating effectively to the patient, as appropriate. Give her time to make a decision.
3. Do not assume a patient lacks capacity merely because she makes an unwise decision. Focus on the process by which the patient makes the decision because this determines whether the patient actually lacks capacity.
4. Decisions taken for the patient lacking capacity should always be made in her best interests. The wishes of the patient's relatives and caregivers are relevant but secondary.
5. Decisions taken for the patient lacking capacity must also be less restrictive of the patient's rights and freedoms.

TESTS FOR MENTAL CAPACITY

What is the test for mental capacity?

A person is unable to make a decision if she suffers from an impairment of or disturbance of the functioning of the brain or mind that causes her to not be able to do one or more of these things, in relation to making a specific decision at the time it needs to be made:

- Understand the information
- Remember the information
- Weigh up the information
- Communicate the decision

What are informal and formal tests of mental capacity?

The caregiver conducts informal tests. Accredited GPs or specialists conduct formal tests.

	Informal Tests	Formal Tests
Who?	Caregiver, nurse, relative, GPs etc.	Accredited GPs and specialists using the Assessment of Mental Capacity form.
When?	Day to day matters; e.g. choice of meal or daily activity.	Important matters; e.g. whether to have surgery or change a will.

What if a patient refuses to undergo a formal capacity assessment?

You cannot force the patient to undergo the assessment. It may help to explain to the patient why it is necessary and what the consequences of refusal would be. If the patient lacks the capacity to decide whether to have the assessment or not, you can still conduct a formal assessment as long as the decision to have the assessment is made in the patient's best interests. If the patient is a danger to himself or others because of

mental disorder, then the Mental Health (Care and Treatment) Act allows for admission and detention of the person into psychiatric care.

What does best interests mean?

You must always consider the best interests of the patient when making a decision on behalf of a patient who lacks capacity. The best interests of the patient's relatives are secondary. For more detail on what factors you should consider in determining the best interests of a patient, refer to the Best Interests Checklist in Chapter 6 of the Code of Practice.

What types of cases can GPs expect?

You can expect visits from relatives of the person whose capacity is at question, the person who allegedly lacks capacity or a Personal Welfare Donee (see next page). The relatives may want to stop the person from making a particular decision. Conversely, the person may want to have the capacity assessment to put any doubts that relatives may have to rest about her capacity. You may also be asked by another professional; e.g. a lawyer, about the capacity of a person to enter into legal transactions.

What does the MCA require the GP to do when diagnosing or treating a person who lacks mental capacity?

You should keep detailed records of all decisions and the steps leading up to decisions made in relation to patients who lack capacity. GPs must be able to explain and provide objective reasons for making a particular decision, showing how it was in the best interests of the person lacking capacity. These records are important as a matter of best practice but are also useful in the event of a dispute.

What risks may GPs face when working with patients who lack capacity?

In complex or borderline cases, a GP should refer the patient to the appropriate specialist; e.g. psychiatrist, for assessment. The GP should always act within her competence and ensure that a patient is referred to a specialist where appropriate. If a GP acts outside of her scope of competence, she may be liable for negligence.

LASTING POWER OF ATTORNEY (LPA)

What is a Lasting Power of Attorney (LPA)?

A LPA is a legal document that allows a person who is 21 years of age or older (donor), and who has mental capacity, to voluntarily appoint one or more persons (donees), to act

and make decisions on her behalf when she lacks mental capacity in the future. It takes effect when the person loses capacity. The donee may only make decisions for the donor if the donor lacks capacity, or the donee reasonably believes that the donor lacks capacity to make those decisions.

What kinds of decisions can the donee of an LPA make and how does it affect GPs?

The donor of an LPA may give the donee authority to make decisions about the donor's personal welfare and/or property and affairs. A Personal Welfare Donee may give or refuse consent to the carrying out or continuation of treatment by anyone providing health care (including the conduct of a clinical trial) IF AND ONLY IF the donor expressly states this in the LPA. However, a Personal Welfare Donee does not have the power to refuse life-sustaining treatment or treatment to prevent a serious deterioration in the condition of the donor. The doctor will usually make these decisions based on the best interests of the patient. If the donor has made an advance medical directive (AMD) in accordance with the Advance Medical Directive Act while she still had capacity, the doctors have to comply with the AMD.

PROTECTIONS & RESTRAINTS

Does the MCA protect GPs who may need to care or treat patients who are unable to give informed consent due to a lack to capacity?

GPs acting in connection with the care or treatment such patients are protected from liability under section 7 of the MCA if:

- before doing the act, they take reasonable steps to establish whether the patient lacks capacity about the matter in question, and
- they reasonably believe that the patient lacks capacity and the act to be done is in the patient's best interests.

What acts of care and treatment are not covered by section 7 of the MCA?

GPs who are negligent are not protected by section 7 of the MCA.

How is restraint defined (in the context of restraining a patient)?

Restraint is defined as the use of, or threat to use, force by an individual to secure the doing of an act that the person resists, or restricting the person's freedom to move whether or not the person resists. A person can be restrained without physical force or threat of physical force being used.

Under what circumstances can a GP use restraint and receive protection under section 7 of the MCA?

The GP must satisfy the following conditions:

- take reasonable steps to determine whether the patient lacks capacity about the matter in question before doing the act,
- reasonably believe that the patient lacks capacity,
- reasonably believe that the act of restraint is necessary to prevent the patient from suffering harm, and
- ensure the restraining act is a proportionate response to the likelihood of the patient suffering harm and the seriousness of that harm.

What other factors should a GP consider when deciding whether to restrain a patient?

It is not appropriate to use restraint merely to make it easier for the GP to "manage" the patient. GPs considering the use of restraint must give objective reasons why the restraint was necessary. These reasons should be detailed in the patient's records. If a patient who does not have capacity to consent demonstrates challenging behaviour or behaves in a way that may cause harm to others, healthcare and social service staff may restrain or remove the person to prevent harm befalling the patient or anyone else. This duty is imposed by the common law on healthcare and social service staff regarding the persons they serve.

COMMITTEE OF PERSON & COMMITTEE OF ESTATE

What mechanism replaces the current Committee of Person and Committee of Estate?

Court appointed deputies will replace these Committees. If a person has not made an LPA, and loses capacity to make particular decisions, certain individuals can apply to the court to appoint a deputy to make those decisions on behalf of the person who lacks capacity. The court would not usually appoint a deputy to make decisions on medical treatment unless the treatment or care is disputed. GPs can continue to care and treat patients who are unable to give informed consent by virtue of section 7 of the MCA. Existing Committees of Person and Estate will be converted to deputies when the MCA comes into force.

ABUSE

What should a GP do if she suspects a patient who lacks capacity is being abused?

She should report her suspicions to the authorities. The MCA

criminalises the ill-treatment of persons over the age of 16 who lack mental capacity or whom the offender reasonably believes lacks mental capacity. Ill-treatment includes physical, sexual, financial, and psychological abuse as well as neglect and omission. The report should be made to the Office of Public Guardian and the appropriate authorities, e.g. the police, in a sexual abuse case. The MCA states that GPs who make such reports will not breach their professional ethical codes when they report such cases.

OFFICE OF PUBLIC GUARDIAN

What is the Office of Public Guardian?

The Office of Public Guardian is responsible for the welfare of persons who lack mental capacity. Its functions include registering LPAs, supervising deputies and investigating complaints.

REFERENCE

1. Timothy RJ Nicholson, William Cutter, Matthew Hotopf. Assessing Mental Capacity: The Mental Capacity Act. B.M.J. 336: 322-5.

LEARNING POINTS

- **The MCA codifies the best practices to be applied when working with or caring for a person who lacks mental capacity.**
 - **The MCA prohibits blanket decision-making on behalf of persons with capacity issues and introduces a functional test of capacity that is time and decision specific.**
 - **Professionals, such as GPs, have a particular duty to consider the Code of Practice when acting in relation to a person lacking mental capacity.**
 - **GPs must be able to explain and provide objective reasons for making a particular decision, showing how it was in the best interests of the person lacking capacity.**
 - **In complex or borderline cases, a GP should refer the patient to the appropriate specialist; e.g. psychiatrist, for assessment.**
 - **If the patient is a danger to himself or others because of mental disorder, then the Mental Health (Care and Treatment) Act allows for admission and detention of the person into psychiatric care.**
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