

Consent Form for Adults Unable to Consent

To be completed by health professional proposing test.

Please see guidance on health professional overleaf for details of situations where court appeals must first be sought.

Patient's name: _____ Patient PRU number: _____:

Date of birth: _____ Male Female

Responsible health professional:

Special requirements (e.g. other language or communication method):

A Details of proposed test

- blood sample to be analysed for:
- tissue sample to be analysed for:
- other sample (please specify):

B Assessment of patient's capacity

I confirm that the patient lacks capacity to give or withhold consent to this test because:

- the patient is unable to comprehend and retain information material to the decision
- the patient is unable to use and weigh this information in the decision-making process
- the patient is unconscious

Details about how this decision was reached (exclude if patient unconscious):

.....
.....

C Assessment of patient's best interests

To the best of my knowledge the patient has not refused this test previously or in a valid advance directive. Where possible and appropriate, I have consulted with colleagues and those close to the patient. I believe the procedure to be in the patient's best interests because:

.....
.....

Test cannot wait until capacity recovered (if incapacity is likely to be temporary) because:

.....
.....

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D Statement of health professional proposing test

In my clinical judgement, the proposed test is in the best interests of this patient, who lacks capacity to consent for himself or herself. Where possible and appropriate, I have discussed the patient's condition with those close to him or her and taken their knowledge of the patient's views and beliefs into account in determining his or her best interests.

Signature..... Date

Name (PRINT)..... Job title

- A second opinion has been sought** (please ask colleague to complete section below)

Comment:.....

.....
Signature..... Date
Name (PRINT)..... Job title

E Involvement of the patient’s family or others close to the patient

The final responsibility for determining whether a test is in an incapacitated patient’s best interests lies with the health professional performing the test. However, it is good practice to consult with those close to the patient (e.g. spouse/partner, family and friends, carer, supporter or advocate) unless you have good reason to believe that the patient would not have wished particular individuals to be consulted, or unless the urgency of their situation prevents this. “Best interests” go far wider than “best medical interests”, and include factors such as the patient’s wishes and beliefs when competent, their current wishes, their general well being and their spiritual and religious welfare.

If a person close to the patient was not available in person, has this matter been discussed in any other way (e.g. over the telephone)? **Yes** **No**

Details:

Voluntary statement of relative(s) or others close to the patient

I / We have been involved in a discussion with the relevant health professionals over the testing of.....(patient’s name) and understand that he / she is unable to give his / her own consent, based on the criteria set out in this form. I / We also understand that testing can lawfully be provided if it is in his / her best interests to receive it.

Comments about this decision:
.....
.....

Signature: Date:
Name (PRINT): Relationship to patient:.....
Address (if not same as patient):.....

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Guidance to health professionals (to be read in conjunction with consent policy)

This form should only be used where it would be usual to seek written consent but an adult patient (18 or over) lacks capacity to give or withhold consent to treatment. If an adult **has** capacity to accept or refuse treatment, you should use the standard consent form and respect any refusal. Where treatment is very urgent (for example if the patient is critically ill), it may not be feasible to fill in a form at the time, but you should document your clinical decisions appropriately afterwards. If treatment is being provided under the authority of Part IV of the *Mental Health Act 1983*, different legal provisions apply and you are required to fill in more specialised forms (although in some circumstances you may find it helpful to use this form as well). If the adult now lacks capacity, but has clearly refused particular treatment in advance of their loss of capacity (for example in an advance directive or ‘living will’), then you must abide by that refusal if it was validly made and is applicable to the circumstances. For further information on the law on consent, see the Department of Health *Reference guide to consent for examination or treatment* (www.doh.gov.uk/consent).

When treatment can be given to a patient who is unable to consent

- For treatment to be given to a patient who is unable to consent, the following **must** apply:
- the patient must lack the capacity (‘competence’) to give or withhold consent to this procedure AND
 - the procedure must be in the patient’s best interests.

Capacity

A patient will lack capacity to consent to a particular intervention if he or she is:

- unable to comprehend and retain information material to the decision, especially as to the consequences of having, or not having, the intervention in question; and/or
- unable to use and weigh this information in the decision-making process.

Before making a judgement that a patient lacks capacity you must take all steps reasonable in the circumstances to assist the patient in taking their own decisions (this will clearly not apply if the patient is unconscious). This may involve explaining what is involved in very simple language, using pictures and communication and decision-aids as appropriate. People close to the patient (spouse/partner, family, friends and carers) may often be able to help, as may specialist colleagues such as speech and language therapists or learning disability teams, and independent advocates or supporters. Capacity is 'decision-specific': a patient may lack capacity to take a particular complex decision, but be quite able to take other more straightforward decisions or parts of decisions.

Best interests

A patient's best interests are not limited to their best medical interests. Other factors that form part of the best interests decision include:

- the wishes and beliefs of the patient when competent
- their current wishes
- their general well-being
- their spiritual and religious welfare

Two incapacitated patients, whose *physical* condition is identical, may therefore have different best interests.

Unless the patient has clearly indicated that particular individuals should not be involved in their care, or unless the urgency of their situation prevents it, you should attempt to involve people close to the patient (spouse/partner, family and friends, carer, supporter or advocate) in the decision-making process. Those close to the patient cannot require you to provide particular treatment that you do not believe to be clinically appropriate. However they will know the patient much better than you do, and therefore are likely to be able to provide valuable information about the patient's wishes and values.

Second opinions and court involvement

Where treatment is complex and/or people close to the patient express doubts about the proposed treatment, a second opinion should be sought, unless the urgency of the patient's condition prevents this. Donation of regenerative tissue such as bone marrow, sterilisation for contraceptive purposes and withdrawal of artificial nutrition or hydration from a patient in PVS must never be undertaken without prior High Court approval. High Court approval can also be sought where there are doubts about the patient's capacity or best interests.