

**CONSENT FORM 4**

**PATIENTS AGE 16+ WHO LACK THE CAPACITY TO CONSENT TO CARE AND/OR TREATMENT**

**Patient details (or pre-printed label)**

|  |  |
| --- | --- |
| Patient’s surname/family name |  |
| Patient’s first names |  |
| Date of birth |  |
| Responsible health professional |  |
| Job title |  |
| Service |  |
| NHS number (or other identifier) |  |
| Gender |  |
| Special requirements (e.g. other language/other communication method) |  |

\*\***To be retained in patient’s health records\*\***

**All sections to be completed by health professional proposing the procedure**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **A - Details of procedure or course of treatment proposed**  (NB: see guidance to health professionals overleaf for details of situations where court approval must first be sought) | | | | | | | |
|  | | | | | | | |
| The procedure will involve the use of the anaesthesia | General or regional | | |  | | | |
| Local anaesthesia | | |  | | | |
| Sedation | | |  | | | |
| **B - Assessment of patient’s capacity (in accordance with the Mental Capacity Act 2005)** | | | | | | | |
| I confirm that the patient lacks capacity to be able to give valid consent to the above care or treatment as evidenced **on the attached MCA 1** | | | | | | |  |
| **Date of Assessment of Capacity** | |  | | | | | |
| Copy of MCA1 attached | | Yes |  | | No |  | |
| **C- Decision made in patient’s best interests** | | | | | | | |
| I am satisfied that the patient has not refused this procedure in a valid Advance Decision to Refuse Treatment (ADRT) | |  | | | | | |
| The treatment has not been refused by a person with relevant powers under a registered Lasting Power of Attorney or by a Court Appointed Deputy | |  | | | | | |
| The above procedure is, in my clinical judgement, in the best interests of the patient, who lacks capacity to consent for him 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 as recorded on **MCA2** | | | | | | | |
| **Date of Best Interests Decision** | |  | | | | | |
| Copy of MCA2 attached | | Yes |  | | No |  | |
| I have / have not sought a second opinion | | Yes |  | | No |  | |
| **Signed** | | **Date** | | | | | |
|  | |  | | | | | |
| **(PRINT Name)** | | **Job Title** | | | | | |
|  | |  | | | | | |
| Where a second opinion is sought, the health professional should sign below to confirm agreement that the treatment is in the person’s best interests. | | | | | | | |
| **Signed** | | **Date** | | | | | |
|  | |  | | | | | |
| **(PRINT Name)** | | **Job Title** | | | | | |
|  | |  | | | | | |

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| **D – Involvement of patient’s family and others close to the patient**  Unless the person has an Attorney or Deputy, the final responsibility for determining what is in a person’s best interest will rest with the relevant health professional. However, the health professional must consult with those close to the patient (e.g. spouse/partner, family and friends, carer, supporter or advocate) as far as is practicable and as appropriate.  This section may be signed by a person or persons close to the patient, if they wish: | | | | |
| I/We have been involved in a discussion with the relevant health professionals in relation to the proposed care or treatment to be given to the patient named below | | | | |
| **Patients Name:** | |  | | |
| I understand that the above patient lacks the capacity to give his/her own consent to the proposed care or treatment and that treatment can lawfully be provided if it is in his/her best interests to receive it.  Any comments (including any concerns about this decision) | | | | |
|  | | | | |
| **Signed Name** | | **Date** | | |
|  | |  | | |
| **(PRINT Name)** | | **Date** | | |
|  | |  | | |
| **Relationship to the patient** | |  | | |
| **Address (if not the same as the patient)** | |  | | |
| **“Independent Mental Capacity Advocate (IMCA)**  For decisions about serious medical treatment, where there is no one appropriate to consult other than paid staff, has an Independent Mental Capacity Advocate (IMCA) been instructed? | | | **Yes** | **No** |
| **Name of IMCA** | |  | | |
| **Signature of IMCA** | | **Date** | | |
|  | |  | | |
| **E -The patient has an Attorney or Deputy**  Where the patient has authorised an Attorney to make decisions about the procedure in question under a Lasting Power of Attorney or a Court Appointed Deputy for Health and Welfare has been authorised to make decisions about the procedure in question, the Attorney or Deputy will have the final responsibility for determining whether a procedure is in the patient’s best interests. | | | | |
| **STATEMENT OF ATTORNEY OR DEPUTY**  I have been authorised to make decisions about the treatment in question under a Lasting Power of Attorney /as a Court Appointed Deputy (delete as appropriate). I have considered the relevant circumstances relating to the decision in question and believe the procedure to be in the patient’s best interests. | | | | |
| **Signature of Attorney or Deputy** | **Date** | | | |
|  |  | | | |
| **(PRINT Name)** | **Date** | | | |
|  |  | | | |

**Guidance to health professionals**

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| This form should only be used where a patient age 16 + has been assessed as **lacking capacity** to consent to the care/treatment and it has been agreed that it is in the patients best interests to receive it.  If an adult has capacity to accept or refuse treatment, you should use the consent Form 1.  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. If the adult lacks capacity but has made a valid ADRT that is applicable to the proposed treatment then you must abide by that refusal.  For further guidance see the Trusts Policy on Mental capacity Act 2005 <https://www.rdash.nhs.uk/26169/mental-capacity-act-2005-policy/> |
| **Law on Consent**  See the Department of Health’s Reference guide to consent for examination or treatment (2009) for a comprehensive summary of the law on consent <https://www.gov.uk/government/organisations/department-of-health-and-social-care> |
| **Trusts Policy**  For further guidance see the Trusts Policy on Consent to Care and Treatment.  <https://www.rdash.nhs.uk/27029/consent-to-care-and-treatment-policy/> |
| **Independent Mental Capacity Advocate (IMCA)**  The Mental Capacity Act introduced a duty on the NHS to instruct and independent mental capacity advocate (IMCA) in serious medical treatment decisions when a person who lacks capacity to make a decision has no one who can speak for them, other than paid staff. IMCAs are not decision makers for the person who lacks capacity. They are there to support and represent that person and to ensure that decision making for people who lack capacity is done appropriately and in accordance with the Act. |
| **Lasting Power of Attorney and Court Appointed Deputy**  A person over the age of 18 can appoint an attorney to look after their health and welfare decisions, if they lack the capacity to make such decisions in the future. Under a Lasting Power of Attorney (LPA) the attorney can make decisions that are as valid as those made by the person themselves. The LPA may specify limits to the attorney’s authority and the LPA must specify whether or not the attorney has the authority to make decisions about life-sustaining treatment. The attorney can only, therefore, make decisions as authorised in the LPA and must make decisions in the person’s best interests.  The Court of Protection can appoint a deputy to make decisions on behalf of a person who lacks capacity. Deputies for personal welfare decisions will only be required in the most difficult cases where important and necessary actions cannot be carried out without the court’s authority or where there is no other way of settling the matter in the best interests of the person who lacks capacity. If a deputy has been appointed to make treatment decisions on behalf of a person who lacks capacity then it is the deputy rather than the health professional that makes the treatment decision and the deputy must make decisions in the patient’s best interests. |
| **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. The Court of Protection deals with serious decisions affecting personal welfare matters, including healthcare such as:   * Decisions about the proposed withholding or withdrawal of artificial nutrition and hydration (ANH) from patients in a permanent vegetative state (PVS) * Cases involving organ, bone marrow or peripheral blood stem cell (PBSC) donation by an adult who lacks capacity to consent * Cases involving the proposed non-therapeutic sterilisation of a person who lacks capacity to consent to this (e.g. for contraceptive purposes) and * All cases where there is a doubt or dispute about whether a particular treatment will be in a person’s best interests (include cases involving ethical dilemmas in untested areas)   The Court can also be asked to make a decision in cases where there are doubts about the patient’s capacity and also about the validity or applicability of an advance decision to refuse treatment. |