ELDAC
End of Life Directions for Aged Care

Urgent Medical Treatment

Case Study

Maria's story

Maria is a resident of the Nampara Aged Care Home. She has almost total vision impairment as a result of macular degeneration, and a history of hypertension and breast cancer (in remission). She does not have an Advance Care Directive.

Recently Maria complained to nursing staff that she had nausea, vomiting and abdominal pain. Following medical investigations she was diagnosed with advanced pancreatic cancer. Her oncologist advised that surgery and invasive treatment would be unlikely to significantly improve her condition, and recommended palliative management to control Maria's symptoms and quality of life. On returning to Nampara she was reviewed by Dominic, her GP, and a palliative care plan was established.

A few weeks after her cancer diagnosis, Maria starts experiencing chest pain. Josef, a nurse on duty at the home, finds her in discomfort, reaching for her chest. He is concerned and asks a colleague to call an ambulance. Maria overhears this discussion and says: 'I don't want to go to hospital. I have made my peace and maybe this is my time'.

The paramedics arrive and examine Maria who repeats her request not to go to hospital. She states that she does not want treatment. The paramedics suspect she is having a non-ST-elevation myocardial infarction and is at risk of cardiac arrest. She requires urgent Percutaneous coronary intervention to treat the narrowing of her coronary arteries, and to save her life. They advise Maria that she may die if she does not receive this treatment immediately but she replies: 'I'm dying anyway, I'm ready to go, I don't want any more treatment.' While the paramedics are confident that Maria has decision-making capacity, they are also worried about her not receiving treatment.

Ultimately, the paramedics decide not to transfer Maria to hospital, and with her consent give her some aspirin and other anticoagulant pain relief to help manage the pain. Maria is transferred back to her room, but continues to experience chest pain. She is reviewed by Dominic, who prescribes further pain and symptom relief. Maria dies the following day, with her family by her side.

Points for reflection

1. Was it appropriate for Maria not to be transferred to hospital, and not to receive urgent medical treatment?
2. If Maria did not have decision-making capacity, could hospital transfer occur and medical treatment be given without her consent?
3. What steps could you take to ensure you know the preferences of the people you care for if they require urgent treatment?

1. Was it appropriate for Maria not to be transferred to hospital, and not to receive urgent medical treatment?

It is not uncommon for health professionals and personal care workers to be unsure about whether to provide urgent medical treatment when a person they care for refuses it. This uncertainty can also arise where a person refuses to be transferred to hospital.

If a person with capacity refuses to go to hospital it is lawful not to transfer them, even if the person requires medical examination and/or treatment urgently, and refusing to go may cause serious harm or death.

Similarly, **a person with capacity can refuse medical treatment, including life-sustaining treatment, even if it is clinically indicated and urgently needed (e.g. in an emergency)**. This is because the law recognises an individual's right to consent or refuse consent to medical treatment, even if it results in an adverse outcome e.g. death.

Transferring a person to hospital or treating them without their consent is considered an assault.

Maria is presumed (by law) to have capacity to make medical treatment decisions. In addition, the paramedics are confident from their examination that Maria has capacity. Therefore, it was appropriate for the paramedics to comply with Maria's lawful refusal and not transfer her to hospital, or provide medical treatment to her, even though it is an emergency situation.

Visit the **End of Life Law Toolkit** for further information on the law about:

- *Capacity and Consent to Medical Treatment.* (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Capacity-and-Consent-to-Medical-Treatment)
- *Withholding and Withdrawing Life-Sustaining Medical Treatment.* (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Withholding-and-Withdrawing-Life-Sustaining-Medical-Treatment)
- *Hospital transfers and Urgent Medical Treatment.* (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Urgent-Medical-Treatment)

It was also appropriate and good practice for the paramedics to seek Maria's consent prior to giving her aspirin and other pain relief.

2. If Maria did not have decision-making capacity, could hospital transfer occur, and medical treatment be given without her consent?

Generally it is lawful for a health professional to provide treatment without consent to a person without capacity if it is needed urgently to save the person's life, prevent serious damage to their health, or prevent significant pain and distress.

Treatment cannot be provided in an emergency if it has been refused by the person in their valid Advance Care Directive. If there is no Advance Care Directive it may still be possible to obtain consent from the person's substitute decision-maker. Indeed, the legislation in some States and Territories requires health professionals to make reasonable efforts (if practical) to seek a substitute decision-maker's consent (and/or to find out whether the person has an Advance Care Directive) before giving urgent treatment. If there is an opportunity to obtain consent and a health professional does not do so, treating the person could result in civil or criminal liability.

If Maria does not have decision-making capacity, the paramedics should find out whether she has an Advance Care Directive that contains a relevant decision about treatment and/or hospital transfer. As she does not have a Directive, the paramedics should consider whether Maria's substitute decision-maker can provide consent.

The law on obtaining a substitute decision-maker's consent in an emergency varies by State and Territory:

- If Maria were in **Western Australia, South Australia** or the **Northern Territory**, the law requires that her substitute decision-maker be contacted to make a decision, if it is practical to do so.
- In **Tasmania, Victoria, New South Wales** and the **Australian Capital Territory,** a substitute decision-makers' consent would not be required for Maria to be treated or transferred.

- In **Queensland**, Maria could be transferred or treated without a substitute decision-maker's consent if there was an imminent risk to her life or health. However, consent would be needed if the treatment was required to prevent her suffering significant pain and distress.

Though consent is not required in some States and Territories, it would still be good clinical practice in those jurisdictions to try to contact Maria's substitute decision-maker for consent, if time and circumstances permit.

If it were not possible to obtain consent from Maria's substitute decision-maker (e.g. a decision-maker could not be contacted or was not willing to make a decision), the laws in each State and Territory would enable her to be transferred and/or receive medical treatment without consent.

Learn more in the **End of Life Law Toolkit's** ***Urgent Medical Treatment*** **resources.** (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Urgent-Medical-Treatment)

3. What steps could you take to ensure you know the preferences of the people you care for if they require urgent treatment?

Knowing the treatment and care preferences of the people you care for can help:

- ensure their treatment preferences are followed,
- prevent unnecessary hospital admissions,
- prevent provision of treatment that they do not want, is not in their best interests, or is futile or burdensome, and
- reduce distress to the person, their family and the health professionals involved in their care.

The **ELDAC End of Life Law Toolkit** contains useful tips for health professionals, personal care workers, and aged care providers about knowing how to act in an emergency situation. These include:

- Have a conversation about Advance Care Planning with the person or their substitute decision-maker upon the person entering aged care, or receiving home care.
- Discuss what treatment the person wants or does not want if an emergency situation arises.
- Know if the people in your care have an Advance Care Directive or resuscitation plan, and what it says.
- Know who the person's substitute decision-maker is (if they do not have capacity), or would be (if they do have capacity), and how to contact them.
- Respect the person's treatment decision.
- Know what the law says about providing, withholding and withdrawing life-sustaining treatment.

Learn more in the **End of Life Law Toolkit's** ***Urgent Medical Treatment*** **factsheet.** (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Urgent-Medical-Treatment)

Final legal observations

The paramedics acted lawfully by respecting Maria's refusal to be transferred to hospital, and her refusal of an urgent Percutaneous coronary intervention. If Maria did not have decision-making capacity, it would be good practice to seek consent to hospital transfer and medical treatment from her substitute decision-maker, though the law on this varies by State and Territory. If it were not possible to obtain consent from Maria's substitute decision-maker, the urgent treatment laws in those jurisdictions would enable her to be transferred and/or receive medical treatment without consent.