ELDAC
End of Life Directions for Aged Care

Capacity and Consent to Medical Treatment

Case Study

Nina's story

Nina has Chronic Kidney Disease (CKD) secondary to Type 2 Diabetes Mellitus. Despite her recent diagnosis of dementia, Nina is still cognitively stable and is able to live independently while receiving regular visits from Susan, a home care nurse, and increased support from her daughter Alison. Nina does not have an Advance Care Directive.

Susan has cared for Nina for a long time and as a result, she is familiar with her typically friendly disposition. On one visit however, Nina becomes agitated when Susan attempts to complete Nina's routine blood sugar level test. Susan reviews Nina's webster pack, and observes that Nina's medications have not been taken for the last 24 hours. When she encourages Nina to take them, Nina appears confused and refuses to take the medications, claiming 'you are trying to kill me'. She tries to stand up but becomes unsteady, and says she feels dizzy. Nina's behaviour is unusual as in Susan's experience Nina is usually cooperative, cognitively alert and orientated.

Susan shares her concerns about Nina with Alison, who has arrived to visit Nina. Alison agrees that Nina's behaviour is out of character and decides to take Nina to see her GP. When reviewing Nina's recent blood test results, the GP realises that Nina's renal function is impaired, and her haemoglobin is 70. He is aware Nina has suffered anaemia several times in recent years. In light of this, her CKD and current symptoms, the GP advises that he wants to admit Nina to hospital for a blood transfusion and further investigation.

Points for reflection

1. What factors must be satisfied for Nina to have capacity to make medical treatment decisions and to provide valid consent?
2. If you were the GP in this scenario, how would you determine if Nina has capacity?
3. In this case, do you think Nina has capacity to consent to a blood transfusion? Why or why not?
4. Does Nina's dementia mean that she will always lack capacity for treatment decisions?

1. What factors must be satisfied for Nina to have capacity to make medical treatment decisions and to provide valid consent?

Nina will have capacity to consent to or refuse medical treatment if she can comprehend and retain the information required to make the decision, including the consequences of that decision. Nina must then be able to use and weigh that information to make a decision.

To provide valid consent, Nina must:

- have decision-making capacity,
- give consent freely and voluntarily without undue pressure or influence, and
- consent specifically to the treatment that will be given – in this case, a blood transfusion.

The GP should inform Nina about treatment risks and other information relevant to making the decision.

2. If you were the GP in this scenario, how would you determine if Nina has capacity?

The GP should explore whether Nina has capacity to consent by asking questions to determine whether she understands that she is anaemic; that she requires a blood transfusion to treat this; and the associated risks of consenting to or refusing the blood transfusion.

If the GP is not certain that Nina has capacity, he should refer Nina for a formal capacity assessment by a medical practitioner with expertise in this.

Learn more about the legal requirements for capacity and consent in the **End of Life Law Toolkit's *Capacity and Consent to Medical Treatment* resources**. (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Capacity-and-Consent-to-Medical-Treatment)

3. In this case, do you think Nina has capacity to consent to a blood transfusion? Why or why not?

It is unlikely that Nina has capacity to consent to the blood transfusion due to her current cognitive state. Her confused behaviour (e.g. claiming that Susan is trying to kill her) indicates that she does not currently have insight into her condition, and that she is unable to make informed decisions about her treatment at this time. If Nina does not have capacity, as she does not have an Advance Care Directive consent will be required from Nina's legally recognised substitute decision-maker.

Learn more about substitute decision-makers in the **End of Life Law Toolkit's *Substitute Decision-Making* resources.** (https://www.eldac.com.au/Toolkits/End-of-Life-Law/Substitute-Decision-Making)

4. Does Nina's dementia mean that she will always lack capacity for treatment decisions?

No. Nina's capacity to consent to treatment must be determined on a case by case basis, at the time treatment is proposed. She will not lack capacity simply because she has dementia. In fact, it is likely in this case that Nina's capacity fluctuates depending on the current state of her health and cognitive condition. Generally her baseline cognition is alert and orientated, and she is usually willing to take her medication. If Nina was not unwell, she may in fact have capacity to make all, or at least some, medical treatment decisions. If there is doubt, a formal capacity assessment should be sought.

Learn more about capacity and consent to treatment in your **State or Territory** at ***End of Life Law in Australia***. (https://end-of-life.qut.edu.au/capacity#statetercap)

Final legal observations

After asking Nina questions about her condition and discussing her symptoms and treatment options, the GP concludes that Nina does not understand her condition or the information about the proposed blood transfusion (including its risks), and that she does not have capacity to provide consent.

As Nina does not have an Advance Care Directive, a substitute decision-maker will be required to consent to a blood transfusion being provided. Alison could be Nina's substitute decision-maker, but this will depend on the law of the State or Territory, and where Alison sits in the order of decision-makers.