

## Capacity and Consent to Medical Treatment Case Study



### Nina's story

Nina is 83 years old and has Chronic Kidney Disease (CKD) secondary to Type II Diabetes Mellitus (T2DM). 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.

Susan has cared for Nina for a significant period of 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 her routine blood sugar level test. She reviews Nina's webster pack, and observes that her 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.

When Alison arrives, Susan shares her concerns about Nina. Alison agrees that Nina's behaviour is out of character and decides to take Nina to see her GP. When reviewing her recent blood test, Nina's GP realises that her 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, what would you do to determine if Nina has capacity?
3. In this case, do you think Nina has the 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?

## Legal considerations on the points for reflection

### 1. What factors must be satisfied for Nina to have capacity to make medical treatment decisions and to provide a 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.

A clinician must inform Nina about treatment risks and other information relevant to making the decision.

### 2. If you were the GP in this scenario, what would you do to 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 that she understands the associated risks of consenting to or refusing the blood transfusion.

If the GP is uncertain whether Nina has capacity, he should refer Nina for a formal capacity assessment by a medical practitioner with expertise in this.

### 3. In this case, do you think Nina has the capacity to consent to the administration of 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 healthcare at this time. If Nina does not have capacity, provided Alison (her daughter) is Nina's legally recognised substitute decision-maker she may be able to consent to the blood transfusion on Nina's behalf.

Find out more about substitute decision-makers in the **ELDAC Legal Toolkit's *Substitute decision-making resources***. (<https://www.eldac.com.au/tabid/4963/Default.aspx>)

### 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.

Find out 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>)

## Final legal observations

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

If Nina does not have an Advance Care Directive which provides a relevant treatment decision, a substitute decision-maker will be required to consent to a blood transfusion being provided.