

Withholding and Withdrawing Life-Sustaining Medical Treatment Case Study



Renata's story

Renata is an 82-year-old resident at the Calypso Aged Care Home. Two years ago, she was diagnosed with advanced bowel cancer and received 3 intensive cycles of chemotherapy treatment after undergoing a bowel resection to create a permanent colostomy. Renata was aware that her cancer was incurable but with the help of her husband, she remained well and enjoyed a reasonable quality of life.

At the end of last year Renata's husband passed away suddenly. Following his death she became socially isolated and found it increasingly difficult to care for herself. With her children's support she moved into Calypso.

Not long after settling into Calypso, Renata began experiencing right-sided chest and upper abdominal pain. Following further investigations, Renata's oncologist, Rajesh, advises that the cancer has metastasised to her right lung, liver, and bones. He advises Renata to consider palliative chemotherapy as it may manage her disease symptoms and possibly prolong her life. Renata's son, Alejandro, is at the consultation and tells Rajesh he wants his mother 'to do everything possible and keep fighting it'. Renata reluctantly agrees to schedule chemotherapy for later that week.

After the appointment, Renata returns to Calypso and reflects on her diagnosis. She is fatigued, and feels that her strength is deteriorating due to her age and conditions. She previously experienced severe side effects from chemotherapy and understands the palliative treatment will only temporarily extend her life but not cure her condition.

Later that week, Alejandro takes Renata to her appointment where she advises Rajesh that after much careful thought she does not want chemotherapy, and would prefer to focus on spending the time she has left with her family. Alejandro becomes extremely distressed and demands that Rajesh 'make my mother have the chemo!'.

Points for reflection

1. Is it lawful for Renata to refuse chemotherapy, even if she will die sooner without that treatment?
2. Does Rajesh have to follow Renata's decision?
3. Can Alejandro demand that Renata have the treatment?
4. What if Renata did not have capacity to make a decision about chemotherapy?

Legal considerations on the points for reflection

1. Is it lawful for Renata to refuse chemotherapy, even if she will die sooner without that treatment?

The law presumes that all adults have capacity to consent to or refuse treatment, unless it is shown otherwise.

A person with capacity may refuse medical treatment, even if it is treatment needed to keep them alive. This is because **capacity relates to a person's ability to make a decision, not what decision they make**. However, unwise or unusual decisions may be a prompt to check a person's capacity.

Renata will have capacity if she:

- is able to comprehend and retain the information needed to make the decision, including the consequences of the decision; and
- can use and weigh that information when deciding.

If Renata has capacity, provided her consent has been given freely and voluntarily (and relates to the proposed treatment) she can lawfully refuse the chemotherapy.

Renata appears to understand the proposed treatment, and the consequences of having, or refusing the chemotherapy (she knows that if she does not have it the cancer will spread and cause death). She has considered the information provided by Rajesh and has weighed it. For example, she has considered that the chemotherapy may prolong her life, but also its other implications including the potential for side effects and diminished quality of life. She has used and balanced that information against the consequences of refusing treatment, as part of her decision-making process.

Find out how to determine if a person has capacity to consent to medical treatment in the **ELDAC Legal Toolkit's *Capacity and consent to medical treatment resources*** (<https://www.eldac.com.au/tabid/5268/Default.aspx>)

2. Does Rajesh have to follow Renata's decision?

A health professional must follow a decision to withhold or withdraw treatment made by a person who has capacity. In fact, a health professional who provides treatment contrary to a refusal will have committed an assault on the person, and may be subject to civil, criminal or disciplinary action. Therefore, if Renata has capacity Rajesh should accept her decision not to have chemotherapy.

3. Can Alejandro demand that Renata have the treatment?

No. If Renata has capacity, her decision to refuse treatment must be followed, even if Alejandro or others disagree with her decision.

4. What if Renata did not have capacity to make a decision about chemotherapy?

Where a person does not have capacity, a decision to withhold or withdraw life-sustaining can still be made:

- in a valid Advance Care Directive (made when the person had capacity); or
- by a person's substitute decision-maker, provided they have the power to do this under the law of their State or Territory.

Find out more about substitute decision-makers' powers in your **State or Territory** at ***End of Life Law in Australia*** (<https://end-of-life.qut.edu.au/stopping-treatment/adults/state-and-territory-laws>)

In making a decision to withhold or withdraw treatment from a person without capacity, a substitute decision-maker generally needs to consider:

- what the person would have wanted if they had capacity; and
- what would be in the person's best interests after considering such things as potential risks, burdens and benefits of treatment.

Renata does not have an Advance Care Directive refusing treatment, so her substitute decision-maker would need to consider whether or not to consent to the chemotherapy. If Alejandro is her lawfully recognised substitute decision-maker, he would need to consider Renata's best interests and preferences in order to reach a decision.

For more information about substitute decision-making visit the **ELDAC Legal Toolkit *Substitute decision-making resources*** (<https://www.eldac.com.au/tabid/4963/Default.aspx>)

Final legal observations

After further discussion, Rajesh considers Renata understands the proposed treatment, and the consequences of undergoing the treatment as well as refusing the treatment (e.g. that she will die). He believes she has considered the information provided and weighed it to arrive at her decision e.g. she has considered that the chemotherapy may prevent the cancer, but may also cause side effects; that it may prolong her life only temporarily; and her preference to spend time with her family. The law recognises Renata's ability to choose not to have chemotherapy, which Rajesh must respect.