the briefing

straightforward and honest legal advice to take the stress out of tough situations

Your life: Your medical treatment

Every mentally competent adult has the right to choose whether to accept or refuse medical treatment, even if the consequences of a refusal may risk permanent injury or even death. Nobody can force a mentally competent adult to have treatment against their will.

What happens if you are unable to make a treatment decision, because you lack the mental competency to do so. You may have suffered a stroke or be unconscious after a road traffic accident. You can't communicate, so who makes that decision for you?

In those circumstances, the health care professional treating you will decide whether to treat or not. The decision ultimately lies with them. Your family, partner or spouse has no legal right to make that decision or to insist on your treatment or to give your refusal to treatment unless you have given them express permission to do so, in the form of either an Advance Directive or a Lasting Power of Attorney for Health and Welfare.

It is an absolute misconception that your loved ones can make that decision. The sorts of cases that you might read about in the press are those very cases where no person has been legally appointed to make the decision, and there is a dispute between the healthcare professionals and the family/loved ones about treatment. The healthcare professionals will generally seek an order from the Court of Protection as to whether a specific treatment or withdrawal of treatment is lawful.

In addition, there are some treatments and situations where the healthcare professionals must make an application to the Court of Protection. These are for 'serious' medical treatment and an explanation of the sorts of treatment this covers is contained in the Mental Capacity Act 2005 Code of Practice.

Consider a situation where you are suffering from dementia and in the final stages of a terminal illness, and you have a heart attack at home. An ambulance is called by a neighbour. Before you became ill, you made it clear to your children that if anything happens to you, and you are unlikely to be able to recover sufficiently to enjoy a good standard of living, you do not want to be treated. The paramedics arrive and find you on the floor. The neighbour is still there, but she only moved in a week ago, and does not know anything about you or your wishes and feelings. The medics must act quickly, and they start to perform CPR and get your heart started again. However, you now have broken ribs and a collapsed lung, need help with breathing and the likelihood of another heart attack is high. You remain unconscious and your life expectancy and quality of life are very poor.

This could have been so different if you had got legal advice at the time you discussed the matter with your children. Since the Mental Capacity Act 2005 came into force in October 2007, it has been possible for individuals to self-determine their treatment, or rather their refusal to be treated in the case of an Advance Decision (AD) or, to appoint someone to make health and welfare decisions, including refusing life-sustaining treatment under a Lasting Power of Attorney for Health and Welfare (LPAHW). These are legal documents, and if they are valid and applicable to the circumstances in which the individual finds him or herself, they are legally binding. An advance decision to refuse a particular treatment if valid and applicable can not be overruled, and the medic acting in accordance with those decisions cannot incur liability for the consequences. What better way to ensure that you have the last word about your medical care and treatment? Get legal advice. Speak to a member of the Later Life Team at Wollen Michelmore today.

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