

FRAMEWORK FOR CLINICAL ASSESSMENT OF MENTAL CAPACITY IN OLDER ADULTS

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HOW CAN CAPACITY BE DETERMINED?

BY OUTCOME

- Poor judgment or making bad decisions mean lack of capacity
- Does not allow for decisions that do not conform to accepted opinion



BY STATUS

- Having a certain illness or disability equates to loss of capacity
- All-or-none approach, does not consider actual ability



BY FUNCTION

- Decision specific basis
- Assumes presence of capacity until proven otherwise



FUNCTIONAL BASIS FOR CAPACITY

TIME SPECIFIC

- Capacity may fluctuate on a day to day basis
- Capacity may be lost and regained

DOMAIN SPECIFIC

- Ability may vary for different domains, e.g. medical, legal, financial, relationship

TASK SPECIFIC

- Complex tasks often require a higher level of cognitive ability

TEST FOR MENTAL CAPACITY

Re C (Adult: refusal of treatment) [1994] 1 All ER 819

Could the patient understand and retain information relevant to the decision in question?



Did he believe that information?



Did he weigh that information in the balance to arrive at and express a choice?

TEST FOR MENTAL CAPACITY

1. Understand

- Adequate information must be given on:
 - The nature of the document to be signed
 - The purpose of the document to be signed
 - The risks and benefits of signing the document
 - The risks of not signing the document
 - Alternatives and their risks and benefits
- Maximize the ability to understand by using simple language, diagrams, interpreter

TEST FOR MENTAL CAPACITY

2. Retain

- Must be able to retain the information for long enough to make an effective decision

TEST FOR MENTAL CAPACITY

3. Believe

- Ability to apply the information realistically to his or her own situation
- Alternative views are acceptable if they are validly held and not due to psychiatric illness or other irrational beliefs

TEST FOR MENTAL CAPACITY

4. Weigh

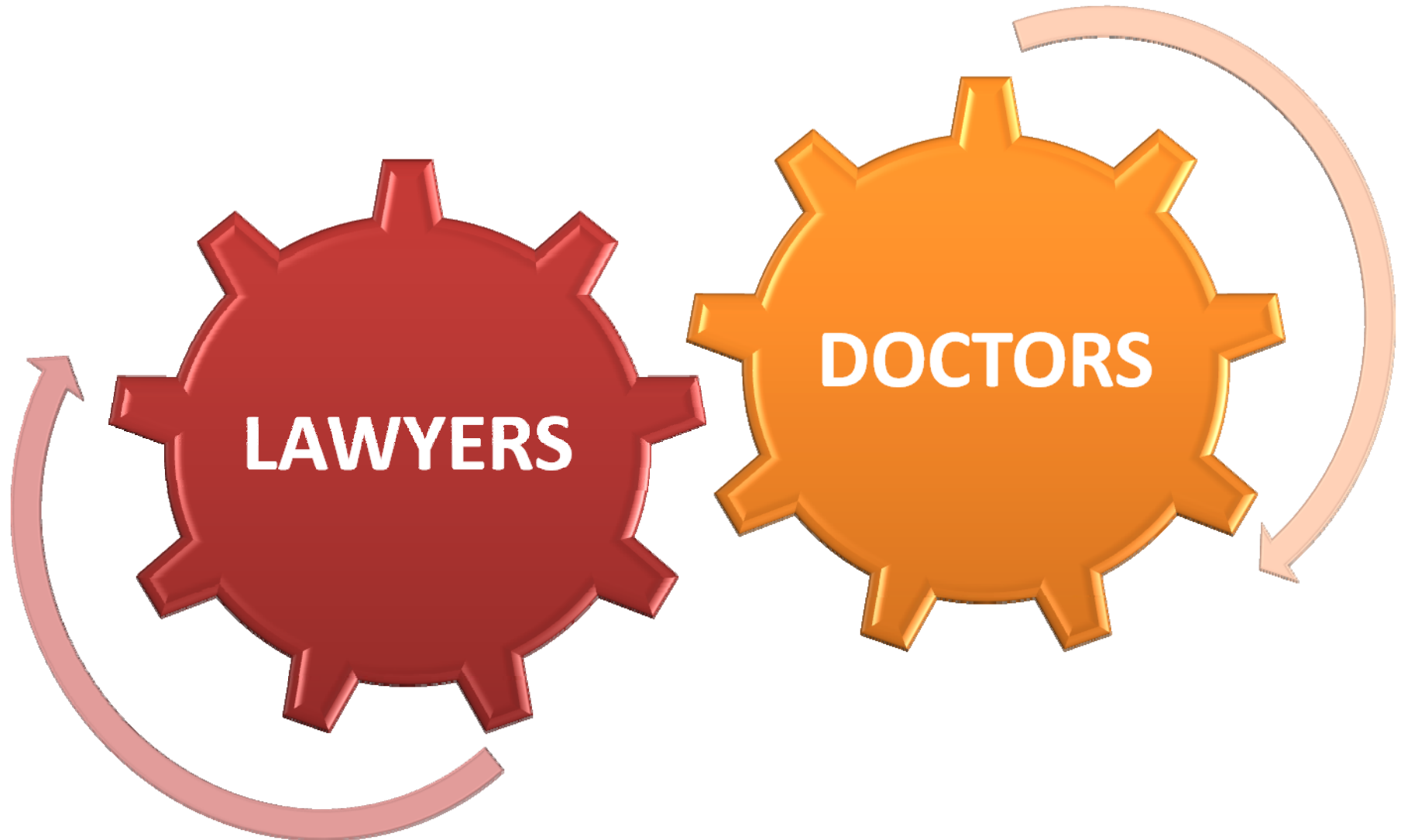
- This requires consideration of risks, benefits, short term outcomes, long term outcomes, and assigning relative weights to each
- Making a decision based on all the relevant factors, including individual values and priorities
- This may be affected by decline in cognitive function (e.g. delirium, dementia, mental retardation)

TEST FOR MENTAL CAPACITY

5. Express

- Verbal or non-verbal means
- Use of aids to assist communication

GUIDELINES FOR CAPACITY ASSESSMENT



CAPACITY ASSESSMENT FOR LAWYERS

- A solicitor cannot be retained by a client who does not have a mental capacity.
- There is a **legal presumption of capacity** unless the contrary is shown.
- Whether a client does have capacity is a matter of law and it should be borne in mind that **different levels of capacity are required for different activities.**
- If there is doubt about a client's mental capacity it may be advisable, where possible, to **seek an opinion from the client's doctor** having explained to the doctor the relevant test of capacity.

Law Society of Hong Kong

Guide to Professional Conduct

5.01(4) Freedom to accept instructions

CAPACITY ASSESSMENT FOR DOCTORS

- Before assessment
 - Obtain information from lawyers regarding the legal test to be satisfied
 - Obtain information required for conducting the assessment
 - Optimize the setting
 - Assess at the best time of the day
 - Assess in a comfortable environment
 - Consider home assessment
 - Consider withholding sedating medications

CAPACITY ASSESSMENT FOR DOCTORS

- During assessment
 - Full medical and psychiatric history
 - Current medications
 - Cognitive assessment, which may include:
 - Mini Mental State Examination
 - Clock drawing test
 - Frontal lobe tests
 - Make full notes of the assessment
 - List out reasons for your conclusion

RECOMMENDED READING

- Written for doctors and lawyers
- Cited by courts in HK and the UK
- Topics covered:
 - Financial affairs
 - Testamentary capacity
 - Criminal
 - Litigation
 - Contract
 - Refusal of medical treatment

