POLICY FOR WITNESSING DOCUMENTS FOR PATIENTS

Amendments

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<th>Date</th>
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<tr>
<td>August 2009</td>
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<td>General update &amp; review including:</td>
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<td>• Information regarding Lasting Powers of Attorney and Advance Decisions and</td>
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<td>• Appendix Two, Checklist for Assessing Mental Capacity/best interest in the</td>
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Compiled by: Jill Down, Head of Customer Affairs
In Consultation with: Ruth Lallmahomed, Acting Director of Nursing & Governance, Matrons, Business Centre Managers & Midwifery Committee.
Ratified by: TEC
Date Ratified: August 2009
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Target Audience: All Staff
Comments on this document to: Jill Down, Head of Customer Affairs
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WITNESSING DOCUMENTS FOR PATIENTS POLICY

See also:
Trust Policies: Assessing a Patient’s Mental Capacity to make Decisions
Advance Decisions to Refuse Treatment
Other Documents Mental Capacity Act 2005
Mental Capacity Act 2005 Code of Practice

1 Aim

To ensure timely and appropriate response to requests for witnessing of documents.

2 Introduction

Patients, their relatives or legal representatives, may ask for the patient’s signature to be witnessed on several different documents.

These include:

• Last Will and Testament
• Lasting Power of Attorney
• Advance Decisions to Refuse Treatment
• Access to Pension Books/Banks/Building Society Accounts

The Trust has no legal responsibility to witness any of the above documents.

Patients should be encouraged to have such documents formalised (by others) before admission, or after discharge from hospital.

Patients must be medically assessed (see Section 4) before any document can be witnessed. The process of witnessing any document will only be undertaken in emergency circumstances and if a signature is required urgently.

3 Who Can Witness Documents

In emergency circumstances, where a signature is required urgently, the role will be undertaken as follows:

• During “office” hours 09.00 – 17.00 Monday to Friday (excluding Public Holidays), this will be undertaken by a Matron not involved in the clinical care of the patient. Outside of these hours, the role will be undertaken by the late duty Matron or Clinical Nurse Site Practitioner.

NOTE: If a Matron is unavailable at Ashford Hospital, this will be undertaken by the Site Co-ordinator.
• During the day on a Saturday or Sunday or a Public Holiday, this will be undertaken by the Site Coordinator.

UNDER NO CIRCUMSTANCES SHOULD ANY HEALTHCARE PROFESSIONAL INVOLVED WITH THE PATIENT’S CLINICAL CARE UNDERTAKE THE TASK OF WITNESSING A SIGNATURE.
4 MEDICAL ASSESSMENT

When a request is made, an assessment of the patient's capacity to make decisions must be undertaken by a member of the Consultant Care Team. This assessment must be recorded in the patient's health records.

For further information on the assessment of capacity, please see the Trust's policy “Assessing a Patient's Mental Capacity to make Decisions” or the Mental Health Act 2005 Code of Practice at www.dca.gov.uk. A summary of the test of capacity can be found at Appendix One along with the Trust’s checklist which should be completed and filed in the patient's records at Appendix Two.

In the event that the patient is assessed as lacking capacity to make a decision, the member of the Consultant Care Team should make the relative/legal advisor aware that the document will not be witnessed, due to the patient's state of understanding.

5 CLERICAL PROCEDURE

5.1 LAST WILL AND TESTAMENT

Two witnesses are normally required for this document. It would be preferable that one of the witnesses is a “third party” not employed by the Trust. However, it is recognised that this may not be practical and, in the event that a “third party” cannot be identified, it will be the responsibility of the senior member of staff called (i.e. Matron, Site Co-ordinator or CNSP) to arrange attendance of a second witness. In the absence of a “third party” witness, the second witness can be any member of staff not directly involved with the care of the patient.

The witnesses should introduce themselves to the patient and outline their involvement in the process.

The patient should sign the document in the indicated area, using their normal signature and the witnesses should do likewise.

The document should then be handed to the patient.

The ward staff should make an entry in the patient's health record as to who witnessed the document and those present.

Before witnessing the signature the preparatory work, as outlined in Section 4 must be carried out.

5.2 LASTING POWER OF ATTORNEY (LPA)

Sometimes one person will want to give another person authority to make decisions on their behalf. A Lasting Power of Attorney (LPA) is a legal document that allows them to do
so. To be valid, an LPA must have been drafted while the patient was mentally capable. The LPA must be registered with the Office of the Public Guardian and this can be done anytime after the LPA has been drafted.

LPAs are completed in two parts – Part A and Part B.

Part A presents the Donor's (ie the patient's) statement.

It is possible that having completed Part A of the LPA a patient may ask a member of staff to witness their signature although it should be noted that this would not be considered an 'emergency request' and, as such, the patient should be encouraged to make alternative arrangements.

Before witnessing the signature the preparatory work, as outlined in Section 4, must be carried out. In addition, the witness must ensure that it is the patient who has completed the document.

Once Part A has been completed, the patient will need to identify an “independent person” to complete Part B of the LPA.

At this point, the Donor can choose someone they have known personally over the last two years (Category A) or someone who, because of their relevant professional skills and expertise, consider themselves able to provide the certificate (Category B).

Category B skills are identified as:

- A registered healthcare professional.
- A registered social worker.
- A barrister, solicitor or advocate.
- An independent Mental Capacity Advocate (IMCA).

In the event that a healthcare professional within the hospital setting agrees to complete the skills certificate, they will be required to have a detailed discussion with the patient regarding their decision to make an LPA. Because of the nature of this declaration, it is suggested that healthcare professionals in the hospital setting avoid acting as the certificate provider. In the emergency situation (which should be the exception) Trust staff are advised to contact an individual in one of the other three categories detailed above.

5.3 ADVANCE DECISION TO REFUSE TREATMENT

An advance decision enables someone aged 18 and over, while still capable, to refuse specified medical treatment for a time in the future when they may lack capacity to consent to or refuse that treatment.
Witnessing the person's signature is not essential except in cases where the person is making an advance decision to refuse life sustaining treatment.

Please see the Trust Policy Advance Decisions to Refuse Treatment.

Before witnessing the signature the preparatory work, as outlined in Section 4, must be carried out.

6 DISSEMINATION AND IMPLEMENTATION

This policy will be made available on the Trust intranet.

Staff contacting the Head of Customer Affairs with questions regarding the witnessing of documents will be directed to the policy.

7 MONITORING COMPLIANCE

Compliance with the policy will be monitored on an exception basis noting any concerns raised by staff, patients or their carers through the Incident Investigation process, the Patient Advice & Liaison Service or through formal complaints.

8 REVIEW

This policy will be reviewed if statutory requirements / best practice guidelines change or no longer than 3 years after the previous review.

9 ARCHIVING ARRANGEMENTS

This policy will be archived in hard copy by the Quality Department and any request for retrieval should by made to the Quality Department.

10 REFERENCES & BIBLIOGRAPHY

Mental Capacity Act 2005
Website www.opsi.gov.uk

Mental Capacity Act 2005 Code of Practice.
Website www.dca.gov.uk

11 IMPACT ASSESSMENT

Equality Impact Assessment Summary

Witnessing Documents for Patients - Jill Down
This policy aims to ensure timely and appropriate response to requests for witnessing of documents.

**Methodology**
- A brief account of how the likely effects of the policy was assessed (to include race and ethnic origin, disability, gender, culture, religion or belief, sexual orientation, age)
- The data sources and any other information used
- The consultation that was carried out (who, why and how?)

This policy will effect any individual who wishes to have a document witnessed by a member of Trust staff while in hospital. It is equally applicable to all individuals who have been assessed as having capacity to understand the document to be signed.

**Key Findings**
- Describe the results of the assessment
- Identify if there is adverse or a potentially adverse impacts for any equalities groups

No adverse or potentially adverse impacts have been assessed for any equalities groups.

**Conclusion**
This is an internal policy which describes the process to be followed in the event that a patient or their carer asks a member of Trust staff to witness the patient signing a document while in the care of the Trust.

**Recommendations**
- State recommended changes to the proposed policy as a result of the impact assessment
- Where it has not been possible to amend the policy, provide the detail of any actions that have been identified
- Describe the plans for reviewing the assessment

No changes proposed following impact assessment.
APPENDIX ONE

THE TEST OF CAPACITY

(Summarised from the Trust Guideline – Assessing a Patient’s Mental Capacity to Make Decisions).

The Mental Capacity Act sets out a two stage test of capacity.

STAGE ONE

**Does the person have an impairment, or a disturbance in functioning of their mind or brain.**

Examples may include:

- Conditions associated with some forms of mental illness.
- Dementia.
- Significant learning disabilities.
- The long term effects of brain damage.
- Physical or mental conditions that cause confusion, drowsiness or loss of consciousness.
- Delirium.
- Concussion following head injury, and
- The symptoms of alcohol or drug abuse.

Note: Stage One requires proof that the person has an impairment of the mind or brain, or some sort of disturbance that effects the way their mind or brain works. If a person does not have such an impairment or disturbance “of the mind or brain”, they will not lack capacity under the Act.

STAGE TWO

**Does the impairment or disturbance mean that the person is unable to make a specific decision when they need to?**

For a person to lack capacity to make a decision, the Act states that their impairment or disturbance must affect their ability to make a decision when they need to. People must be given all practical and appropriate support to help them make a decision for themselves. Stage Two can only apply when this help and support has failed.

An Inability to make a Decision

A person is unable to make a decision if they cannot:

1. Understand the information about the decision to be made (the Act calls this “relevant information”).

Relevant information includes:
- The nature of the decision.
- The reason why the decision is needed, and
- The likely affects of deciding one way or another, or making no decision at all.

2 Retain that information in their mind long enough to use it to make an effective decision.

- People who can only retain information for a short while must not automatically be assumed to lack capacity to decide.

3 Use or weigh that information as part of the decision making process.

- Sometimes people can understand information but an impairment or disturbance stops them using it.
- The impairment or disturbance leads to a person making a decision without understanding or using the information given.

4 Communicate their decision (by talking, using sign language or any other means).

- Sometimes there is no way for a person to communicate. Examples will include people who are unconscious, those who are conscious but cannot speak or move at all.

Note: The first three points should be applied together. The fourth point only applies in situations where people cannot communicate their decision in any way.
Mental Capacity Act 2005 - Checklist for assessing mental capacity/best interest in the trust

The following check-list should be completed for all patients requiring a mental capacity assessment, in relation to a significant decision ie about health or social care. This check-list must be completed by registered practitioners (Drs, RN – Senior Staff Nurses; Band 6 and Band 7 Nurses; Therapists, Care Managers, Midwives)

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<thead>
<tr>
<th>Date of Assessment:</th>
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<tr>
<td>Name and Designation of Assessor:</td>
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<tr>
<td>Name of Person being assessed:</td>
</tr>
<tr>
<td>Hosp No:</td>
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<tr>
<td>NHS No:</td>
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<tr>
<td>DOB:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Consultant / SpR:</td>
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<tr>
<td>NOK/Carer contact details:</td>
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<td>Ward / Unit:</td>
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**NB:** Once completed the check-list must be filed in the patients notes

For further guidance please see Code of Practice – Trust Guidelines (trust net)

**NB:** For Adults 18years & over
1. Is there a:

   1. Lasting Power of Attorney (LPA) – finance?
   2. Lasting Power of Attorney -welfare?
   3. Written Statement?
   4. If there is an Advance Decision to refuse treatment (in relation to this decision at this point in time) & is it valid & applicable?
   5. Court Appointed Deputy?

2. Detail of the SPECIFIC treatment / care for which decision is required:

   When (date) specific treatment or care required: _____________________

   ** 1. If decision required for more than one issue, please use additional sheets for each specific treatment

3. For the above specific issue / decision, does the person have an impairment or disturbance in the functioning of, the mind or brain,

   Evidence/Details: (ie, diagnostic tests, functional assessments)

   AND can the person:
   (functional test)

   1. Understand the information relevant to the decision? and
   2. Retain the information (in their mind long enough to use it to make an effective decision)? and
   3. Use or weigh the information to arrive at a choice? and
   4. Communicate the decision (in any manner)?

   (Yes to all 4 questions 1-4 would indicate the person does have capacity)

**NB:** Attempts must be made to reiterate the information at appropriate intervals if short term retention of information is impaired
4. If the person is believed to lack capacity on this specific issue /
   decision?
   
   Is the lack of capacity likely to be Temporary?
   
   Is the lack of capacity likely to be permanent?
   
   NB: Is treatment/decision considered urgent or can it be deferred?
   
   Please comment:

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<th>Yes</th>
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5. (If the person lacks capacity)
   
   Who will be the decision maker? : (This will normally be the person responsible for the
   treatment/action)
   
   Name .................................................................
   
   designation & contact details ........................................
   
   NB; Is there a personnel welfare Lasting power of Attorney which gives a donee specific power?
   This must be checked via the Court of Protection

6. Views of interested others (family, friends, carers IMCA. Give names
   & roles) including; contact details & relevant supporting information:

7. If there are any conflicts of interest amongst family/carer, health or
   social care professionals please outline
### 8. Independent Mental Capacity Advocate

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Is there an existing Independent Mental Capacity Advocate?

Is there a requirement for an Independent Mental Capacity Advocate (IMCA)?

If Yes, IMCA was contacted on ..............................................................
by whom (inc contact details)..........................................................................

Name & Contact details of IMCA.................................................................

IMCA report being received & considered?

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### 9. Checklist for making ‘Best Interest’ decisions

1. Have all the relevant circumstances been considered?
2. Has the person been encouraged, as far as reasonably practicable, to participate in making the decision affecting them, even when the person is believed to lack capacity?
3. Confirmed that no motivation/desire to bring about the patient’s death if relating to life sustaining treatment?
4. Consideration has been given to the patient’s past and past wishes and feelings without discrimination?
5. Consideration has been given to any relevant written statement made when the person had capacity?
6. Consideration has been given to beliefs and values likely to influence the person’s decision e.g., religious, cultural and lifestyle choices?
7. Have other factors that the person is likely to consider (e.g., emotional bonds, family obligations, financial issues, accommodation etc) taken into account?
8. Consultation carried out with key people as to what would be in the person’s best interests e.g., spouse, civil partner, anyone named by the person, carer, family friends, professional or voluntary services including existing advocate, IMCA any lasting power of attorney or deputy appointed by the Court of Protection?
9. If IMCA involved, does the IMCA support the ‘best interest’ decision?

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If Yes, please provide details:

NB: If No to any of the above please detail: (eg Is treatment/decision considered urgent)

Best Interests Decision:
10. Views of Lead Professional (inc name/role):
Details:

11. Views of other professionals (inc names/roles):
Details:

12. Assessment Summary:
(The treatment/decision should be the least restrictive option or intervention possible. Special considerations for life sustaining treatment have been considered or are not applicable. This decision is not based on age, appearance, condition, gender or race. Every effort has been made to communicate with the person concerned).

Signed:  
_________________________________________________________________
Name:  
_________________________________________________________________
Designation:  
_________________________________________________________________
Department:  
_________________________________________________________________
Date: __________