

Getting older – practical issues about medical treatment

Wouldn't we all love to be young and healthy forever! Sadly it isn't going to happen. Yet because of fantastic medical advances many of us can look forward to a long life – which is great. However, a fair proportion of us will probably be managing a medical condition in our older years or even a number of conditions. Decades ago this did not happen – people just died earlier.

So older people generally need more medical treatment as they age. But adults have to consent to receive medical treatment – other than in emergencies. And of course some of the conditions older people have to manage or have managed for them may result in a diminution of their faculties. A prime example would be dementia where a sufferer might lose the ability to communicate meaningfully. If that happens then the patient has lost legal capacity and with that the patient loses the capacity to consent to treatment. This is where legally things become a little more complicated for doctors and families.

Where someone cannot consent to treatment doctors can still treat them under the authority of the Adults With Incapacity (Scotland) Act 2000. The doctor first has to complete a certificate stating that in his or her view the patient has lost capacity. This right extends to other medical professionals such as dentists or nurses who have had certain training on assessing incapacity. What is not understood by many families is that without being given prior authority by the patient, no one in the family has an automatic right to influence treatment or give consent to it or refuse it even. In practice one might hope that medical professionals will discuss treatment with close relatives if practical to do so.

However the only way you can ensure that the views of someone closest to you – your spouse for example – will be taken into account in medical decisions about you is to have previously appointed your spouse as your welfare attorney. That changes things for medical professionals – they must by law seek consent from your attorney for your treatment to go ahead. The only way doctors may avoid discussions with your attorney is if it were not “reasonable and practical” to ask for the attorney's consent. That would almost have to mean for some reason the attorney was not able to be contacted at all or in a reasonable time frame.

If an attorney did not agree a course of treatment then the medical professional proposing it must refer the case to an independent medical practitioner for a second opinion.

I suspect most people in Scotland think their spouse has automatic rights to decide treatments for their ill spouse who has lost capacity. That is just wrong. Yet I also suspect most people really would want their spouse or a close relative to be able to have a say in how they are to be treated medically when quite ill.

The only answer is to appoint an attorney – and to do so long before illness is even on the horizon. It's not difficult or expensive to grant a power of attorney – but doing it does give a lot of comfort to many as they know their loved one must be consulted on medical matters if severe illness strikes.