

## Adults who are unable to Consent to Proposed Procedure or treatment

### Patient details (or pre-printed label)

NHS Number: \_\_\_\_\_

Patient's surname/family name \_\_\_\_\_

Patient's first name(s) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Date of birth \_\_\_\_\_

Male  Female

Adastra case number (or other identifier) \_\_\_\_\_

Responsible health professional \_\_\_\_\_

Job title \_\_\_\_\_

Special requirements \_\_\_\_\_

*(E.g. other language/other communication method)*

**To be retained in patient's notes**

**All sections to be completed by health professional proposing the procedure or treatment**

**A. Details of procedure or treatment proposed**

**B. Assessment of patient's capacity**

**I confirm that the patient lacks capacity to give or withhold consent to this procedure or treatment because:**

the patient is unable to comprehend and retain information material to the decision; and/or

the patient is unable to use and weigh this information in the decision-making process

**Further details:** for example how above judgements reached; which colleagues consulted; what attempts made to assist the patient make his or her own decision and why these were not successful.

**C. Assessment of patient's best interests**

To the best of my knowledge, the patient has not refused this procedure in a valid advance directive. Where possible and appropriate, I have consulted with colleagues and those close to the patient, and I believe the procedure to be in the patient's best interests because:

**D. Involvement of the patient’s family and others close to the patient**

The final responsibility for determining whether a procedure is in the patient’s best interests lies with the health professional performing the procedure. However, it is good practice to consult with those close to the patient (e.g. spouse/partner, family and friends, carer, supporter or advocate) unless you have good reason to believe that the patient would not have wished particular individuals to be consulted, or unless the urgency of their situation prevents this. “Best interests” go far wider than “best medical interests”, and include factors such as the patient’s wishes and beliefs when competent, their current wishes, their general well-being and their spiritual and religious welfare.

To be signed by a person or persons close to the patient, if they wish:

**I/We have been involved in a discussion with the relevant health professionals over the care or treatment of**

\_\_\_\_\_ **(insert patient’s name).**

**I/We understand that he/she is unable to give his/her own consent, based on the criteria set out in this form. I/We also understand that treatment can lawfully be provided if it is in his/her best interests to receive it.**

Any other comments (including any concerns about decision):

Name \_\_\_\_\_ Relationship to patient \_\_\_\_\_

Address (if not the same as patient) \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Adastra case number (or other identifier) \_\_\_\_\_

If a person close to the patient was not available in person, has this matter been discussed in any other way (e.g. over the telephone?)

Yes       No

Details:

### Signature of health professional proposing treatment

The above procedure is, in my professional judgement, in the best interests of the patient, who lacks capacity to consent for himself or herself. Where possible and appropriate I have discussed the patient's condition with those close to him or her, and taken their knowledge of the patient's views and beliefs into account in determining his or her best interests.

I have/have not (delete as appropriate) sought a second opinion.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (PRINT) \_\_\_\_\_ Job title \_\_\_\_\_

Name(s) of any other individuals present: \_\_\_\_\_  
\_\_\_\_\_

### Where a second opinion has been sought, he/she should sign below to confirm agreement:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name (PRINT) \_\_\_\_\_ Job title \_\_\_\_\_

## Guidance to health professionals (to be read in conjunction with the BADGER

Informed Consent Procedure CL54)

### Consent Form 3

This form should only be used where it would be usual to seek written consent but an adult patient (18 or over) lacks capacity to give or withhold consent to treatment. If an adult **has** capacity to accept or refuse treatment, you should use the standard '**Consent Form 1**' and respect any refusal. Where treatment is very urgent (for example if the patient is critically ill), it may not be feasible to fill in a form at the time, but you should document your clinical decisions appropriately afterwards. If the adult now lacks capacity, but has clearly refused particular treatment in advance of their loss of capacity (for example in an advance directive or 'living will'), then you must abide by that refusal if it was validly made and is applicable to the circumstances.

### When treatment can be given to a patient who is unable to consent

For treatment to be given to a patient who is unable to consent, the following **must** apply:

- **the patient must lack the capacity ('competence') to give or withhold consent to this procedure AND**
- **the procedure must be in the patient's best interests.**

### Capacity

A patient will lack capacity to consent to a particular intervention if he or she is:

- unable to comprehend and retain information material to the decision, especially as to the consequences of having, or not having, the intervention in question; and/or
- unable to use and weigh this information in the decision-making process.

Before making a judgement that a patient lacks capacity you must take all steps reasonable in the circumstances to assist the patient in taking their own decisions. This may involve explaining what is involved in very simple language, using pictures and communication and decision-aids as appropriate. People close to the patient (spouse/partner, family, friends and carers) may often be able to help.

Capacity is 'decision-specific': a patient may lack capacity to take a particular complex decision, but be quite able to take other more straight-forward decisions or parts of decisions.

### Best interests

A patient's best interests are not limited to their best medical interests. Other factors which form part of the best interests' decision include:

- the wishes and beliefs of the patient when competent
- their current wishes
- their general well-being
- their spiritual and religious welfare

Two incapacitated patients, whose *physical* condition is identical, may therefore, have different best interests. Unless the patient has clearly indicated that particular individuals should not be involved in their care, or unless the urgency of their situation prevents it, you should attempt to involve people close to the patient (spouse/partner, family and friends, carer, supporter or advocate) in the decision-making process. Those close to the patient cannot require you to provide particular treatment which you do not believe to be clinically appropriate. However they will know the patient much better than you do, and therefore are likely to be able to provide valuable information about the patient's wishes and values.