

DEFINITION OF SERIOUS MEDICAL TREATMENT

Serious medical treatment is defined in the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006.

Serious medical treatment is treatment which involves providing, withdrawing or withholding treatment in circumstances where:

- in a case where a single treatment is being proposed, there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for him,
- in a case where there is a choice of treatments, a decision as to which one to use is finely balanced, or
- what is proposed would be likely to involve serious consequences for the patient.

The Code of Practice defines 'serious consequences' as those which could have a serious impact on the patient, either from the effects of the treatment itself or its wider implications. This may include treatments which:

- cause serious and prolonged pain, distress or side effects,
- have potentially major consequences for the patient (for example, stopping life-sustaining treatment or having major surgery such as heart surgery), or
- have a serious impact on the patient's future life choices (for example, interventions for ovarian cancer)

The Code of Practice gives some examples of medical treatments which could be considered serious, for the purposes of the Act:

- chemotherapy and surgery for cancer;
- electro-convulsive therapy;
- therapeutic sterilisation;
- major surgery (such as open-heart surgery or brain/neuro-surgery);
- major amputations (for example, loss of an arm or leg);
- treatments which will result in permanent loss of hearing or sight;
- withholding or stopping artificial nutrition and hydration;
- termination of pregnancy

Oxfordshire: guidelines for involvement of an Independent Mental Capacity Advocate ('IMCA') in Serious Medical Treatment decisions

However, the Code of Practice adds that these are illustrative examples only, and whether or not these procedures are considered serious medical treatment in any given case will depend on the circumstances and the consequences for the patient. Decision-makers who are not sure whether they need to instruct an IMCA should contact the IMCA provider for Oxfordshire (Oxfordshire Advocacy Development Group) on 01865 767462; email imca@oadg.org.uk; or, for discussion, may email mentalcapacityact@oxfordshire.gov.uk .

The only situation in which the duty to instruct an IMCA need not be followed, is when an urgent decision is needed (for example to save someone's life). This decision must be recorded with the reason for non-referral.