

Decision-making for ICU admissions

Legal and ethical framework

Train the trainers workshop 2017

What is the ethically relevant decision?

- Decision to refer or not to refer?
- Decision to admit or not to admit?
- What is the best treatment for this patient?

Decision-making

- Decisions regarding patient care
 - Patient has capacity (consent/shared decision making)
 - Patient lacks capacity (best interests)

Decision-making

Patient has capacity

Common law:

- *Montgomery v Lanarkshire Health Board (Scotland)* (Supreme Court 2015)
- For consent to medical treatment to be valid, the patient must be put into a position to decide personally what is material to him or her. Material risks include what a reasonable person in the patient's position might attach significance to and any reasonable alternative treatment. In addition the doctor should be reasonably aware of specific risks that this patient might attach significance to. *Requires dialogue with the patient*

Decision-making

Patient has capacity

Common law:

- RE T (adult refusal of treatment) 1992 Court of Appeal

‘A man or woman of full age and sound understanding may choose to reject medical advice and medical or surgical treatment either partially or in its entirety. A decision to refuse medical treatment by a patient capable of making the decision does not have to be sensible, rational or well-considered’

Decision-making

Patient has capacity

Mental Capacity Act 2005

- A person aged 16 and over is assumed to have capacity
- Note cognitive impairment per se does not mean lack of capacity
- Implications for patients who have learning difficulties or dementia

You need to talk to the patient

Decision-making

Patient lacks capacity

Mental Capacity Act 2005:

- A valid and applicable advance refusal of treatment must be respected
- A registered Welfare Lasting Power of Attorney must be respected (the holder of the LPA can make decisions as a proxy for the patient, but must do so according to the principle of best interests)

Decision-making

Mental Capacity Act 2005:

- If no relevant ADRT or LPA then:
- The legal principle is that the decision must be made in the person's best interests (section 4)

In determining what is in a person's best interests, the person making the determination must not make it merely on the basis of—

(a) the person's age or appearance, or

(b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.

Decision-making

Mental Capacity Act 2005:

You must consider—

(a) whether it is likely that the person will at some time regain capacity to make a decision (b) if it appears likely that he will, when that is likely to be.

You must, so far as reasonably practicable, permit and encourage the person to participate as fully as possible in any decision affecting him/her.

Decision-making

Mental Capacity Act 2005:

You must consider, so far as is reasonably ascertainable—

- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
- (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
- (c) the other factors that he would be likely to consider if he were able to do so.

Decision-making

Mental Capacity Act 2005:

You must take into account, if it is practicable and appropriate to consult them, the views of—

(a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,

(b) anyone engaged in caring for the person or interested in his welfare,

(c) any donee of a lasting power of attorney granted by the person, and

(d) any deputy appointed for the person by the court,

Decision-making

- A decision to refer or admit/not admit to ICU is a decision about whether to withhold a potentially life sustaining treatment
- Clinical component what *can* we do?
- Ethical component what *should* we do?
- Both need justification

Professional guidance

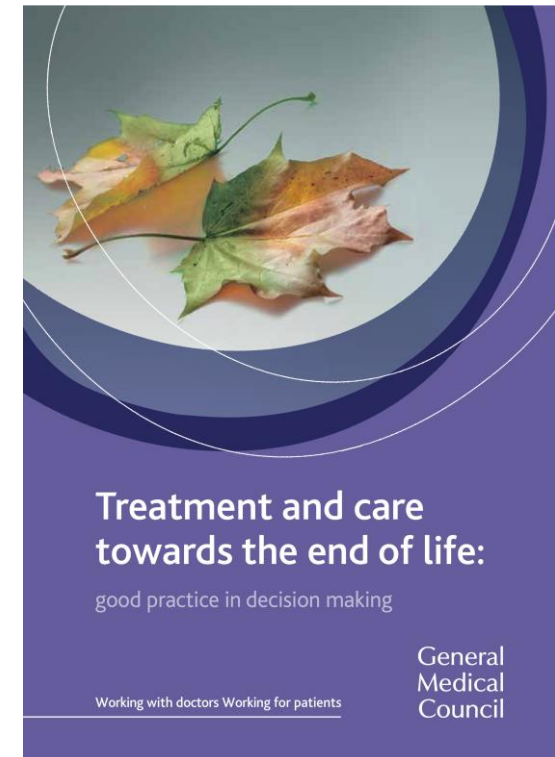
WARWICK

24. The starting point for reaching good decisions is careful consideration of the patient's clinical situation,... You must carry out a thorough assessment of the patient's condition and consider the likely prognosis...

25. You should identify treatment options based on:

(a) up-to-date clinical evidence about effectiveness, side effects and other risks


(b) relevant clinical guidelines on the treatment and management of the patient's condition, or of patients with similar underlying risk factors, such as those issued by the National Institute for Health and Clinical Excellence (NICE) and the Scottish Intercollegiate Guidelines Network (SIGN).



Professional guidance

WARWICK

16(f) ...the doctor must consult with members of the healthcare team and those close to the patient (as far as it is practical and appropriate to do so) before reaching a decision. When consulting, the doctor will explain the issues; seek information about the patient's circumstances; and seek views about the patient's wishes, preferences, feelings, beliefs and values. ...The doctor must take the views of those consulted into account in considering which option would be least restrictive of the patient's future choices and in making the final decision about which option is of overall benefit to the patient.



Treatment and care towards the end of life:
good practice in decision making

Working with doctors Working for patients

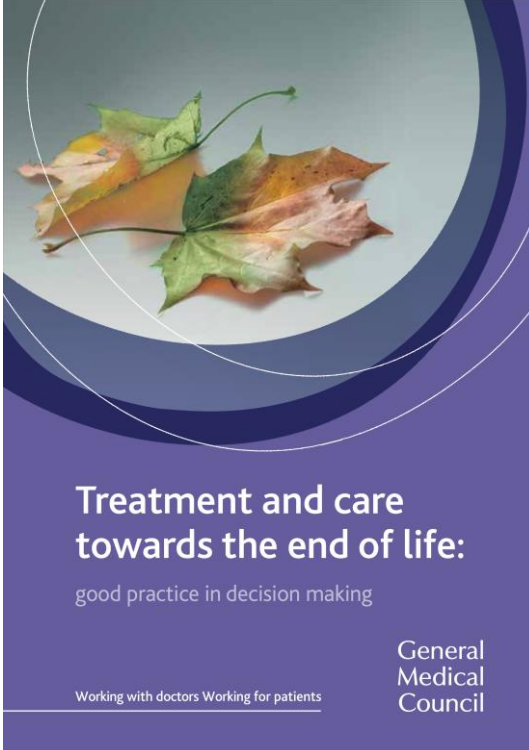
General Medical Council

Professional guidance

WARWICK

40. The benefits of a treatment that may prolong life, improve a patient's condition or manage their symptoms must be weighed against the burdens and risks for that patient, before you can reach a view about its overall benefit. ...

41. The benefits, burdens and risks associated with a treatment are not always limited to clinical considerations, and you should be careful to take account of the other factors relevant to the circumstances of each patient.



Treatment and care towards the end of life:
good practice in decision making

General Medical Council

Working with doctors Working for patients

What is the ethically relevant question?

- Should we refer/admit this patient to ICU?
- What treatment options would be best for this patient?

What would a good decision making process look like?

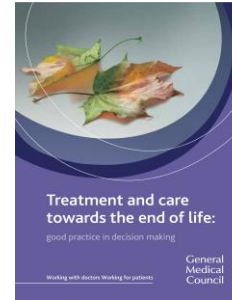
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Transparent
Consistent
Ethically justified
Evidence based
Patient centred

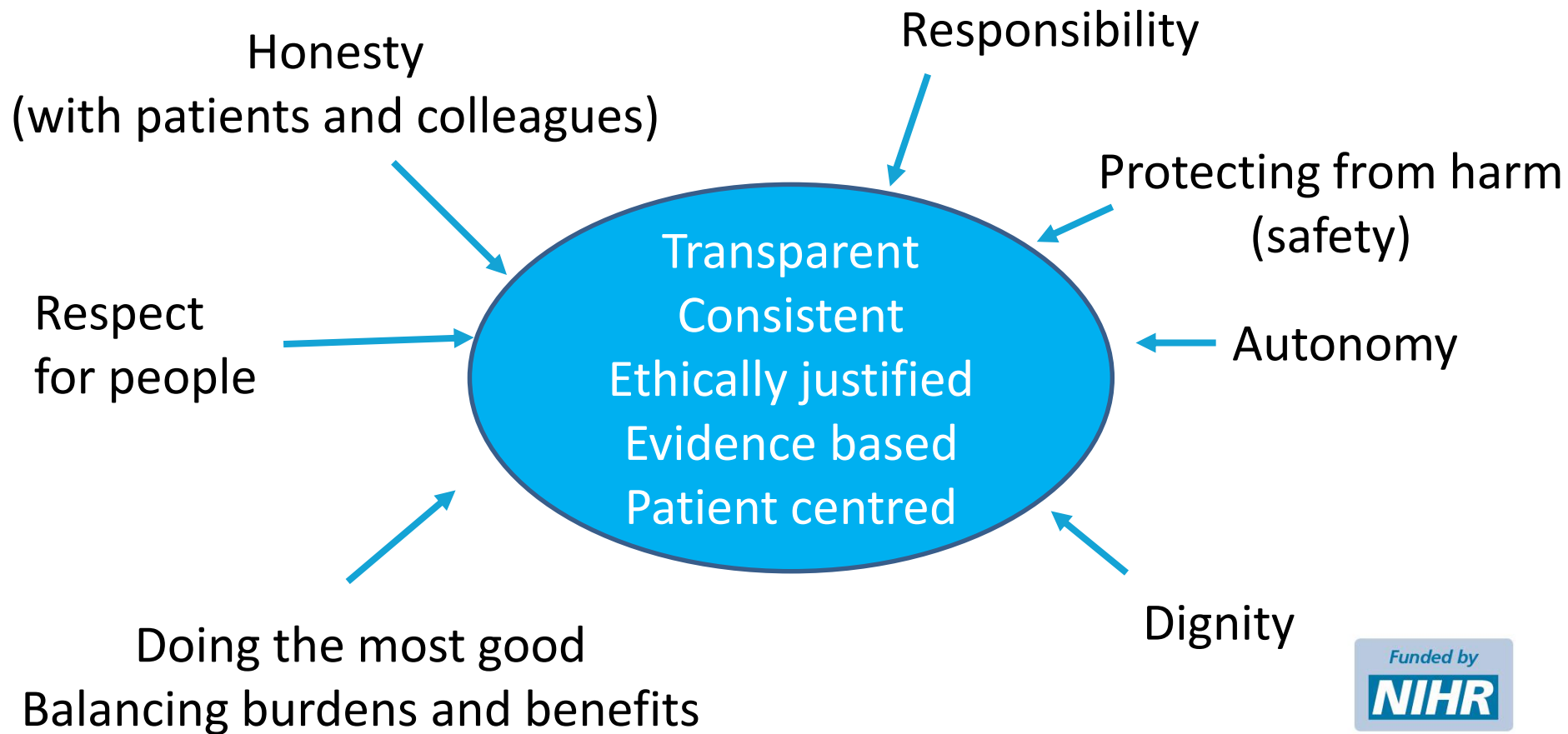
Ethical framework

- Principles
- Particulars
- Perspectives

Principles



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Particulars

- Clinical information
 - Acute condition
 - Previous health/co morbidities
 - Functional reserve
- Contextual information
 - Family situation
 - Patient's quality of life (as perceived by them)
 - Lasting power of attorney
 - Capacity to deliver care on the ward
 - Capacity to deliver care on ICU

Perspectives

- The patient
 - Current views/values/wishes
 - Previously known/expressed views/values/wishes (ADRT)
 - Nominated representative (LPA)
 - What is important to this person in relation to their treatment?
- Family/friends
 - Their knowledge of patient
 - Their views on benefits and burdens of treatment

Perspectives

- The referring team (may know patient better)
 - Consultant
 - Junior doctors
 - Nurses (ward and outreach)
- The ICU team (expert knowledge of treating the critically ill patient)

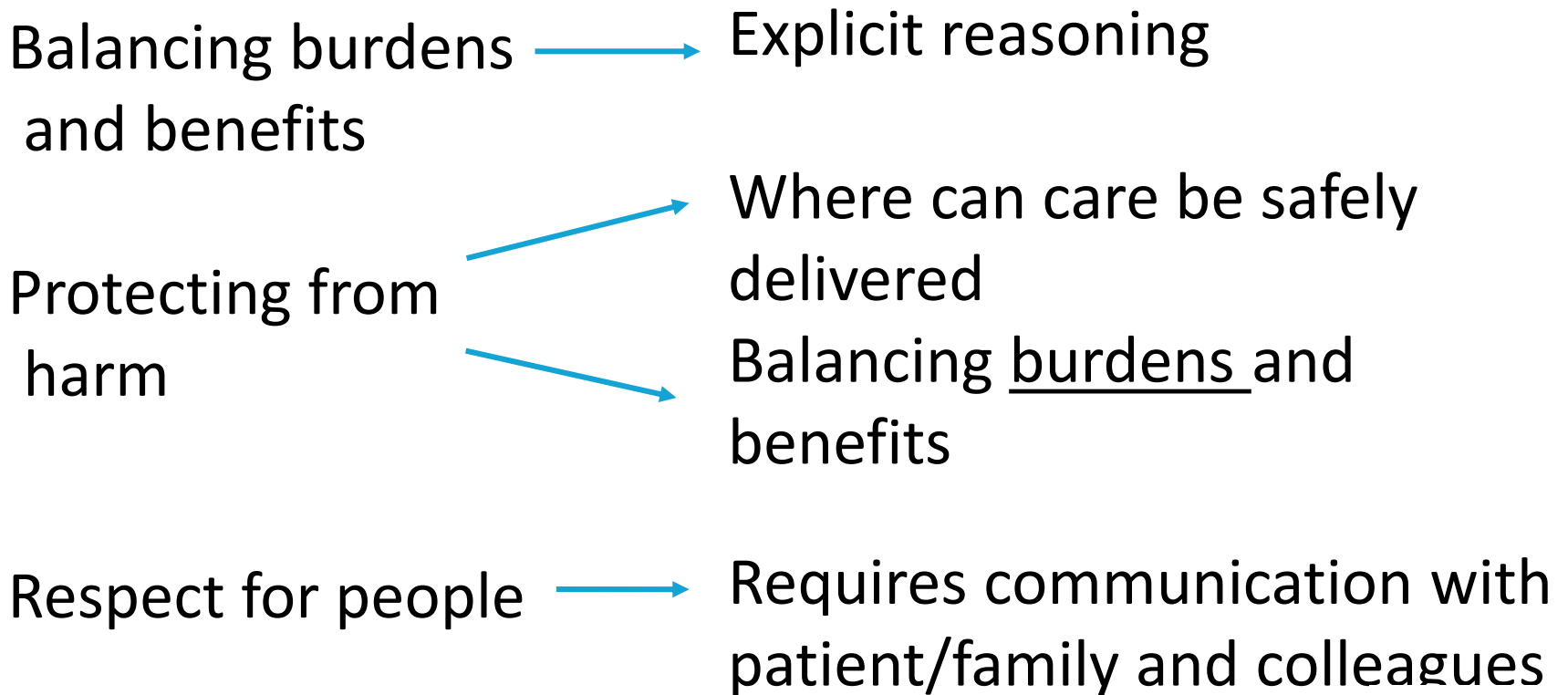
Principles to practice

Honesty → Encourages explicit reasons for referral and admission; requires communication with patient and family

Autonomy → prompt to consider what matters to **this particular patient**

Dignity →

Principles to practice



Development of support for decisions around referral and admission to ICU

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- Draws on research findings
- Reflects best current practice
- Mitigates for possible shortcomings in process
- Integrates ethical reasoning into decision-making process
- Addresses whole of decision-making process

1. Referral mechanism

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- **No current standards in referral**
- Improve communication between clinical teams
- Prompt gathering of relevant information
- Prompt best interests deliberation at referral stage
- Improve communication with patient and family

2. Patient and family support

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Treating people who are
critically ill
Information for patients

You have been given this information sheet because the doctors and nurses caring for you have asked the intensive care team for advice about your treatment. When someone becomes suddenly very unwell (critically ill), there are different options about what is the right treatment for them. This leaflet is about these options. We hope that this information will help you to understand what is happening, and to take part in discussions about your care. This will help the doctors and nurses make sure you get the treatment that is right for you. You do not need to read this, or take part in any discussions, if you do not want to.

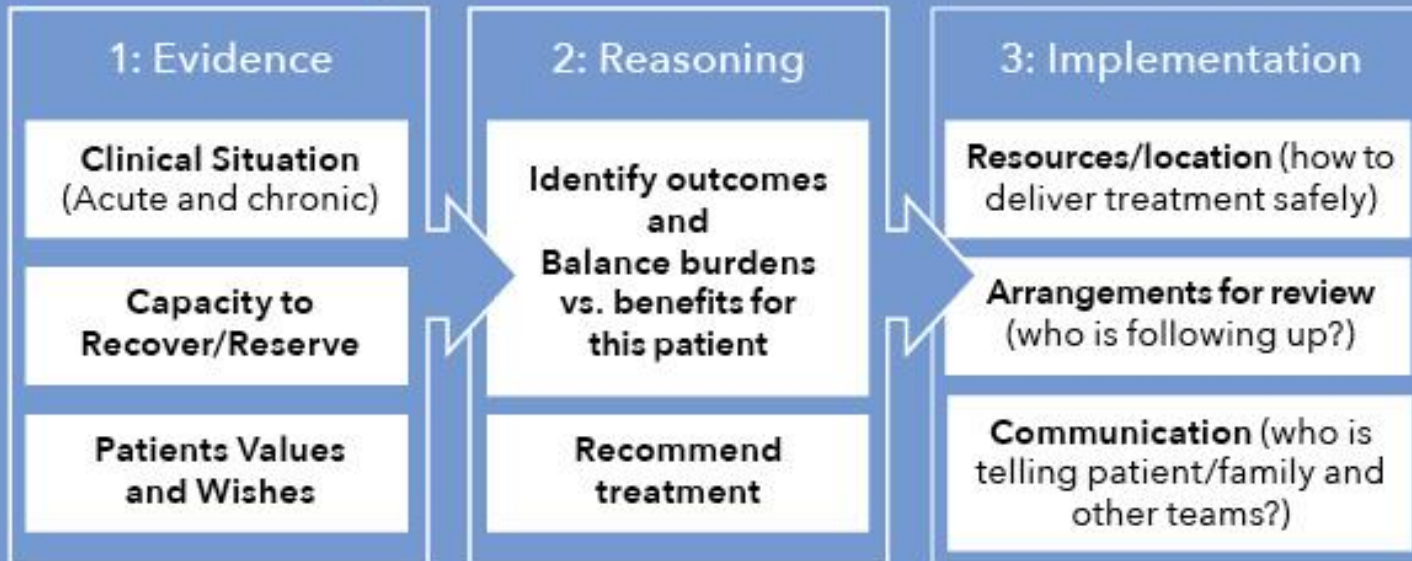
- Leaflets for patients and family/friends
 - Explains the process and reasoning to patients and families
 - Supports them to participate
 - Provides links to ongoing support

3. Decision-support framework

- **Currently no standard system for process of decision-making**
 - A. Address context of decision-making
 - B. Information gathering
 - C. Deliberation on optimal therapy for the patient and the most appropriate setting for that care
 - D. Communication of the decision and planning for future care



Decision-making for escalation of treatment



Decision-making for Intensive care unit admissions 2016. REC: 15/WM/0025