Doctors often have to make decisions about the care patients who are unwell and likely to die in the near future. The GMC has published written guidelines for doctors who have to make decisions about end of life care and the withdrawal of treatment. The guidelines should be read in conjunction with local hospital and hospice policies and must be compliant with national law and policy. Doctors also need to be familiar with the legal concept known as the ‘Doctrine of Double Effect’, when prescribing drugs for pain-relief and comfort, that may also inadvertently hasten death. Any decision that a doctor makes must be lawful, otherwise they are likely to face criminal charges and GMC disciplinary proceedings.

The Liverpool Care Pathway (LCP) has been a particularly useful resource for clinicians involved in making a patient comfortable in their last weeks, days and hours of life, as it has come about through consultation and peer review. The pathway provides guidance to doctors about the provision of palliative care, including drug administration, hydration, and nutrition. The pathway or a variation of it has been adopted by the majority of hospitals and hospices across the UK. This pathway is currently under review, however, due to concerns that patients have been placed on it when they were not moribund.

An especially controversial area of concern for patients is where doctors make a decision that a patient is not for resuscitation. Before recording or making a “Do Not Resuscitate” directive, doctors need to make sure that they
follow the appropriate protocol, taking into account the patient’s wishes if they have capacity, or arriving at a best interests decision by ensuring they take all relevant evidence and opinions into account (including those of family members and multidisciplinary colleagues, where appropriate). National guidance from the Resuscitation Council is available to aid doctors in coming to a reasoned and ethical decision. A doctor’s rationale should be properly recorded in notes and the decision should be kept under review.

To view some of the relevant documents and Decision Making Tools, visit the following (external) links:

Treatment and Care Towards the End of Life: Good Practice in Decision Making (English Version) PDF (GMC Publications)

Marie Curie Guidance on Liverpool Care Pathway (Marie Curie)

Guidance on “Do Not Resuscitate” Directives (Resuscitation Council Guidance)

Glossary of Terms Used in End of Life Care (GMC Publication)

Resuscitation Guidelines – How to Resuscitate (Resuscitation Council Guidance)

Palliative care decisions can on occasions be controversial and misunderstood by colleagues, patients and families. Newspapers, too, will critically focus on whether doctors get things right and whether families of the terminally ill are properly involved in the end of life care (see for example a Telegraph Article on the Liverpool Care Pathway). It is especially important for a doctor to take into account the opinions of others, when making best-interest decisions for those patients who lack capacity, and to keep good records of what is decided and how a decision is reached. On occasions, the courts may become involved with supervising and adjudicating on a doctor’s decision that relates to care and treatment of an adult or child, where there is disagreement or
the court’s opinion is sought.

The legal framework and ‘best practice’ standards change from time to time and it is important that doctors keep up to date on these topics.

Where doctors make a significant error of judgment relating to end of life care, their motives will generally be examined at a GMC fitness to practise hearing, held in public. Past GMC end of life cases include: [GMC v Dr Iain Kerr](#) who was given a six month Order of Suspension from the Register for his role in prescribing a drug to an elderly patient that was not clinically justified and which was likely to be used by the patient to end her own life.

The following cases are illustrations of how the courts assesses poor prognosis and quality of life, when adjudicating on the lawfulness of the approach of doctors to dying patients. The case law provides some useful guidance.

*Case Law on End of Life Decisions:*

IN THE SUPREME COURT: In [Aintree University Hospitals NHS Foundation Trust v James [2013] UKSC 67](#) the Supreme Court held that pursuant to section 5 of the [Mental Capacity Act 2005](#) the clinicians should focus on whether it is in the best interests of a patient (who lacks capacity) to give or provide treatment, rather than deciding whether to withdraw treatment in the best interests of the patient. If care and treatment is not objectively in the best interests then the court would not be in a position to authorise treatment because it would be unlawful to give any treatment. The court identified a number of factors which the clinician decision-makers would need to consider in weighing up the evidence available in order to come to a decision in the patient’s best interests, with

IN THE COURT OF APPEAL: In the (same) case of Aintree University Hospitals NHS Foundation Trust v David James (by his litigation friend the Official Solicitor); May James; Julie James [2013] EWCA Civ 65 the Court of Appeal determined that it was in a patient’s best interests for a hospital to withhold treatment that was life-sustaining, where ongoing clinical interventions were likely to be futile, and were extremely painful and burdensome for the patient to endure. The patient would be unlikely to recover from their medical condition, which included multi-organ failure, respiratory failure (Mr James was on a ventilator), cardiovascular failure and renal failure. As he deteriorated he also developed various complications, including sepsis, stroke and myocardial infarction. The patient was in a minimal conscious state. The prognosis was extremely poor.

The patient’s family opposed the hospital doctors’ making decisions about the withdrawal of treatment. The hospital had therefore sought a declaration that it would be lawful for doctors to withdraw/withhold treatment. The Court of Appeal, in part, relied on the Capacity Act 2005 s.1(5) and the code of practice that accompanies the Act, to determine the legal test to be applied. The appeal court made a declaration that it would be lawful for doctors to withhold treatment, in the best interests of the patient. (March 2013)

Doctors Defence Service provides Legal Advice and Guidance to Doctors who wish to clarify the legal basis for a decision they have made or intend to make. At Doctors Defence Service, we have lawyers who are trained in medical law, and lawyers who are clinically qualified — who have practised in the NHS and in private practice. Our lawyers can help doctors to better understand the current legal framework on end of life decisions and the minimum standards expected of a doctor. Our
lawyers can also represent doctors in criminal and regulatory proceedings related to end of life care. Call us on: 0800 10 88 739 for more details of our legal advice services, or use our Contact Form.

Legal Advice from a UK Medical Law Lawyer

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