



Emergency declarations 24/7



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“The firm’s healthcare department is extremely expert, with a great depth of experience. Members are always helpful and approachable, and they provide the advice and support we require very efficiently.

Chambers UK

In Healthcare situations arise where a Court decision may be required as a matter of urgency every hour of every day.

For this purpose an “emergency situation” is defined as follows:

- Potentially life-threatening, one in which irreparable damage to the patient’s health is anticipated.
- Where doctors or hospital managers are faced with a refusal by an adult competent patient to accept essential treatment.
- Where there is doubt as to capacity to consent to life saving treatment or conscientious objection such as Jehovah’s Witnesses and blood transfusions.
- Where there is an issue about competency and capacity regarding patients needing urgent physical treatment.
- Where urgent declarations are required regarding legality of proposed treatment or withdrawal of life sustaining care.

Case Law has established the categories of medical treatment requiring a Court application:

- Withdrawal of artificial nutrition and hydration from a patient in a permanent vegetative state
- Non-therapeutic sterilisation treatment of a person who cannot consent
- Termination of pregnancy in the absence of consent

The Mental Capacity Act 2005 and Code enhanced the power of the Court of Protection to grant interim injunctions and declarations and other appropriate orders in relation to serious medical treatment and deprivation of liberty decisions.

Applications should be made as a matter of good medical practice whenever the legality of the treatment proposed is in doubt and as soon as possible:

- Withdrawal or withholding of life-sustaining treatment
- Any serious treatment where there is a disagreement between those involved and those close to the patient.
- Where treatment proposed may involve the use of force to restrain the patient or may otherwise be restricted by the patient.
- Invasive procedures on children are subject to the inherent jurisdiction of the Court in respect of whom there is no parental consent forthcoming.
- Organ or regenerative tissue donation by a patient lacking capacity.
- Delivery by Caesarean section when the mother’s mental capacity is in issue.
- Authorising separation of Siamese Twins against the parents’ wishes.
- Doubt or disagreement about the mental capacity of the patient in accordance with the Mental Capacity Act 2005 and invasive physical treatment when considered to be in the patient’s best interests.

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- Welfare decisions where there is disagreement between the family carers and those with a duty of care towards the patient.

It is not strictly necessary to obtain prior approval of the Court for medical treatment for non-therapeutic purposes in cases of termination of pregnancy (see S.1 Abortion Act 1967), human tissue transplants (see Re Y (Mental Incapacity Bone Marrow Transplant) [1997]). There is no definition of special forms of medical treatment suitable for prior judicial declaration and each case must be decided on its own facts.

We maintain a 24-hour hotline, 7 days a week. Confidential telephone numbers are supplied to our clients on request. There may be a need for independent representation by the Official Solicitor of the Supreme Court based at 81 Chancery Lane, London WC2A 1DD, DX 0012 LONDON/CHANCERY LANE. Tel: 0207 911 7127. Fax: 0207 911 7105. E-mail: enquiries@offsol.gsi.gov.uk.

For the procedure in making urgent applications to the Court of Protection see www.publicguardian.gov.uk/decisions/applying/htm and Practice Direction E under Part 9 and 10 of the Court of Protection Rules 2007.

For out of Court hours service at RCJ the number is 0207947 6000 and ask for Security who will refer you to the relevant urgent business officer.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.