Mental Capacity Act or Mental Health Act?

It is not always easy to decide which Act to use. However, the criteria for detaining a patient under the Mental Health Act include that it is necessary to use the MHA for the patient’s health or safety or for the protection of others – i.e. if the treatment can be given with the authority of the Mental Capacity Act then the MHA is not necessary and should not be used.

Patient refuses treatment for serious condition*

ASSESS CAPACITY TO MAKE THIS DECISION

HAS capacity

LACKS capacity

Aged 18+ and HAS capacity:
Follow patient’s wishes unless the treatment is for a mental disorder** and the MHA applies

Aged 16 or 17 and HAS capacity:
Complicated ...
Follow patient’s wishes unless the treatment is for a mental disorder and the MHA applies (there is no lower age limit for the MHA).

If life-threatening physical disorder that is not a cause or symptom of a mental disorder, consider consulting those with parental responsibility (unless breach of confidentiality would be harmful). Get second opinions and legal advice!

(Age 16+)
Use this checklist:
• No valid advance refusal
• No valid Health and Welfare Attorney who refuses consent
• In best interests
• No need for DoLS

If YES to ALL

Is patient objecting or resisting?

YES

Use MHA for a mental disorder
Use MCA for a physical disorder that is a cause of a mental disorder

NO

MCA gives authority for treatment for physical or mental disorder, in hospital or community

*Use of statute should be necessary.  **Disorder or disability of mind.