There are specific legal frameworks in each jurisdiction of the UK to support the treatment of adult patients who lack capacity to consent for themselves.

**Assessing capacity**

- There is an assumption that adult patients have capacity unless it is established that they do not.
- Adults are those aged 16 and above.
- A patient should not be treated as unable to make a decision, unless all practicable steps to help them do so have been taken, without success.
- Capacity can be assessed by checking whether or not a patient can:
  - understand, and retain relevant information
  - weigh up the information
  - make a decision based on the information
  - communicate their decision (whether by talking or other means).
- If the answer is "no" to any of the above, then a person lacks capacity to make that decision.
- Capacity is situation specific; a patient with reduced capacity may be capable of consenting to simple procedures but not to more complex treatment.
- Capacity may fluctuate, for example at different times of the day or depending on whether sedative medication has recently been taken.
- Capacity may be temporarily impaired during illness, but someone lacking capacity may regain it as their health improves. Appropriately detailed notes and a documented assessment of capacity are essential in these cases.
- Any assessment of capacity must focus on the patient, although in relation to their best interests. Those close to the patient may also be able to provide useful information about previously expressed wishes. Mental illness is not a direct indicator of capacity.

**Legal considerations**

- There is specific legislation about treating adults lacking capacity:
  - England and Wales: Mental Capacity Act 2005
  - Scotland: Adults with Incapacity (Scotland) Act 2000
  - Northern Ireland: Mental Capacity Act (NI) 2016.
- Check whether a legally valid proxy exists, where applicable. These are:
  - England and Wales: The holder of a health and welfare lasting power of attorney (LPA) or court of protection deputyship.
  - Scotland: The holder of a welfare power of attorney (WPA) or welfare guardianship.
- Where no legally valid proxy exists, patients who lack capacity should not be deprived of appropriate treatment without an assessment of what is in their best interests.
- Follow guidance from:
  - The relevant capacity legislation
  - General Medical Council (GMC) or General Dental Council (GDC).
Key points

- An adult patient is assumed to have capacity unless it can be shown otherwise.
- Capacity is task-specific and someone with reduced capacity may be able to consent to some aspects of their care.
- Be aware of the mental capacity legislation in your jurisdiction.

Further guidance

- GDC, Standards for the dental team: https://www.gdc-uk.org/professionals/standards
- GMC, Consent- doctors and patients making decisions together: https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/consent

MDDUS Training & CPD resources: https://www.mddus.com/training-and-cpd