

Informed Consent: Problems and Exceptions

Dr Simon Chan

Department of Anaesthesia and Intensive Care

Prince of Wales Hospital

The Chinese University of Hong Kong

Informed Consent

- Permission for something to happen or agreement to do something
- Medical informed consent
 - Permission granted in the knowledge of consequence
 - The main ethical principle underlying consent is autonomy



Autonomy

- Freedom from external control or influence, self-government
- A concept found in moral, political and bioethical philosophy
- For a *rational* individual, the capacity to make an informed, un-coerced decision
- But is autonomy absolute?
 - Individual vs society
- The modern democratic society has designed rules and laws to create fair way of living
- Informed consent for medical interventions or invasive treatments – a legal requirement



Consent: patients and doctors making decisions together

Working with doctors Working for patients

General
Medical
Council



香港醫務委員會 THE MEDICAL COUNCIL OF HONG KONG

行公義 Ensuring Justice

守專業 Maintaining Professionalism

護社羣 Protecting the Public



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Code of Professional Conduct

Section 2

The Medical Council, on the recommendation of the Ethics Committee, has reviewed and revised section 2 “Consent to medical treatment” of the Code of Professional Conduct (Revised in January 2009) with a view to providing clearer guidelines to medical practitioners on informed consent. The revised section 2 is appended below for information of members of the medical profession and supersedes the previous version with immediate effect.

AMERICAN 'EXCEPTION'-ALISM...



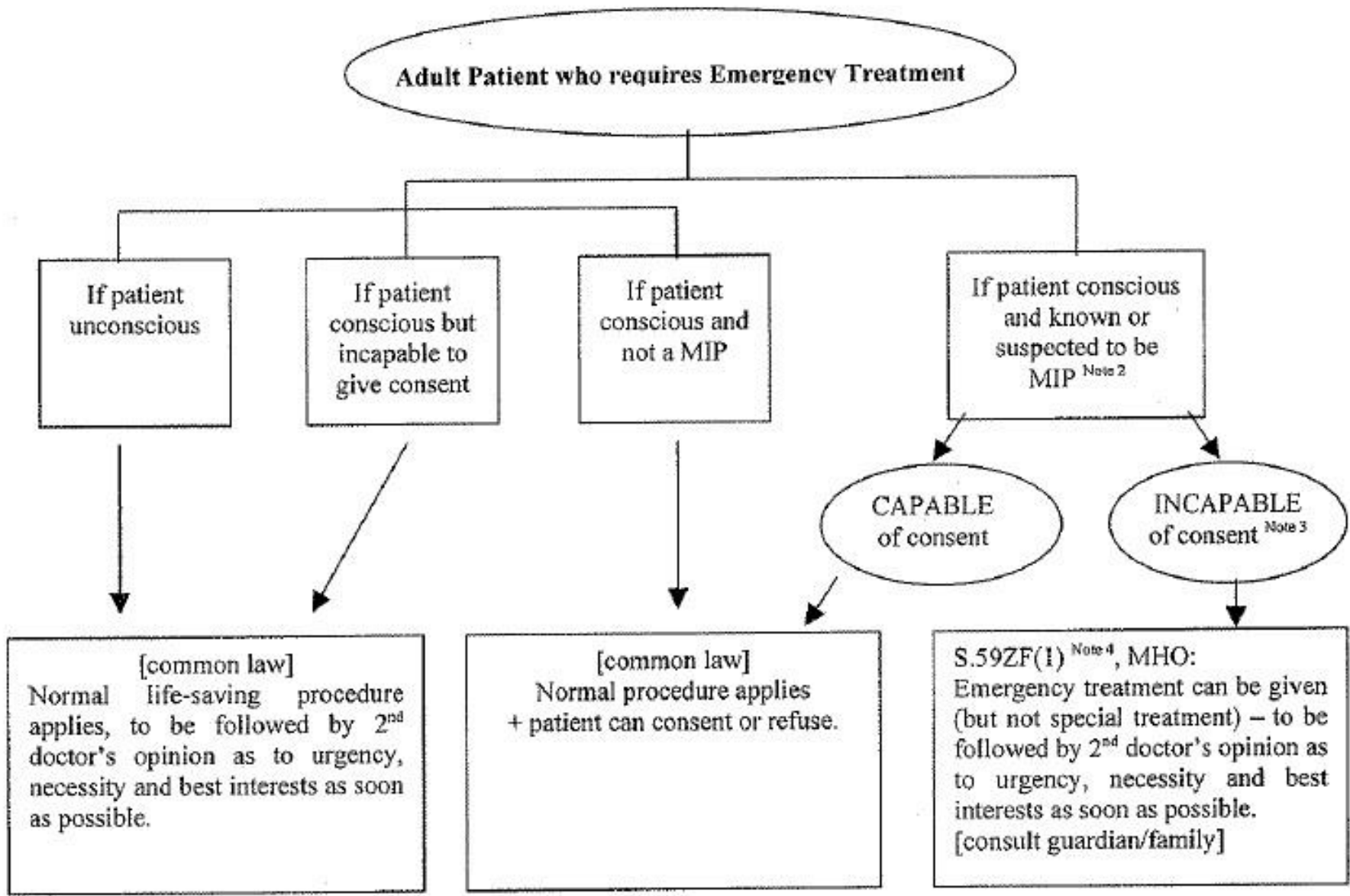
Exceptions for Informed Consent

Procedures Exempted for Written Consent

- Hospital Authority guideline
- Procedures – normal day-to-day practice of clinicians under normal circumstances
 - Blood taking, IV line, IV injection
 - Central line (internal jugular or subclavian), nasogastric tube, urinary catheter
 - Suprapubic tapping, joint aspiration, protoscopy

Emergency Treatments without Consent

- In emergency situation, physicians should provide treatment that is both urgent and necessary in the best interest of patients, provided that there is no clear advance refusal)
- May discuss with the patient's family or close friends on the view of proposed treatment when patient is competent



MIP = Mentally incapacitated person

Treatment Against Patients' Will

- Protecting the public: infectious diseases, infection control and confidentiality
- Prevention and Control of Disease Ordinance (Cap 599) in Hong Kong
 - Notification of disease with patient's diagnosis given to authority: 49 Statutory notifiable diseases, such as TB, MERS, Creutzfeldt-Jakob disease
 - Mandatory treatment of communicable diseases
 - Anonymous reporting of HIV/AIDS by physicians

Research Without Consent

- Situations where consent is difficult or impossible to obtain
 - Unconscious patients
 - Patients in shock,
 - Studies with short therapeutic window
- While research without consent will infringe the right of autonomy, whole society will benefit
- European Union allows such studies to recruit patients without their consent under strict regulation

Other Issues related to Informed Consent

- Consent for minor
- Mentally incapacitated person
- Advance directives
- Right to refuse or demand treatment
- Amount of information provided

Treatment for Child

- Persons of age of 16 are considered to be adult in UK and can give a consent for treatment
- The legal age to give a valid consent in Hong Kong is 18
- NB. Gillick competent

2.12 *Child patients*

2.12.1 Consent given by a child under the age of 18 years is not valid, unless the child is capable of understanding the nature and implications of the proposed treatment. If the child is not capable of such understanding, consent has to be obtained from the child's parent or legal guardian.

2.12.2 The degree of maturity and intelligence required for a child to understand the nature and implications of the proposed treatment will depend upon the importance and complexity of the case. It is the doctor's duty to ensure that

Assessment of Competence

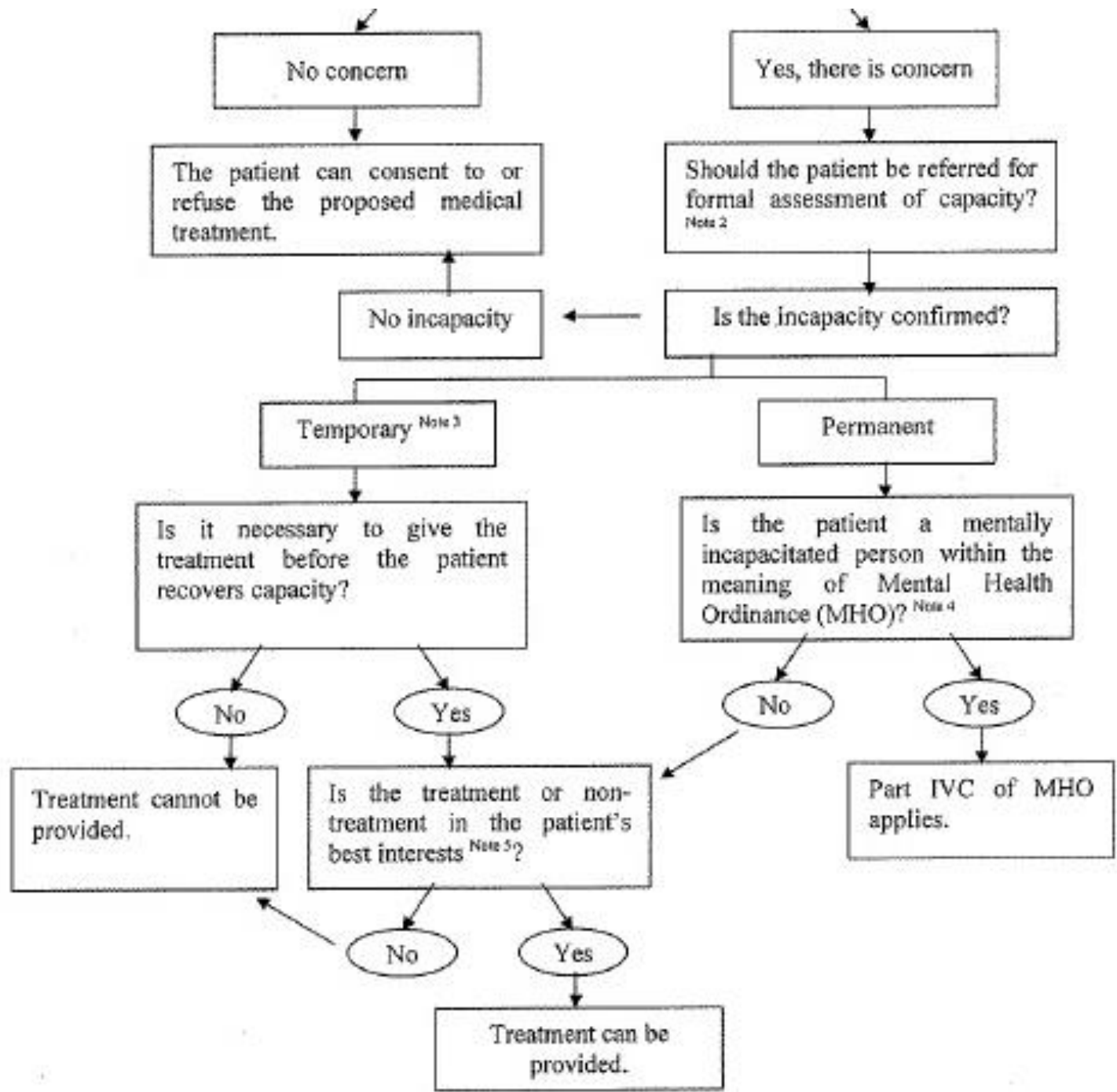
MEDICAL PRACTICE

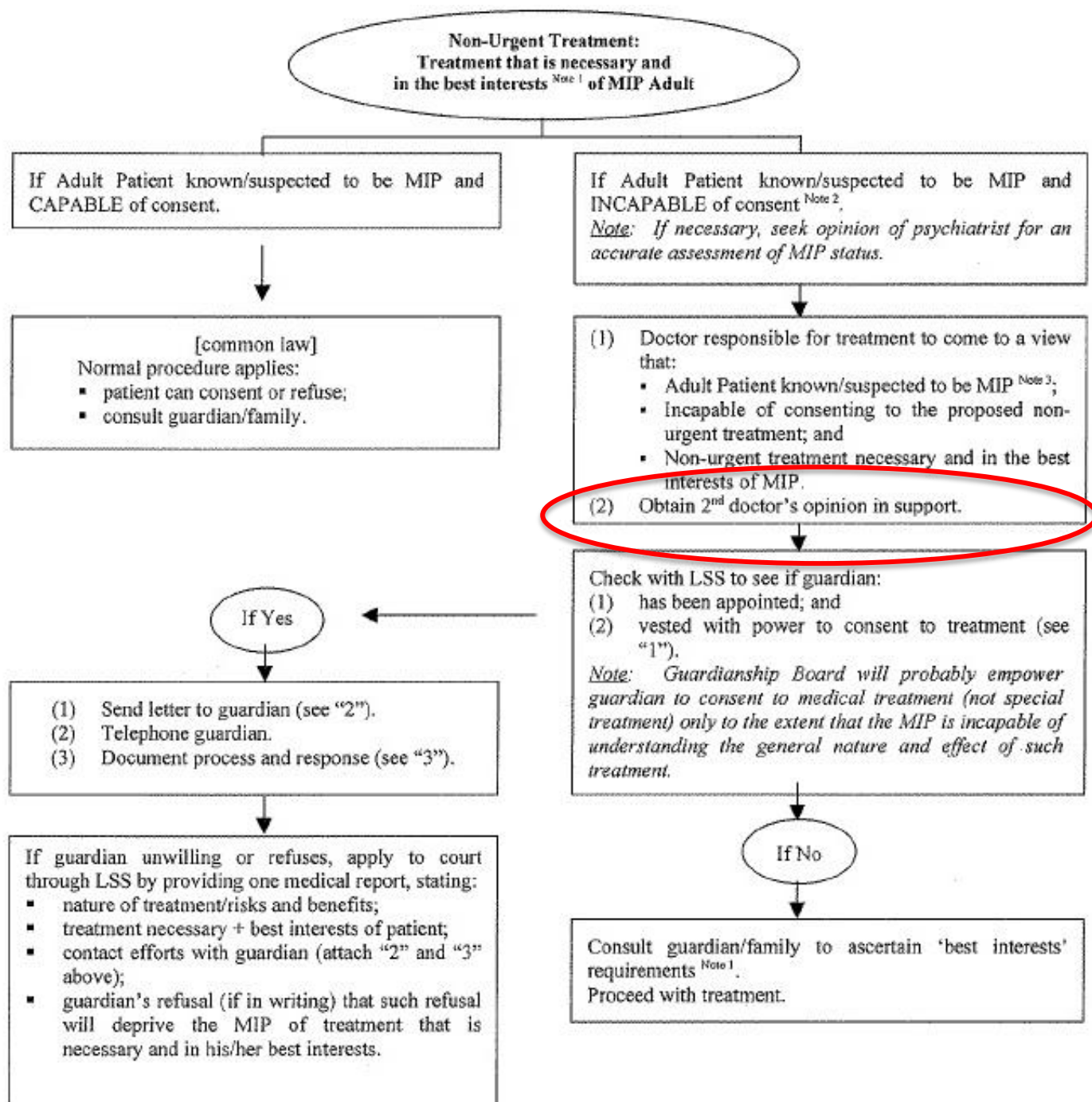
JG Wong 王穎珊
P Scully

A practical guide to capacity assessment and patient consent in Hong Kong

如何在香港實踐能力評估與病人同意治療的概念

- Capable to understand and retain the information?
- Capable to use the information and weigh it in the balance?
- Able to a degree commensurate with the gravity of the decision in question?
- Capable to communicate a decision?







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Revised in
July 2012

Guide to doctors/dentists

**Consent to Medical and Dental Treatment
of mentally incapacitated person ("MIP") in
the context of Part IVB & Part IVC,
Mental Health Ordinance (Cap. 136)**

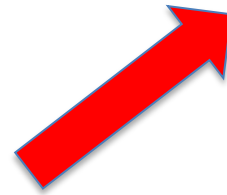
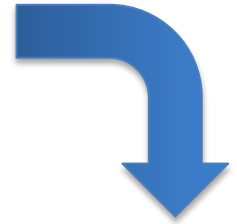
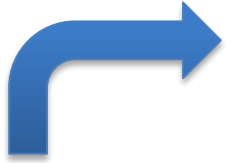
- A depressed patient took overdose of NSAIDs can be detained in hospital for treatment of his depression with Mental Health Ordinance (Cap 136 s 26)
- If the same patient developed severe gastric bleeding from overdose, he is competent enough to refuse a life-saving endoscopy and blood transfusion

Advance Directive

- When an adult becomes incompetent, he loses the right to decide on his medical care
- Advance directive, or living will, was introduced in UK in 2005 under Mental Capacity Act

Right to Refuse or Demand Treatment

- Common law clearly give competent patients to refuse any medical treatment
- In contrast, no patient has a right to demand certain treatment
- If a patient wishes treatment that in the doctor's view is clinically not indicated, there is no such ethical or legal obligation to provide such treatment (GMC 2008)
- This view has been challenged in 2004 when Burke suffered from cerebellar ataxia and demanded for a life-prolonged treatment (artificial nutrition and hydration) when he lost his ability to swallow
- The Court of Appeal overturned this ruling



Amount of Information Provided

2.10 *Proper explanation of proposed treatment and risks*

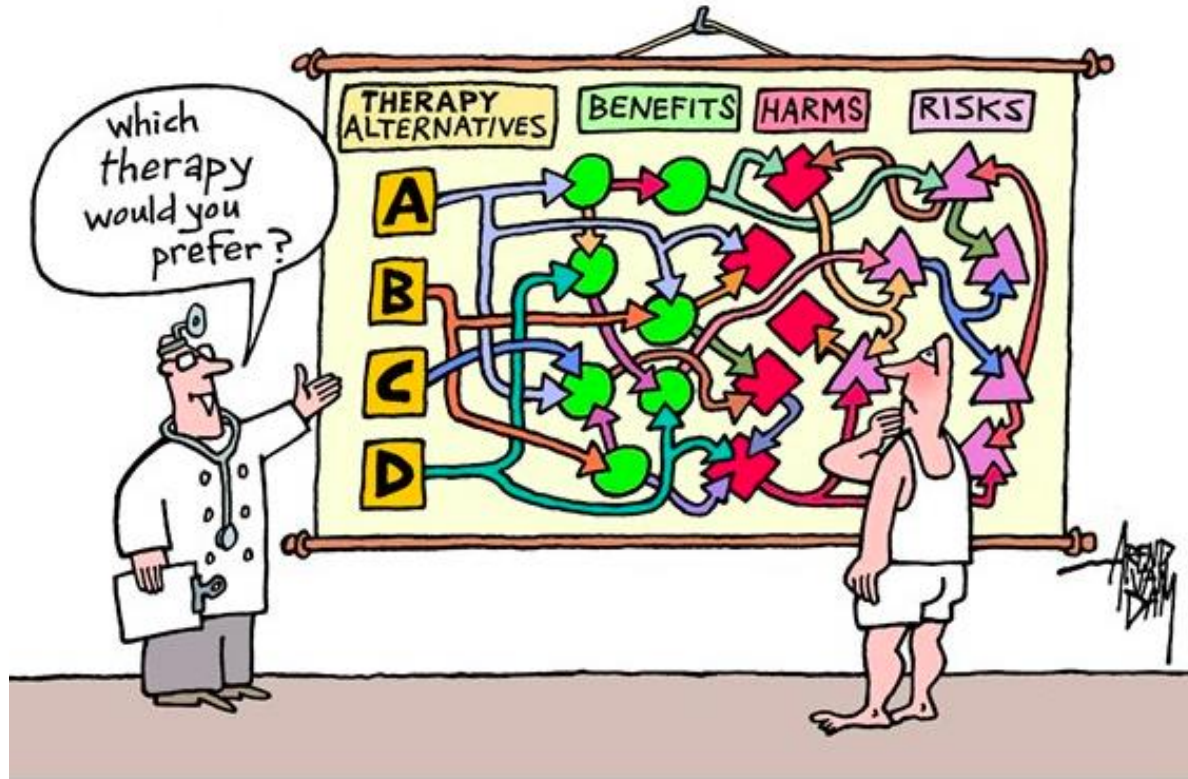
- 2.10.1 Explanation should be given in clear, simple and consistent language. Explanation should be given in terms which the patient can understand. It is the doctor's duty to ensure that the patient truly understands the explanation by being careful and patient.
- 2.10.2 The explanation should be balanced and sufficient to enable the patient to make an informed decision. The extent of explanation required will vary, depending on individual circumstances and complexity of the case.

Information Retained

- Only 20% of vital information retained in a capsule endoscope study (90% are university educated and 60% medical students)
- Measures to enhance consent form using multimedia interventions – mixed result
- Only additional time spent in one-to-one interview significantly improved understanding and recall of information

Summary

- Exceptions for informed consent – minor procedures, emergency situations, conditions that may endanger public
- The legal age to consent in Hong Kong is 18
- Mentally incapacitated patients for non-urgent treatment – need to observe part IVC of Mental Health Ordinance
- Advance directive is increasingly common in Hong Kong
- Competent adult patients have right to refuse but not to demand treatment
- It remains the clinician's judgment on the amount of information provided when obtain informed consent, but additional time in interview will improve understanding and recall of information



informed consent

Thank you