

HOW CAN I LEARN MORE?

This may be a very difficult time for you and your family and it may raise a number of questions. We encourage you to talk with members of your healthcare team if you have any questions.

Social Worker: _____

416-762-7316 ext. _____

Patient Care Manager: _____

416-762-7316 ext. _____

Patient Relations: 416-762-7316 ext. 2119

This document is based on the Health Care Consent Act (1996). The full Act can be found at www.e-laws.gov.on.ca.

More information is also available from the Consent and Capacity Board website at www.ccboard.on.ca or the Ontario Seniors' Secretariat at www.seniors.gov.on.ca/en/advancedcare.

Disclaimer: This guide provides general information that is accurate to the best of our knowledge. It is always recommended that you consult a lawyer if you want



Making decisions
for others - your
role as a substitute
decision maker

All patients have the legal right to make their own care decisions if they are able to understand the risks and benefits.

A PATIENT'S ABILITY to make their own healthcare decisions can change over time and may require a substitute decision maker. This depends on their condition and the type of healthcare decision they are facing.

In Ontario, according to the Health Care Consent Act (1996), every person can make his/her own decisions about healthcare and treatment when they are capable of doing so.

- Patients are assumed to be capable of decision-making unless there is a reason to believe otherwise
- Patients may be capable of making decisions about their care at one time and incapable at another
- Patients who are capable of making decisions have the right to change their mind at any time

If a patient is not capable of making a decision about their care (if they are unconscious, for example), responsibility is given to a substitute decision maker.

WHEN ARE SUBSTITUTE DECISION MAKERS NEEDED?

- When the patient does not understand the information they need to know to give consent for treatment
- When the patient does not understand what might happen as a result of their decisions

WHAT TYPES OF DECISIONS ARE MADE?

When a patient is incapable of making their own decisions, substitute decision makers' responsibilities can include:

- Decisions about treatment and care
- Decisions about diagnostic procedures
- Consent about transfer to other healthcare organizations
- Decisions about end of life wishes

Except in specific cases of emergency, the substitute decision maker must give or refuse consent to treatment on behalf of a patient.

The substitute decision maker will receive all information that the patient is entitled to (e.g., what the treatment is, benefits, risks, what happens as a result of not having the treatment).

WHO CAN BE A SUBSTITUTE DECISION MAKER?

In order of priority, a substitute decision maker can be:

- A guardian
- The person named in a Power of Attorney for Personal Care document (not Power of Attorney for Property)
- A representative appointed by the Consent and Capacity Board
- A spouse or partner
- A child or parent
- A parent with right of access only
- A brother or sister
- Any other relative by blood or marriage
- A Public Guardian and Trustee

To qualify as a substitute decision maker, the person must be:

- 16 years of age or older
- Capable of making the needed decision
- Willing and available to take on this role

The law allows a relative to consent for the patient if no other higher ranking person is available. If a Power of Attorney for Personal Care document has been completed, a copy will be requested for the patient's chart.

Substitute decision makers must be available to the healthcare team within a reasonable time frame. This is particularly important for discharge planning.

HOW SHOULD DECISIONS BE MADE?

The substitute decision maker is not being asked to make the decision he/she feels best, but what he/she feels the patient would want.



Consider the patient's previously expressed wishes; their instructions may be written in a Power of Attorney (POA) document, living will, advance directive or be expressed verbally.

If the substitute decision maker does not know the patient's wishes, then the substitute decision maker must make treatment decisions according to the patient's best interest.

If the healthcare team feels that a substitute decision maker is not making decisions in the best interests of the patient, the team can apply to the Consent and Capacity Board for review.

WHAT IF AGREEMENTS CAN'T BE REACHED?

Sometimes, when there is more than one substitute decision maker, they disagree. In such situations, our staff will help the substitute decision makers work through the decision. If there is still no agreement, one of the following will occur:

- An official of the Office of the Public Guardian and Trustee (OPGT) will make a decision
- The Consent and Capacity Board will appoint one person to make the decision (the person appointed may or may not be one of the prior substitute decision makers)