

Making Health Care Decisions for Other People

Information for patients and families about Substitute Decision Making:

When patients cannot make decisions for themselves



Who are Substitute Decision-Makers?

When a patient is incapable of making health care decisions, the law requires that a Substitute Decision-Maker (SDM) give or refuse consent on the patient's behalf. The law gives a list in ranked order of people who may give or refuse consent.

Substitute Decision Makers List

(Health Care Consent Act 1996)

1. A guardian with the authority to give or refuse consent to treatment
2. An attorney for personal care with the authority to give or refuse consent to treatment
3. A representative appointed by the Consent and Capacity Board
4. A spouse or partner
5. A child or parent or a children's aid society
6. A parent who has only a right of access
7. A sibling (all equally)
8. Any other relative (related by blood, marriage or adoption)
9. The Public Guardian and Trustee is the decision maker of last resort if no other person is capable, available or willing to give or refuse consent.

The health care team will work with the people at the highest level on this list over age 16 and willing, available and capable of giving or refusing consent.

How does the Substitute Decision-Maker (SDM) decide?

There are rules in law about making health care decisions for someone else. A Substitute Decision-Maker (SDM) must make decisions based on:

- The patient's previously expressed wishes, or
- The patient's best interests, if the SDM does not know the patient's wishes
 - The SDM should consider the patient's values and beliefs
 - The SDM should talk with the health care team about whether the treatment will improve the patient's condition or well-being, prevent it from getting worse, or slow the worsening of the condition.

If you are an SDM ask yourself:

- Would the patient say yes or no to this treatment if the patient could speak to us right now?
- What is important to this person in this type of situation?

Advance Care Planning can help

Completing a Power of Attorney for personal care (POA) is the only way someone can say in advance who their SDM will be. Writing a POA for personal care can also help if more than one person is at the same place on the ranked list (for example, if the patient has more than one child or sibling) and they do not agree.

An advance directive or living will can help the SDM understand what the patient would want in different situations. They record a person's health care wishes. It is important for patients to talk about their wishes with their SDM and family so that wishes are clear.

What if SDMs disagree?

Sometimes, when there is more than one SDM, they disagree on treatment choices. Health care professionals at UHN can help SDMs come to an agreement. If SDMs still cannot agree, the Public Guardian and Trustee will make the decision.

What happens if the treatment team disagrees with the SDM?

Sometimes the patient's treatment team thinks the SDMs are not making a decision based on the wishes or best interests of the patient. If the team and the SDMs cannot agree, the team or the SDMs may apply to the Consent and Capacity Board to see if the treatment decision was made according to the law.

We can help

At UHN we are committed to providing excellent patient care and making sure that patients and SDMs know their rights and what they need to do. Please feel free to talk to the staff here. Members of the health care team can help you through these difficult times to make the health care choices that the patient would want. You can find contact information listed on the following page.

Legal disclaimer: The information in this brochure is not legal advice and should not be used instead of the advice of a lawyer.

Contact information and resources

UHN Department of Clinical and Organizational Ethics

Toronto General Hospital
Phone: 416 340 4800 ext. 8607

Toronto Western Hospital
Phone: 416 603 5800 ext. 2521

Princess Margaret Cancer Centre
Phone: 416 340 4800 ext. 2710

Toronto Rehabilitation Institute
Phone: 416 597 3422 ext. 3972

UHN Patient Relations (Patient Ombudsman)

Phone: 416 340 4907

Consent & Capacity Board

Toronto Regional Office
Phone: 416 327 4142
Fax: 416 327 4207
Website: www.ccboard.on.ca

Office of the Public Guardian and Trustee

Toll-free: 1 800 518 7901
Website: www.attorneygeneral.jus.gov.on.ca/english/family/pgt/

Advance Care Planning

Speak Up: Advance Care Planning in Canada
Website: www.advancecareplanning.ca

Health Care Consent Act 1996 Substitute Decisions Act

Website: www.e-laws.gov.on.ca



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