

# Substitute Decision Makers and Naming a Power of Attorney for Personal Care



## Information for patients and families

Read this booklet to learn:

- what a Substitute Decision Maker (SDM) is
- what a Power of Attorney (POA) for Personal Care is
- how to name a POA for Personal Care
- how your health care team will use your information
- where to find more information



Sometimes people are not able to make their own health care decisions because they are ill or for other reasons. It is important to understand how decisions about your medical care will be made if you are unable to speak on your own behalf.

## **What is a substitute decision maker (SDM)?**

An SDM is a person who can legally make health care decisions on your behalf if you are not able to understand or appreciate the information needed to make decisions about your care.

- Your SDM's role is to make care decisions for you consistent with your known applicable wishes, values, and beliefs.
- When your wishes are not known, or do not apply to your health care situation, your SDM's role is to make decisions that are in your best interests.
- Best interests involve decisions that will improve or maintain a patient's condition.

## **Who is my SDM if I'm not able to make health care decisions?**

You don't have to choose your SDM. The law lists, in order, the person (or people) who will be your legally recognized decision maker(s)/SDM(s) if you do not have the ability to consent to treatment.

If you are incapable of making your own treatment decisions, a health care worker must talk to the **first person** on the list below.

If there isn't such a person, or if this person is not able, willing, or available to make health care decisions for you, the health care worker must ask the **second person** on the list. This continues, in order, until an SDM is identified from this list:

1. A legal guardian with the power to give or refuse consent to treatment
2. A Power of Attorney for Personal Care with the power to give or refuse consent to treatment
3. A person chosen by the Consent & Capacity Board
4. A spouse or partner
5. A child (over 16 years of age) or parent or a worker from the Children's Aid Society
6. A parent with right of access only
7. A brother or sister (or if more than one sibling, brothers and sisters together)
8. Any other relative (related by blood, marriage or adoption)
9. The Office of the Public Guardian and Trustee (OPGT)

The OPGT is part of the Ontario Ministry of the Attorney General. This office will make decisions about your care **only** if no other person on this list is able, willing, or available to give or refuse consent.

Where there is more than one person who qualifies as your SDM, (for example, if you have 2 children willing to be your SDM), they can both make decisions about your care.

If equally ranked SDMs cannot agree on decisions about your care, the OPGT will make the treatment decision instead. You may wish to appoint one person as your SDM to minimize the likelihood this happening.

## What if I want to choose exactly who will make health decisions for me?

If you want to choose the person who will be your SDM, you can make them your attorney for personal care.

The word “attorney” here does not mean a lawyer.

An attorney for personal care is someone you trust and legally choose to make health decisions for you if you are not able to make them for yourself.

## Who can I choose to be my attorney for personal care?

This person (or people) could be someone from the list above. Or, you could choose someone else, such as a close friend or a neighbour. You can choose anyone you like, **but they can't be:**

- under 16 years old
- unable to understand or appreciate information about the treatment decisions proposed for you
- someone who is paid to give you health care or other support services

If you choose more than one person, you need to specify whether they need to make the decision together, or if one can make the decision by themselves if the other(s) are not available.

## How do I make someone my attorney for personal care?

To legally make someone your attorney for personal care, you must complete a **Power of Attorney for Personal Care form**. This is a form that gives someone you trust the legal power to make health care decisions for you if you are not able to make them for yourself.

You will also need two witnesses to sign the form. When the form is complete, your POA for personal care will become your SDM when you are incapable of making health care decisions. You will always be asked to make decisions for yourself unless you are not able to do so.

If you have an attorney for personal care, your health care team will contact this person first to make health care decisions for you if you are unable to make them for yourself.

A POA for personal care is not the same as a **POA for Property**. A POA for Property manages your finances for you if you are unable to make financial decisions for yourself. Your POA for Personal Care may or may not be the same person as your POA for Property.

## What should I talk to my SDM about?

Choosing who you trust to make health care decisions for you if you are unable to make them for yourself is part of **advance care planning**. Advance care planning also includes thinking about, talking about and writing down what you would like to happen if your SDM has to make decisions for you.

Talk to your SDM about:

- any values and preferences that could help guide them if they have to make treatment decisions for you
- what medical treatment and care you would and wouldn't want if you became very ill

You can also write down these values, preferences and wishes in a document called an **Advance Care Plan (ACP)**. An ACP helps make it clear to your SDM and health care providers what medical treatment and care you would and wouldn't want.

Your ACP can be documented alongside your POA. Even if you have an ACP, your POA must follow your instructions that apply to your health care situation.

## How do I get a Power of Attorney for Personal Care and an Advance Directive?

- You can contact a lawyer to help you make a POA. (A lawyer does not have to fill out the POA for personal care forms for you.)
- You can get a [POA for Personal Care kit](#) from the Ministry of the Attorney General. The kit is free for all Ontarians.

Download the kit by visiting the website:

[www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poakit.asp](http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poakit.asp)

**or**

- Call the office to ask them to mail you a kit  
Phone: 416 314 2800 (if you live in Toronto) or  
1 800 366 0335 (free call outside of Toronto)
- University Health Network (UHN) has POA for Personal Care kits and Advance Care Planning books.  
Visit the UHN website: [www.uhn.ca/PatientsFamilies/Patient\\_Services/Bioethics\\_Program](http://www.uhn.ca/PatientsFamilies/Patient_Services/Bioethics_Program)
- If you are staying overnight at UHN, a hospital social worker on your unit can help you to get this paperwork and answer any questions you may have.  
**Important:** UHN staff cannot sign any paperwork as a witness.
- Advance Care Planning booklets and other information is available at the website: [www.advancecareplanning.ca](http://www.advancecareplanning.ca)

## **When should I give my Power of Attorney for Personal Care and Advance Directive information to my health care team?**

- Give a copy of your Power of Attorney for Personal Care or Advance Directive paperwork to your attorney for personal care to keep. This way, they can give them to your health care providers when asked.
- If you need to come to UHN for care (such as a visit to the Emergency Department or the Admitting Department) give your health care team the name and telephone number of your attorney for personal care as soon as you can.
- Give your health care team a copy (not the original) of your Power of Attorney for Personal Care or any other Advance Care planning paperwork that you have completed.

At UHN, we want to make sure that you have the person you want making decisions about your health care. Remember to tell your health care team if you have an attorney for personal care and who it is.

It's a good idea to let someone else close to you know this information, so they can also tell your health care team.

## **Where does the information go?**

We record any information that you give us in your health record. This way, all health care providers who are part of your care at UHN are able to get it quickly if they need to.

## How will my health care team use this information?

If you are unable to make health care decisions for yourself, your health care team will talk to your SDM or POA (or POAs) for personal care. They will talk about your health care plan, treatments and procedures, and your wishes, including any that you wrote in your Advance Care Plan.

Your POA for personal care will make care decisions for you when you are unable to make decisions for yourself.

## Who can I talk to if I have questions?

UHN has many team members who can help you learn more about SDMs and attorneys for personal care. Call them any time, or ask a health care team member to call for you.

If you have a question about substitute decision making, please contact UHN Bioethics. You can also talk to the social worker on your health care team.

### [UHN Bioethics Program](#)

Ann Heesters, Director  
Phone: 416 946 4501 extension 8607  
Email: [ann.heesters@uhn.ca](mailto:ann.heesters@uhn.ca)

Toronto General Hospital  
Ruby Shanker, Bioethicist  
Phone: 416 946 4501, extension 8750  
Email: [ruby.shanker@uhn.ca](mailto:ruby.shanker@uhn.ca)

Toronto Western Hospital  
Daniel Buchman, Bioethicist  
Phone: 416 603 5800, extension 2521  
Email: [daniel.buchman@uhn.ca](mailto:daniel.buchman@uhn.ca)

Toronto Rehab  
Kevin Rodrigues, Bioethicist  
Phone: 416 597 3422, extension 3972  
Email: [kevin.rodrigues@uhn.ca](mailto:kevin.rodrigues@uhn.ca)

Multi-Organ Transplant  
Jed Gross, Bioethicist  
Phone: 416 946 4501, extension 5527  
Email: [jed.gross@uhn.ca](mailto:jed.gross@uhn.ca)

Princess Margaret Cancer Centre  
Jennifer Bell, Bioethicist  
Phone: 416 340 4800, extension 2710  
Email: [jennifer.bell2@uhn.ca](mailto:jennifer.bell2@uhn.ca)



## Websites

Power of Attorney for Personal Care – Community Legal Education Ontario (CLEO)

Website: [www.cleo.on.ca/en/publications/power](http://www.cleo.on.ca/en/publications/power)

The Advance Care Planning Workbook  
(Ontario Version) Speak Up

Website: [www.makingmywishesknown.ca](http://www.makingmywishesknown.ca)

Hospice Palliative Care Ontario (HPCO)

Website: [www.hpcoco.ca](http://www.hpcoco.ca)

**Contact UHN Patient & Family Libraries for free booklets on substitute decision making, attorneys for personal care or advance care planning:**

[The Princess Margaret Patient & Family Library](#)

Main Floor, Atrium, 610 University Ave

Phone: 416 946 4501, extension 5383

Email: [patienteducationpmh@uhn.ca](mailto:patienteducationpmh@uhn.ca)

[Toronto General Hospital – Peter and Melanie Munk Patient & Family Learning Centre and Library](#)

Norman Urquhart Building – Level 1, 585 University Ave

Phone: 416 340 4800, extension 5951

Email: [tgpen@uhn.ca](mailto:tgpen@uhn.ca)

[Toronto Rehab University Centre – Sun Life Patient & Family Resource Centre](#)

Main Floor, Room 1-123, 550 University Ave

Phone: 416 597 3422, extension 3558

Email: [torontorehabhealthinfo@uhn.ca](mailto:torontorehabhealthinfo@uhn.ca)

[Toronto Western Hospital Patient & Family Library](#)

West Wing – 1st floor, 399 Bathurst St

Phone: 416 603 6277

Email: [twpfl@uhn.ca](mailto:twpfl@uhn.ca)