



CHECKLIST TO MEET ETHICAL & LEGAL OBLIGATIONS

# Making Decisions for Other People

## The Role of the Substitute Decision Maker (SDM)

We understand that this is a difficult time for you and your family. A loved one is very ill, hospitalized and unable to make her or his own treatment decisions. Someone else must make them, but who? And how?

We hope this guide helps answer your questions. Please feel free to ask about your family member's care at any time.

### WE'RE HERE TO SUPPORT OUR PATIENTS AND THEIR FAMILIES.

### CONTACT INFORMATION

#### Consent & Capacity Board - Toronto Regional Office

Phone: (416) 327-4142

Fax: (416) 924-8873

[www.ccboard.on.ca](http://www.ccboard.on.ca)

#### Health Care Consent Act

[www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca)

### Who makes treatment decisions?

In Ontario, every person can make her / his own decisions about health care and treatment when they are capable of doing so. If the patient is not capable of making a particular decision about treatment, a substitute decision-maker (SDM) will be asked to make the decision. The SDM is usually a close relative. See the *Rank of Substitute Decision Makers* on the following page.

### How does the Substitute Decision Maker decide?

There are rules in law about making health care decisions for someone else. An SDM is asked to make decisions for a patient when the patient is no longer capable of doing so.

The SDM must make decisions based on prior expressed wishes of the patient. If the SDM does not know of a wish applicable in the situation, or it is impossible to follow the wish, the SDM must act in the patient's best interests.

**Ask yourself:** "Has my mother talked about this situation—what did she say?" OR "Would my mother say she would want this treatment or not?"

### Can living wills help?

Wishes expressed by the patient when the patient was capable can help the SDM understand what the patient would want in different situations. Wishes can be expressed in a power of attorney, in other written form (Living Will) or orally. Consider whether the patient has expressed wishes concerning treatment.

### What if you do not know what the patient would want?

If the SDM does not know of a wish applicable to the situation, or if it is impossible to follow the wish, the SDM must make the decision about treatment according to the patient's best interests. "Best interests" are determined by taking into consideration the values and beliefs that the SDM knows the patient held when capable, and understanding the treatment decisions that will improve or change the patient's condition for the better.

An SDM is entitled to receive information about the nature of the treatment, expected benefits, material risks and side effects, alternative courses of action, and the likely consequences of not having the treatment.

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#### What happens when there are disagreements?

Sometimes, when there is more than one substitute decision-maker, they may disagree on treatment decisions. Here there are trained professionals to help resolve these disagreements. If substitute decision makers still cannot agree, there are two options:

A public official in the office of The Public Guardian and Trustee will make the decision

– OR –

The Consent & Capacity Board may appoint a representative to make the decision. The representative may or may not be one of the prior substitute decision-makers.

#### What is the role of the Consent & Capacity Board?

Sometimes when a treatment team and SDM do not agree, and the team cannot obtain consent, a neutral third party called the **Consent and Capacity Board (CCB)** gets involved. In this case an application may be made to the CCB to see if the treatment decision is the right one according to law. This only happens after extensive discussions between SDMs and the treatment team have not produced a result that is satisfactory to everyone.

#### Rank of Substitute Decision Makers from the Health Care Consent Act

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 & Capacity Board
4. A spouse or partner
5. A child or parent
6. A parent who has only a right of access
7. A sister or brother
8. Any other relative (related by blood, marriage or adoption)
9. Public Guardian and Trustee  
([www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca))

#### Please ask questions. We are here to help our patients and their substitute decision makers.

We are committed to providing excellent patient care and ensuring that patients and SDMs have appropriate information about their rights and obligations. Please feel free to talk to the staff here - including social workers, spiritual care providers and an ethicist.

These professionals are here to help everyone through difficult times and to help ensure that you have the information you require to help you make decisions concerning consent to treatment in line with the wishes or best interests of your loved one.

