

Making the Decision

You will be supported in making the necessary decision. Ask questions, and ensure you have all the relevant information before providing an answer. If you feel that you cannot comply with the principles of substitute decision making, let one of the health care team members know immediately.

In the event of a conflict about the principles of substitute decision making, who should be a SDM, or an inability to interpret or follow prior expressed wishes, the Health Care Consent Act provides a mechanism for a 3rd Party (called the Consent and Capacity Board) to assist patients, SDMs, and care providers in making the appropriate decision.

Hierarchy of Substitute Decision-Makers (Health care consent act of Ontario; 1996)

1. The incapable person's **guardian** of the person
2. The incapable person's **attorney** for personal care
3. A **representative** appointed by the Consent and Capacity Board
4. A **spouse** or **partner**
5. A **child** or **parent** or **children's aid society**
6. A **parent** who has only a right of access
7. A **brother** or **sister**
8. Any other **relative** (related by blood, marriage or adoption)

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 on behalf of the patient.

Contact Information

London Health Sciences Centre
Office of the Clinical Ethicist,
Tel: (519)-685-8500 Ext 75112.

Consent & Capacity Board
Phone: 1-866-777-7391 (Toll Free)
Fax: 1-866-777-7273
www.ccboard.on.ca

This information is based on the Health Care Consent Act (1996). To view this act, go to www.e-laws.gov.on.ca

Under Consolidated Law (includes Historical Versions)
Statutes and Associated Regulations

Patient Information

The Role of the Substitute Decision-Maker (SDM)

Making Healthcare Decisions for Others



London Health Sciences Centre

What does it mean to be a substitute decision-maker?

A family member or friend is very ill, hospitalized and unable to make his/her own treatment decisions. Someone else must make them – but who? And how? This brochure is designed to answer those and other questions. We are here to help our patients and their families.

Please ask questions.

Who makes treatment decisions?

In Ontario, every person can make his/her own decisions about health care and treatment when they are capable of doing so. If the patient is not capable, a **substitute decision-maker (SDM)** makes decisions about treatment. The SDM is usually a close relative. The list of SDMs is described on the back of this brochure.

How does the SDM 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. It is important to understand that as **SDM** you are not being asked to make the decision you feel would be best.

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:

“What would [patient] say if they could speak with us right now about this treatment decision?”

“Would [patient] want this treatment or not?”

Prior Wishes

While capable, a person may express wishes in respect to future treatment decisions. The SDM must follow these wishes wherever possible, once the person is no longer capable. Prior wishes may be written (e.g. power of attorney for personal care, advance directive or **living will**, or other) or they may be expressed verbally. It is also important to realize that the most recently expressed wishes trump any earlier wishes. If, for example, your loved one said that they would “want everything done to be kept alive” but now says “I’m done fighting and just want to die peacefully”, it is this second wish that you must consider when making decisions on their behalf.

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 it is impossible to follow, then 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 those treatment decisions that will improve or change the patient’s condition for the better.

Be Informed

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.

Please ask questions.

What happens if there are disagreements?

Sometimes, when there is more than one substitute decision-maker, they disagree on treatment decisions. At the hospital there are trained professionals here that can help in trying to resolve these disagreements. If you still can’t agree, there are two choices:

- A public official in the office of The Public Guardian and Trustee will make the decision,
- or
- The Consent and Capacity Board may appoint a representative to make the decision. The representative may or may not be one of the prior substitute decision-makers.

Sometimes, members of the patient’s treatment team think the SDMs are not making a decision based on the patients prior expressed wishes or best interests. In this case, the team may apply to the Consent and Capacity Board to see if the treatment decision was the right one according to the law. This almost never happens. When it does, it is only after extended discussions between SDMs and members of the treatment team have not produced a result that is satisfactory to everyone.