

The Office of the Public Guardian and Trustee

Treatment Capacity and Substitute Decision Makers

Substitute Decision Making Panel

April 13, 2016

Capacity

- A person is capable with respect to a treatment if the person is able to **understand** the information that is relevant to making a decision about the treatment and able to **appreciate** the reasonably foreseeable consequences of a decision or lack of a decision.

Rules for Substitute Decisions

- All Substitute Decision Makers (SDM's) must follow the Health Care Consent Act
- If the person has, while capable, expressed wishes about the matter then the SDM must follow these wishes if possible. These may have been expressed orally or in writing. The terms - advance directive or living will - are often used to refer to the wishes a person expresses while capable.

Rules for Substitute Decisions

- If there do not appear to be any such wishes, the decision is made in the person's **best interests**. In determining what is in the person's best interests, the **SDM must take into consideration:**
 - the **values and beliefs** the person held while capable
 - the person's **current wishes**, if these can be ascertained
 - the potential **benefits of the treatment**, admission or service
 - whether the benefits outweigh the risks
 - whether there is a less restrictive or less intrusive option

Prior Capable Wishes

- A health practitioner **shall not** administer a treatment if they have reasonable grounds to believe that the person, while capable and after attaining 16 years of age, **expressed a wish applicable to the circumstances to refuse consent to the treatment.**

Questions to ask your capable client

- What are **your wishes** about treatment, i.e.
- Cancer treatment, i.e. chemotherapy
- Intubation
- CPR
- Feeding tube(s)
- Surgery
- Blood transfusions

Questions to ask your capable client

Who is your substitute decision maker?

- Do you have a POA for personal care? If not,
- Representative appointed by the CCB – usually a non-relative, i.e. friend
- **Family** – spouse – married or common-law for at least 1 year or parents of a child
- Parent(s) or children over the age of 16
- Parent who has only right of access
- Brother or sister
- Any other relative by blood, marriage or adoption

Substitute Decision Maker

- Once a person has become incapable for any reason (i.e. sedated and intubated, decreased LOC), the hierarchy in the Health Care Consent Act must be followed to determine the appropriate Substitute Decision Maker. Be aware that people with standing **MUST BE CONTACTED**, even if the incapable person, while capable, requested that they not be contacted.

Substitute Decision Maker

- The **substitute decision maker** must be: capable with respect to the treatment; be at least 16 years old, unless he or she is the incapable person's parent; is not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf; is available; and is willing to assume the responsibility of giving or refusing consent.

Substitute Decision Maker

- If **no higher ranked person** is willing, available and capable, the Public Guardian and Trustee shall make the treatment decision(s) to give or refuse consent
- If two or more **equally ranked substitute decision makers disagree** about whether to give or refuse consent, the Public Guardian and Trustee shall make the decision in their stead.

Contacting PGT for Treatment

- Call your local PGT office and ask to speak to a Treatment Decisions Consultant
- **Toronto:** 1-800-387-2127 / 416-314-2788
- **Hamilton:** 1-800-891-0502 / 905-546-8300
- **London:** 1-800-891-0504 / 519-660-3140
- **Ottawa:** 1-800-891-0506 / 613-241-1202

Contacting PGT for Treatment

- TDC will require verbal confirmation that the client has been found incapable for the proposed treatment
- Information about the efforts that have been made to locate higher ranked SDM's
- Demographic information, prior capable wishes, values and beliefs
- Information about the proposed treatment

Contacting PGT for Treatment

- **For Admission to Long Term Care**
 - CCAC confirmation form which confirms incapacity and PGT needed as SDM of last resort
 - RAI assessment
 - Health assessment
 - Behaviour, smoking or other assessments
 - Facility choice list
 - Determination of eligibility for LTC

Contacting PGT for Treatment

- **Equally ranked SDM's disagree**
 - Information about the proposed treatment
 - Contact information for the SDM's who disagree and any other family members
 - Actions that have been taken to reach a decision, i.e. family meeting(s)

DNR

It is our understanding that the law says that a substitute cannot make an advance directive on behalf of an incapable person because by definition, **an advance directive is a capable person's own expression of their wishes.** Thus, the PGT does not have jurisdiction to make an advance directive for an incapable person.

DNR

If the PGT is aware of prior capable wishes regarding resuscitation (e.g., from discussions that PGT staff had with the person during a period of capacity), PGT staff will make reasonable efforts to communicate that information to the incapable person's care providers.

CPR offered as Treatment

- If CPR is clinically indicated and is part of the proposed plan of treatment related to the incapable person's current health condition, the PGT may make a decision about the plan of treatment. The scope of what may be included in a treatment plan is defined in Section 2 of the *Health Care Consent Act*.

CPR not offered as Treatment

- If CPR is **not** clinically indicated, and consent for **No CPR** is proposed, the PGT will consider the proposal on a case by case basis when making treatment decisions on behalf of the incapable person.

OPGT Treatment Decisions Consultant

- Weekends and Statutory holidays a TDC is available from 8:45 am to 1:30 pm by calling: **1-800-387-2127**
- Laurie.Borland@ontario.ca
- <http://www.attorneygeneral.jus.gov.on.ca/english/family/pgt>