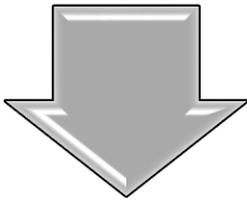


## Obligations of Health Care Providers (HCP) when seeking informed consent from Substitute Decision Makers (SDMs)

**1)** HCPs must be satisfied that they are speaking with the correct SDM(s) on the Hierarchy and that the proposed SDM(s) meets the prescribed requirements (i.e. is capable, available, willing to act, etc.)<sup>1</sup>

- Is the SDM(s) the ranked highest on the hierarchy?
- Does the SDM(s) meet the requirements (i.e. willing to act; mentally capable; available; not prohibited by law and 16 years of age)?
- The Office of the Public Guardian and Trustee is the SDM of last resort  
**Office of the Public Guardian & Trustee  
Treatment Decisions Unit (Hamilton Office)**  
Monday to Friday – 1-800-891-0502  
Weekends/Holidays (8:45-1:30pm) - 1-800-387-2127



**2)** HCPs must advise the SDM(s) of his/her obligations when making decisions on behalf of an incapable resident (i.e. to follow applicable prior capable wishes or act in the resident's best interest)<sup>1</sup>

- Gently remind the SDM(s) they are the *messenger* of the resident's wishes because they have intimate knowledge of him/her. Their role is to convey what they feel the resident **would have said** rather than deciding about their care
- Provide SDM(s) with written information about the role of the SDM (*ie.* Substitute Decision Maker Brochure)
- Rather than asking the SDM(s) what they would want done for their loved one, ask **what their loved one would want for themselves if they were able to say?** This places the ownership of the decision where it should be: with the resident
- Helpful phrases might include:  
"If she could come to the bedside as healthy as she was XXX (add a time reference e.g. when they were admitted etc.), and look at the situation for herself now, what would she tell us to do?"  
"If you had in your pocket a note from him telling you what to do under these circumstances, what would it say?"  
"If you could hear your Mom's voice now, what would she be saying?"

<sup>1</sup> Wahl, J. (2016). Presentation to The Law Society of Upper Canada: *End of Life Care Decision Making: Who Decides, How are Decisions Made*

**3) HCPs must provide information to the SDM sufficient for an informed consent (i.e. the risks and benefits of treatment, etc.)<sup>1</sup>**



**4) HCPs must determine whether the SDM is complying with his/her decision-making obligations, and decide whether to bring an application to the Consent and Capacity Board where the SDM is not.<sup>1</sup>**

- HCP must provide context for the consent discussion (ie. A change in health status or condition)
- HCPs must provide detailed explanations of:
  - the proposed tests/treatments
  - their risks, benefits and side effects
  - alternatives to the proposed tests/treatments
  - what would likely happen if they decided to not have the tests/treatments
- Ensure consistent information is given out by the team routinely
- Ensure the SDM(s) understands the context of the decision (i.e. the end of life prognosis)

Helpful phrases might include:

“I know you’re being asked to make some very difficult choices about care, and it must feel that you’re having to make life-and-death decisions.” “You must remember that this is not a survivable condition, and none of the choices you make can change that outcome. “We are asking for guidance about how we can ensure that we provide the kind of care that he would have wanted at this time.”

- HCP must determine if the SDM(s) is making health care decisions based on previous wishes or best interests:

**Previous Wishes**

- SDM(s) must determine whether the wishes of the resident:
  - were expressed when the resident was still capable (and were expressed voluntarily);
  - whether the wishes are the last known capable wishes or whether the resident changed his/her mind when still capable
  - what the resident meant in that wish;
  - whether it is possible to follow the wish, and
  - whether the wishes are applicable to the particular decision at hand

**Best Interest**

- If no such wishes are known, then SDM must decide what is in the “best Interests”

- If the HCP believes the SDM(s) is not making decisions in accordance with this they can bring an application to the Consent and Capacity Board

**Consent & Capacity Board**

[www.ccboard.on.ca/scripts/english/index.asp](http://www.ccboard.on.ca/scripts/english/index.asp)

Phone: 1-866-777-7391 (Toll Free)

Fax: 1-866-777-7273 (Toll Free)

[ccb@ontario.ca](mailto:ccb@ontario.ca)

<sup>1</sup>Wahl, J. (2016). Presentation to The Law Society of Upper Canada: *End of Life Care Decision Making: Who Decides, How are Decisions Made*