

Who Decides Consent Capacity



Determination of Capacity: The health practitioner proposing the treatment determines the patient's capacity to give or refuse consent for treatment.

Health Practitioner Includes the Following Professionals:

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| Audiologists | Chiropractors |
| Chiropractors | Dental Hygienists |
| Dental Surgeons | Denturists |
| Dietitians | Massage Therapists |
| Medical Laboratory Technologists | Medical Radiation Technologists |
| Midwives | Naturopaths |
| Nurses | Occupational therapists |
| Optometrists | Physicians and Surgeons |
| Physiotherapists | Psychologists |
| Respiratory Therapists | Speech Language Pathologists |

Can I appeal this decision? Yes. If you do not agree with the health practitioner's decision you can apply to an independent body called the Consent and Capacity Board for a hearing to review this finding. Call 1-800-461-2036.

A person may be capable of making a decision about one treatment but not another. It all depends on the complexity of the particular treatment and the person's level of capacity at the time.

*When a person is deemed "capable" of making decisions regarding their treatment, they will do so.

*When a person is deemed "incapable" of making decisions the physician will go down a list of Substitute Decision Makers in this order:

1. Guardian-appointed by the court
2. Power of Attorney
3. Representative-appointed by the consent and capacity board
4. Spouse or partner
5. Child or parent
6. Parent
7. Siblings
8. Other relatives
9. Public guardian and trustee (last resort)

Under no circumstances can Community Living Guelph Wellington employees give consent, written or verbal.

What is the role of a Public Guardian and Trustee (PGT)? The role of the PGT is to serve people who are incapable of making their own decisions about treatment and about transitioning into Long-Term Care Facilities. The PGT provides these people the benefit of informed decision-making about these matters if there is no one else who is available to do this for them.

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What principles does the PGT follow in making a treatment or long-term care admission decision?

The PGT abides by the rules set out in the Health Care Act. If the person has expressed wishes about the matter while they were capable then the PGT must follow these wishes, if possible. Wishes can be expressed verbally or in writing. If there does not appear to be any wishes made, the decision is made in the person's best interests.

The PGT would take into account the following:

- 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 of admission
- Whether the benefits outweigh the risks
- Whether there is a less restrictive or less intrusive solution

What happens in emergency situations?

Treatment may be given without consent in an emergency. An emergency is a situation in which the person for whom treatment is proposed is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm.

Similar provisions enable the Community Care Access Center to admit a person to a long-term care facility without consent in a crisis.

How do I get more information?

To access general information: www.attorneygeneral.jus.gov.on.ca/english/family/pgt/

Ministry of Health and Long-Term Care: www.health.gov.on.ca/public/pub/mental/rights.pdf

Hamilton: Reception: 1-905-546-8300

Toll Free: 1-800-891-0502

Fax: 1-905-546-8301

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