

# Capacity For Treatment and Capacity For Sharing Information



## WHY IS IT IMPORTANT TO KNOW YOUR CAPACITY FOR TREATMENT AND FOR SHARING INFORMATION?

You have the right to make decisions about your treatment and how your personal information is used when you are capable to do so. These rights are protected by legislation.

See the 'Consent' information sheet which talks about consent for treatment.

See the 'Substitute Decision Making' information sheet which describes who makes treatment decisions for you when you are not capable. It also talks about how the Substitute Decision Maker (SDM) makes these decisions for you.

## WHO HAS CAPACITY TO MAKE A TREATMENT DECISION?

You are capable (or 'mentally able') to decide about a treatment when you are BOTH:

- a) **able** to understand the information about the treatment AND
- b) **able** to see how the treatment or non-treatment affects your life and well-being.

The definition of capacity is found in The Health Care Consent Act (HCCA). This Act sets out the rules to protect each person's right to make decisions about their health care.

## WHO WILL EVALUATE YOUR CAPACITY FOR TREATMENT?

The members of the health care team who propose a treatment for you are responsible to evaluate your capacity.

## HOW DOES THE HEALTH CARE TEAM EVALUATE CAPACITY FOR TREATMENT?

The health care team is required by law to evaluate your capacity when they see signs that you are not capable to make a decision about a treatment.

They will talk to you and ask questions about:

- your ability to understand the information (this usually involves your memory and how you work with and think about the information)
- your ability to appreciate how the decisions will affect your life and well-being (this usually involves how you plan for the changes related to the treatment decision).

They will also answer your questions.

The term Substitute Decision Maker includes all the different types of SDMs: like someone appointed by you, or a family member listed in the HCCA hierarchy of automatic decision makers.

## Capacity Evaluation for Treatment Decisions

Seventy-year-old Mo recently had a stroke. Mo has a hard time swallowing and sometimes chokes on food. The family and health care team are wondering if a feeding tube could help prevent food going into the lungs and causing infections.

The first question is who will make the decision about a feeding tube. The team evaluates the capacity of Mo to make the treatment decision. If Mo is found not capable, then Mo's Substitute Decision Maker will make the decision.

If Mo has not signed a Power of Attorney for Personal Care to name a Substitute Decision Maker (informally called a 'POA'), then the law will automatically appoint a Substitute Decision Maker for Mo.

### WHEN MIGHT THE TEAM EVALUATE YOUR CAPACITY?

They may evaluate your mental capacity for treatment when **something in your history or behaviour raises questions about your capacity to consent to the treatment.** Otherwise, the health care team may presume you are capable to make a specific treatment decision. Mental capacity can be different for each type of decision. Mental capacity can also change over time.

### HOW IS MENTAL CAPACITY DIFFERENT FROM FUNCTIONAL CAPACITY?

Mental capacity is about making decisions and functional capacity is about carrying out the decision and managing safety concerns. An example of functional incapacity is when you wish to take your medication but you need help to open the pill bottle and count out the pills.

### WHAT IF I AM FOUND NOT CAPABLE TO MAKE THE TREATMENT DECISION?

If the health care team finds you are not capable, they will tell you.

They will ask who you want to make decisions for you. They will ask if you have already chosen someone by signing a document called 'Power of Attorney for Personal Care.' If not, the law will automatically appoint a Substitute Decision Maker listed in the hierarchy of automatic decision makers. The team will give you information about your rights, including the right to appeal the decision to the Consent and Capacity Board.

### WHAT IF I AM FOUND NOT CAPABLE TO DECIDE ABOUT TREATMENT?

These are your choices:

- Accept the finding and work with your Substitute Decision Maker.
- Challenge the finding by asking the Consent and Capacity Board to review the finding. You need to file a Form A – Application to the board to Review a Finding of Incapacity.

Even if you are found not capable to make a treatment decision, you may still have the capacity to appoint someone to make decisions for you using a 'Power of Attorney for Personal Care.'



## Capacity for Sharing Information

Twenty-year-old Sam recently broke a hip. Sam asks the health care team to tell only the mother and sister about health details.

Sam does not want to share any information with the father who has not been in touch with the family for many years.

The health care team talks to Sam and notes that Sam is remembering information and asking questions. Sam is showing the capacity to make decisions about sharing health information by asking questions about the information and planning for what might happen when not sharing it. The team respects Sam's decision to not share information with the father.

### WHAT IS CAPACITY FOR SHARING INFORMATION?

The definition of capacity is found in the Personal Health Information and Protection Act (PHIPA). You are capable to decide about how your personal health information is collected, used or disclosed when you are BOTH:

- a) **able** to understand the information AND
- b) **able** to appreciate the consequences of giving, not giving, withholding or withdrawing the consent.

### WHO WILL EVALUATE YOUR CAPACITY FOR SHARING INFORMATION?

The members of your health care team are responsible to evaluate your capacity for sharing information.

### HOW DO WE EVALUTE CAPACITY FOR SHARING INFORMATION?

When the health care team is worried that you are not capable to make decisions about your information, they will evaluate your capacity. The team members will ask questions to see if you can remember and understand about sharing your information. They will also ask if you talk about and plan for what will happen if the information is not shared.

### WHAT IF I AM FOUND NOT CAPABLE TO DECIDE TO SHARE MY INFORMATION?

If the health care team finds you are not capable, they will tell you. They will ask if you have already chosen someone to make decisions about your information by signing a document called 'Power of Attorney for Personal Care.' If no one is already appointed, then the law will automatically appoint a Substitute Decision Maker listed in the hierarchy of automatic decision makers.

### ONLINE RESOURCES:

**Health Care Consent Act:** <https://www.ontario.ca/laws/statute/96h02>

**Personal Health Information and Protection Act:** <https://www.ontario.ca/laws/statute/04p03>

**Consent and Capacity Board:** <http://www.ccboard.on.ca/>

**Speak Up Ontario:** <https://www.speakupontario.ca/>

