

Health Care Consent & Advance Care Planning in Ontario What You Need to Know

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Disclaimer

- ▶ This presentation contains legal INFORMATION for educational purposes and not legal advice
- ▶ If you need legal advice for a particular situation, please consult your own legal advisor

Overview

- ▶ How planning for health care decision making and management of your property differ
- ▶ What you need to know for health care decision making planning
 - The requirement for informed consent before treatment
 - Who is required by law to make health decisions for you if you are not mentally capable (your substitute decision maker- SDM)
 - How you may choose who will be your SDM by preparing a Power of Attorney for Personal Care
 - What SDMs are supposed to consider when making decisions for you\
 - How to have conversations to prepare your SDM to make the type of decisions that you would want for yourself\
 - Whether its better (or not) to put your future health care wishes in writing or communicate these wishes in ways other than just through conversations
- ▶ Where to get more information about these issues that is legally accurate?

Future Planning

- ▶ Can't "decide" everything in advance
- ▶ Some decision making must have a real time context (e.g. health care)
- ▶ May "plan" some things in advance of events
 - - for property – who may help you manage your own property/money while still capable (financial advisors, give authority to trusted person in a POA Property)
 - - for property – who may manage your money and property when you are incapable by preparing a POA Property
 - -prepare a will to decide how your property will be disposed of post death)
- **All of this must be done while you are mentally capable to make decisions for yourself**

Future planning

- ▶ May “plan” some things in advance of events
 - - for personal care (decisions about where you live(shelter), nutrition, hygiene, safety, clothing, health care) – **may prepare POA Personal Care** to give authority to someone (or more than one person) to make decisions for you in these areas **when you are NOT mentally capable**
 - - for health care – may decide who will be your **SUBSTITUTE DECISION MAKER** to make Health decisions **by knowing who is your AUTOMATIC SDM** by law or **by preparing a POA Personal care** to name a person or persons to play this role

Future Planning

- ▶ BUT Cannot DECIDE in advance all your future health care as health decisions need to be made in context of your health condition at the time you need health care
- ▶ MAY express your “wishes” about future health care and your values and beliefs that influence how you make health decisions for yourself to your future SDM to help prepare that future SDM to make decisions for you in way closest to way you would decide for yourself if still able to do so

Documents for Planning

- ▶ May prepare a POA Property and a POA Personal Care
- ▶ These give authority to another person to either manage money and property (POA Property) OR make “Personal Care decisions” (POA Personal Care)while you are still alive
- ▶ Personal Care decisions are about health care but also about SHELTER (where you live if its not a Regulated health facility like a hospital or LTC home), nutrition, hygiene, safety, clothing

How two POAs differ

- ▶ POA Property come into effect on signature even if person capable. If person who made it is capable BOTH person (grantor) AND attorney have access and authority over persons money and property and when person incapable then attorney is solely responsible.
- ▶ In contrast POA Personal care ONLY comes into effect if person (grantor) is incapable of this type of decision making
- ▶ POA Property MAY be drafted so it comes into effect only on incapacity . The POA Property would have to include a clause that states that and the method of proof of incapacity would have to be done before the POA Property is activated.

How two POAS are similar

- ▶ In both can name one or MORE attorneys to act jointly or separately
- ▶ Person granting POA of either type must be CAPABLE to prepare a POA
- ▶ Capacity to grant a POA property is specifically defined in the Substitute Decisions Act.
- ▶ Capacity to grant a POA Personal Care is specifically defined in the Substitute Decisions Act and is DIFFERENT than capacity to grant a POA Property
- ▶ To grant a POA of either type person must be capable, be doing this voluntarily and not be under “duress”

What if no POA?

- ▶ BUT if no such documents the law provides a fallback
- ▶ For property – The law provides for Statutory Guardians, Court ordered guardians, joint accounts
- ▶ For health decision making – Health Care Consent Act includes a hierarchy list of automatic SDMs. **EVERYONE** in Ontario always has a SDM for health care even if no POA Personal Care

▶ Health Care Consent and ACP

Do You Know...?

- ▶ Do you know what HEALTH CARE CONSENT is and your rights as a patient when receiving health care?
- ▶ Do you know WHO would make decisions for you about health care (your SUBSTITUTE DECISION MAKER) if you were not mentally capable to make decisions for yourself?

Do You Know....

- ▶ Do you think that your substitute decision maker (SDM) would make health decisions for you in the way that YOU would want?
- ▶ Do you know what can you do to PREPARE your future SDM in the event they need to step in to make decisions for you?

When I say:

Health Care Consent ?

What does this mean to you?



How a person makes healthcare decisions

Values

- Are the risks worth the possible benefits?
- Is this plan consistent with what is important to me?

**Health
Care
Decisions**

Evidence

- Facts
- Expected outcome
- Side effects and risks

Fulford KWM, Peile E, Carroll H. Essential values-based practice: Clinical stories linking science with people. New York: Cambridge University Press 2012.

Adapted by Dr. Nadia Incardona

Health Care Consent

BEFORE providing you with any health treatment, ALL Health Practitioners must get an **informed consent** from

- **YOU , the Patient, if you are mentally capable**
or
- **From your Substitute Decision Maker** if the you are not mentally capable either temporarily or long term

What is INFORMED CONSENT?

- ▶ Informed Consent is a **DECISION** made BY YOU, if capable, after YOU are told about your health condition and the possible treatment and care options

What is INFORMED CONSENT?

- ▶ You should be given information about:
 - the risks,
 - benefits ,
 - side effects ,
 - alternatives to the treatments and
 - what could happen if you refuse the treatments

- ▶ You are entitled to ask questions and get answers before making any decisions

Refusal of Treatment

- ▶ If capable, you may also may refuse any treatment
- ▶ Health Practitioners should make certain that you understand your health condition and treatment options particularly if you refuse any treatment

Who Decides if you are CAPABLE ?

- ▶ The **health practitioner** offering you treatment decides if you are capable to make the particular health decision.
- ▶ Capacity is a “legal” not clinical test
- ▶ Capacity is whether you have:
 - the Ability to understand information relevant to making a decision
 - the Ability to appreciate the consequences of making or not making the decision

Capacity

- ▶ Capacity is always relative to the type of decision and to the PARTICULAR decision to be made
- ▶ You can be capable for some decisions and incapable for others
- ▶ You can even be capable for some HEALTH decisions and not be capable for other health decisions

Capacity

- ▶ Capacity for decision making may change so it always needs to be reassessed before any decision making – No BLANKET finding of incapacity for all decisions

Capacity

- ▶ Different people assess capacity for different purposes
- ▶ For health care – it's the health practitioner offering the treatment to the patient that assesses the patient's capacity
- ▶ For OTHER purposes it may be a lawyer, someone who is called a formal "Capacity Assessor", someone who is called an "Evaluator"

What if You are NOT Capable to make a Health Decision

- ▶ Your SDM “steps into your shoes” and makes the decisions for you if you are incapable
- ▶ Your SDM is entitled to the same information about your health condition and treatments as you would be entitled to get and has the right to ask questions and get answers
- ▶ Your SDM may consent or refuse consent to treatments for you

What about Emergencies?

- ▶ In an **EMERGENCY**, health care providers do not need consent from you or your SDM in order to treat you
- ▶ But, if they know that you had a wish to refuse a particular treatment , then they may honour that and not give you that treatment even if that treatment would be of benefit to you