

INFORMATION GUIDE

Substitute Decision-Makers

For decisions about psychiatric or medical treatment

While you are in hospital, the doctors can change your legal status to ***incapable of consenting to psychiatric and/or medical treatment***. This means you may **not** be able to understand the information about that treatment, including:

- the nature of the treatment
- the expected benefits and possible side effects
- other options
- what can happen if you don't have the treatment

Your substitute decision-maker (SDM) would then make the decision about your treatment for you.

Who can be your SDM?

Your SDM is the highest-ranking person from the list under the *Health Care Consent Act*, who has the authority to give or refuse consent to the treatment:

1. Guardian of the person appointed by the court
2. Attorney for personal care
3. Representative appointed by the Consent and Capacity Board (CCB), an independent tribunal
4. Your spouse, common-law spouse or partner
5. Your child if over the age of 16 or your parent
6. Your parent with right of access only
7. Your sibling if over the age of 16
8. Any other relative by blood, marriage or adoption if over the age of 16

If there are two or more persons of the same rank (for example, two siblings) they may:

- decide about your treatment together
- choose one person to be your SDM
- disagree – if this is the case or no other SDM is available, the Public Guardian and Trustee has the final say

How does a SDM make decisions about treatment?

Under the *Health Care Consent Act*, your SDM

- **must follow your wish** about the treatment if:
 - you expressed it - verbally or in writing - while you were capable and at least 16 years old. This is called a 'prior capable wish'. and
 - there is no order from the CCB that allows a change of your wish; but
your SDM may apply to the CCB for a hearing about your 'prior capable wish'
- **must make decisions in your best interests**, if you did not express a wish while you were capable, or it is impossible to comply with the wish
- **has the right to know all the information** required to make a decision on your behalf

To determine your best interest, your SDM must consider:

- your values and beliefs
- any wishes you expressed
- whether the treatment will improve your health and well-being, prevent further decline or slow down the decline
- whether your health and well-being will improve, remain the same or decline without the treatment
- whether the possible benefit to you outweighs the risk of harm
- whether a less restrictive or intrusive treatment would be as beneficial

If your doctor thinks your SDM is not following the rules, the doctor may apply to the CCB. If you disagree with your SDM, you can apply to the CCB to:

- review your doctor's decision that you are incapable of making treatment decisions (Form A)
- have a representative appointed to give or refuse consent on your behalf (Form B)

Questions?

For questions and information about the Consent and Capacity Board hearings, visit their [website](#).

If you have a question about your specific legal situation, contact a lawyer.

For questions about this Information guide, visit [Ontario.ca/PPAO](https://ontario.ca/PPAO) or contact Psychiatric Patient Advocate Office at 1-800-578-2343.

This information guide provides information only and does not contain legal advice. If at any time requirements in legislation conflict with information in this sheet, the legislative requirements prevail.