

## Capacity for Treatment Information Sheet, Page 1 of 4

### *In this information sheet we talk about:*



- Why it is important to know about your mental capacity
- There is no age of consent
- A story to show why it is important to think about who is capable to consent to treatment
- How we check your capacity
- The different types of decisions and the capacity for each decision
- What happens in an emergency
- Resources

### *Why it is important to know about your mental capacity?*



When you are mentally capable, you have the right to make decisions about your treatment and your personal health information. These rights are protected by law. There is no minimum or maximum age of capacity for consent to treatment in Ontario.



If the health care team finds you are not mentally capable to make a decision, then they will tell you. They will turn to your Substitute Decision Maker to make the decision for you.

### *A story*



Mo is elderly and recently had a stroke. They are confused and still using strong pain killers. The health care team wants to try a new medication.

Who will make the decision about the medication? The healthcare team worries Mo is not capable to make the decision. They check the capacity of Mo to make the decision. When health care providers evaluate capacity, they are only looking at the mental ability to make decisions. They do this using the “able to understand and able to appreciate (be aware of)” test. If Mo is mentally capable, Mo can make whatever choice they want, including choosing not to have a treatment.

If Mo is found incapable, then Mo’s Substitute Decision Maker (also called SDM) will make the decision.

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Mo may also think about who they wish to make decisions for them. Mo may still be able to sign a document called a Power of Attorney for Personal Care (POA).

Deciding about treatment is often harder than deciding about who you trust to make decisions for you. So, Mo may be capable to sign this document even if Mo is not capable to make a treatment decision.

### ***How does the health care team check if I have capacity?***

They will talk to you and ask questions to:

- see what more you need to know about your condition and your choices
- make sure you are able to understand all your choices (including saying no) and the harms and benefits of each option
- check if you have the memory to work with and think about the information
- see your ability to be aware of the effects of each option and your decision, and
- hear how you are able to plan for what could happen to you if you say yes or no to a treatment.

### ***What if I don't understand the questions?***

Your health care team will give you the best chance to understand the information and their questions. This means they will talk with you and explain it in a way you can understand.

You may ask to use an interpreter, hearing devices or any other supports to help you understand.

### ***Is capacity based on certain facts alone?***

No, the health care team will consider all the facts. The health care team should not think you are mentally incapable of making a treatment decision just because of a certain fact, for example:

- |                         |                                 |
|-------------------------|---------------------------------|
| • Advanced or young age | • Refusing a treatment          |
| • Language barrier      | • Lower education level         |
| • Communication issues  | • Cultural/religious background |
| • Mental health illness | • Unique or unusual beliefs     |
| • Physical disability   | • Dementia                      |

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### *Is capacity the same for all types of decisions?*

No, there are different types of capacity depending on the decision. Common decisions in health care are:

- making a medical treatment decision
- deciding on placement to a care facility (nursing or long-term care home, group home, retirement home)
- appointing someone you trust to make decisions for you about treatment and personal care (creating a Power of Attorney for Personal Care document)
- sharing your personal information with others
- making decisions about money and property (health care providers do not evaluate capacity for these decisions).

Legal definitions of capacity for the most common decisions in health care:

Purpose	Definition of Capacity	Person who evaluates capacity
Decide about Treatment or Placement  See Health Care Consent Act (HCCA)	<b>a) Able to understand</b> the information AND <b>b) Able to appreciate</b> (be aware of; grasp) the consequences of making the treatment or placement decision	The health care provider who proposes the treatment (e.g., doctor, physiotherapist, speech language pathologist etc.).  The Ontario Health at Home Coordinator for nursing or long-term care placement.
Appoint an Attorney for Personal Care  See Substitute Decisions Act (SDA)	<b>a) Able to understand</b> whether the proposed attorney has a genuine concern for the person's welfare; AND <b>b) appreciate</b> (be aware of; grasp) that the person may need to have the proposed attorney make decisions for the person.	A lawyer is usually the best person to evaluate whether the person is capable to sign the Power of Attorney document.

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### ***Do I need to be told if I am found to be incapable?***



Yes, you must be told if you are found mentally incapable and that you need help with some types of decisions. If you disagree, you have the right to contest (or appeal) a finding of incapacity to the Consent and Capacity Board.

Remember, even if you cannot make your own treatment decisions, you may still be mentally capable to appoint a person to make decisions using a Power of Attorney for Personal Care document. This is a different type of decision than a treatment decision.

### ***Will I be able to make decisions for myself again?***

It depends on how you are doing. Sometimes you are not capable to make a decision for a short time because of things like:

- Influence from drugs or alcohol
- During or soon after surgery
- During a severe illness.



Your capacity may recover as you get better. When you regain your capacity to make decisions, your SDM must step back and stop making decisions for you.

### ***Here are some online resources:***



- Consent and Capacity Board: <http://www.ccboard.on.ca/>
- Steps to Justice, Preparing a Power of Attorney: <https://stepstojustice.ca/guided-pathways/wills-and-powers-of-attorney-preparing-a-power-of-attorney/>

### ***Other information sheets available at MGH are on the topics of:***

- Consent
- Substitute Decision-Making
- Power of Attorney.