

## Substitute Decision-Making (SDM) Information Sheet, Page 1 of 6



***In this information sheet we talk about Substitute Decision-Makers (SDM):***

- What is a Substitute Decision-Maker (SDM)
- How to become an SDM
- When the SDM role starts
- How to make decisions as SDM
- The Health Care Consent Act in Ontario which talks about consent, capacity, and substitute decision-making.



### ***What is an SDM?***

A Substitute Decision-Maker (SDM) is a person who will make health and personal care decisions for a person who is not able (not capable) to make decisions for themselves. Once the person becomes capable to make decisions again, the SDM stops making decisions.

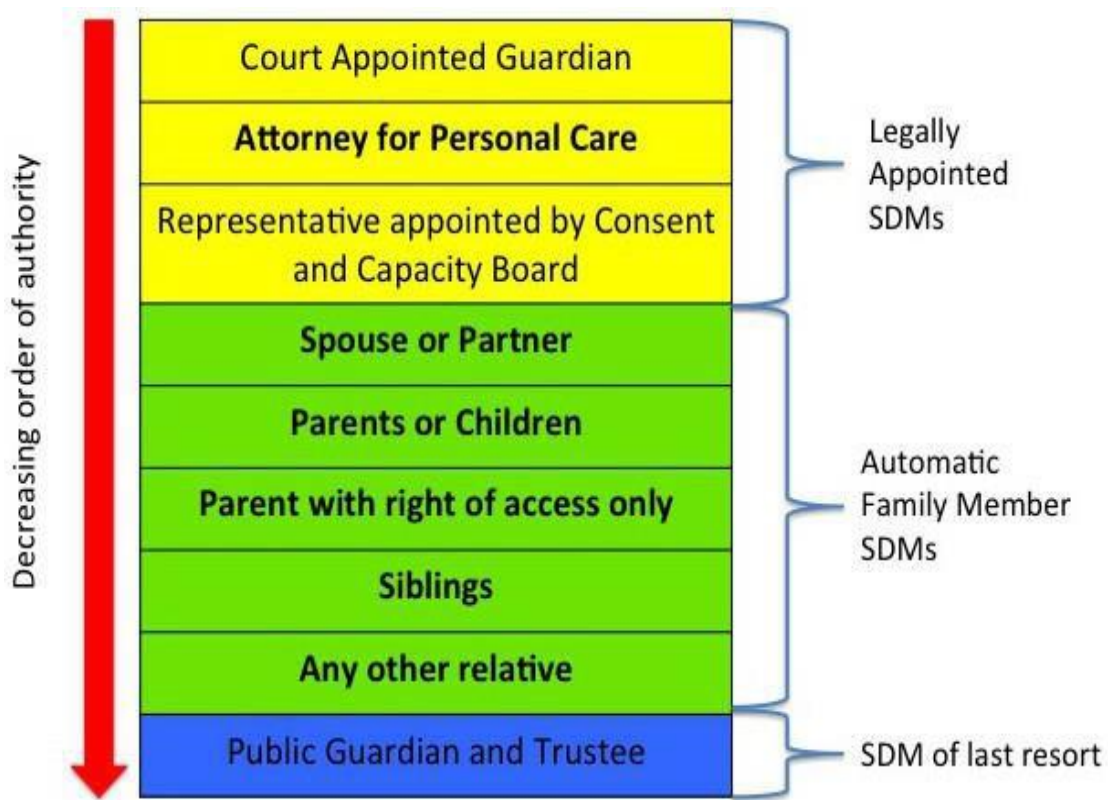
### ***List of Substitute Decision-Makers***

The Health Care Consent Act sets out the order of the legally appointed SDMs. Next is the list of automatic family member SDMs when there are no legally appointed SDMs.

The team will seek the highest person on(s) the SDM list who is available, willing, and mentally capable to take the role of SDM.

If there are multiple people at the same level (e.g., several attorneys for personal care or several siblings) then all must be asked if they want to participate as SDM.

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Ontario's Health Care Consent Act, 1996

### **How does an SDM qualify for the role?**

An SDM must be:

- Willing to accept the role of an SDM
- Available to make decisions (usually within a day or so by email, telephone or in person)
- Capable of giving consent
- 16 years or older
- Not prohibited by a court order or separation agreement.



**All participating SDMs of the same level** (or equal rank) must agree on the decision. They should choose one person to speak for the group of SDMs.

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### ***How does a person become an SDM?***

It depends if there is a legally appointed SDM or not.



If a person does not have a legally appointed SDM, then family members automatically become the SDM as listed above. Friends are not on the SDM list and may only become an SDM if they are appointed with a Power of Attorney document.

### ***How to prepare for the SDM role?***



Talk to the person who asks you (or may ask you) to be their SDM. Ask them about wishes, values, beliefs, and what is important to them. You want to make sure that you have all this information to make treatment decisions for them if you ever have to.

Making healthcare decisions for other people can be challenging, especially when you have to do this during difficult times. The person you have to make decisions for might be someone very close to you and you want to look after.



### ***When does the SDM role begin?***

We will ask the SDM to make healthcare decisions ONLY when the person is not capable of making a specific healthcare decision for themselves. A healthcare provider determines if the person does not have the capacity to make a specific healthcare decision and needs an SDM.



Some examples when a person may be incapable temporarily or for a long time:

- Under the influence of alcohol or drugs
- Suffering side effects from certain pills
- Unconscious or not awake
- Not able to make decisions because of advanced dementia
- Very sick or confused because of infection or
- Very sick after surgery.

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Remember: **The SDM stops making decisions** when the person becomes capable. The person will begin again to make their own healthcare decisions.

### *What is the capacity for making healthcare decisions?*

A person has mental capacity or 'is capable' when they are both:

- **Able to understand** all of the information to be able to make a decision. The person remembers and is able to repeat back the information and ask questions over time.

AND

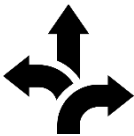
- **Able to be aware of** (usually referred to as "appreciate") the likely results of making the decision (what helps, what is harmful, and what will likely happen if there is no treatment). The person is able to weigh and compare the options. The person is also able to describe their plan and how it will affect their daily activities or their quality of life.



Capacity is **decision** and **time** specific:

**Decision specific:** A person may not be capable of making a decision about surgery. For example, at the same time they may still be capable of making a decision about which pills to take.

**Time specific:** A person may not be capable to make a decision today but may be capable tomorrow, for example, once they have good pain control or recover from surgery.



### *How do I make decisions in the role of the SDM?*

Making healthcare decisions for other people can be hard to do, especially when you have to do this during difficult times.

It helps to know that there are rules in the Health Care Consent Act that tell you how to make these decisions for someone else.

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You must first consider the person's Prior Capable Wishes:



- Think of anything the person may have said that applies to the decision you have to make
- It could have been something they said, wrote down, or recorded on a video
- Whatever information is the most recent is the most important.

*If there are no wishes that apply or they are not possible, then the SDM makes a decision in the person's best interests.*

### ***What does best interests mean?***

Thinking about the person's best interests means following the person's wishes, values, and beliefs as much as possible and considering:



- Will the treatment or plan:
  - improve the current condition or well-being?
  - prevent worsening of the current condition or well-being?
  - slow down the process of getting worse?
- Without the treatment, will the condition get better, worse or stay the same?
- Do the benefits of the treatment outweigh the risks of harm? (These are risks and benefits as the person would consider them.)
- Is there another option that might be as beneficial to the person?

### ***How do I get help?***



If you have questions, speak to our doctor, nurse, social worker, or bioethicist. If you need legal help about your specific situation, speak to your lawyer or to the Consent and Capacity Board administrator.

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### *Here are some online resources:*

- Advance Care Planning Ontario (by Hospice and Palliative Care Ontario), available at <https://www.advancecareplanningontario.ca/>
- Steps to Justice, available at <https://stepstojustice.ca/steps/health-and-disability/2-understand-substitute-decision-making/>
- Office of the Public Guardian and Trustee of Ontario, Making Substitute Health Care Decisions: the role of the Public Guardian and Trustee, 2006, available at <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/ISBN-0-7794-3016-6.pdf>
- Consent and Capacity Board, available at <http://www.ccboard.on.ca/>

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

- **Consent,**
- **Capacity**
- **Power of Attorney**

