

The issue of consent and capacity is important for everyone to understand. This article will discuss consent and capacity in the healthcare context, what happens if you are incapable of making healthcare decisions, and the steps that you can take to prepare in advance.

Consent and Capacity in the Healthcare Context

Before a healthcare provider can give you any medical care, you must give consent. However, you can only give consent if you have mental capacity. To decide whether you have mental capacity, a healthcare provider will look at two things:

1. Your ability to understand the information needed to make the decision, and
2. Your ability to understand the consequences of the decision.

Everyone is assumed to be capable of making a healthcare decision unless there are reasonable grounds to suspect incapacity. Incapacity may be suspected if it seems like you are unable to understand necessary information, or if you are unable to understand the consequences of refusing treatment.

After a Finding of Incapacity

If you are found incapable of making a healthcare decision, your substitute decision maker (SDM) will make a decision on your behalf. Your SDM is required to follow your wishes and they must act in your best interests.

The *Health Care Consent Act* sets out a hierarchy of family members who will act as your SDM: your spouse or partner, followed by your child or parent, followed by your brother or sister, or lastly, any other relative.

Power of Attorney for Personal Care

If you want to choose with certainty the person who will make medical decisions on your behalf, you should name an Attorney for Personal Care. They come first in the hierarchy, before other family. You can choose a friend or family member to act as your Attorney for Personal Care.

An Attorney for Personal Care is appointed through a document called a Power of Attorney for Personal Care. This document must be created while you are mentally capable. It is also possible to appoint an Attorney for Property through a document called a Continuing Power of Attorney for Property. This person would manage your financial affairs in the event of your incapacity. A Power of Attorney for Personal Care and a Continuing Power of Attorney for Property are important parts of any estate plan.

How do I get a Power of Attorney

A lawyer can prepare a Power of Attorney for you. Alternatively, you may download a Kit from the Ministry of the Attorney General at:

<https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/poa.pdf> .

You can also call 1-800-366-0335 to order a kit.

Whether or not you use this kit, it is a good idea to consult a legal professional before you appoint an attorney. If you are living on a low income, your local community legal clinic may be able to help you for free.

This tip sheet, written by staff or volunteer lawyers with the Community Advocacy & Legal Centre (CALC), provides general legal information only about current laws. If you need legal advice you should contact a lawyer. If you are living on a low income you may be eligible for free legal help. Contact your local community legal clinic if you need help with income programs, workers' or tenants' rights, consumer problems, or human rights. Call CALC at 1-877-966-8686 or visit www.communitylegalcentre.ca. If you have a criminal, family or immigration law problem, contact Legal Aid Ontario at 1-800-668-8258 or visit www.legalaid.on.ca.

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