



Guidelines for members for patients found incapable of making treatment decisions under the HCCA

Policy 5.3

Section:	Professional Practice		
Approved By:	Council	Public:	Yes
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Purpose

A member of the College who proposes a treatment¹ is responsible for obtaining informed consent from either the patient, if capable, or a substitute decision maker, if the patient is found to be incapable. Members who obtain consent have a professional accountability to be satisfied that the patient is capable of giving consent.

Under the *Health Care Consent Act, 1996* (HCCA), the College is required to establish guidelines for members who have found a patient to be incapable. These guidelines set out the information to be provided to the patient, as well as the circumstances and conditions under which the information should be provided. These guidelines have been developed to assist members in their discussions with those patients they find to be incapable under the HCCA. These guidelines apply unless the emergency provisions of the HCCA are applicable.

¹ Treatment, in this context, is defined as anything that is done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purposes, and includes a course or plan of treatment.

Policy

1. If the member proposing a treatment determines that the patient is incapable of making the decision and the member believes that the patient is able to understand the information, the member informs the patient that a substitute decision maker will be asked to make the final decision. This is communicated in a way that takes into account the particular circumstances of the patient's condition and the member-patient relationship.
2. If there is an indication that the patient disagrees with this information, and, if it relates to the finding of incapacity or to the choice of substitute decision maker, the member informs the patient of their options to apply to the Consent and Capacity Board for a review of the finding of incapacity, and/or for the appointment of a representative of the patient's choice.
3. If the patient expresses a desire to exercise these options, the member is expected to provide assistance.
4. If there is an indication that the patient disagrees with the finding of incapacity when the finding was made by another health care practitioner, the member explores and clarifies the nature of the patient's disagreement. If it relates to the finding of incapacity or to the choice of substitute decision maker, the member informs the health care practitioner who made the finding of incapacity and discusses appropriate follow-up with such health care practitioner.
5. The member uses their professional judgment to determine whether the patient is able to understand the information. For example, a young child or a patient suffering advanced dementia is not likely to understand the information. It would not be reasonable in these circumstances for the member to inform the patient that a substitute decision maker is going to be asked to make a decision on their behalf.
6. The member uses their professional judgment to determine the scope of assistance to provide to the patient in exercising their options. The member documents their actions, according to departmental policy.