

LIST OF SDM WHO MAY GIVE OR REFUSE CONSENT - HCCA s.20

INTRODUCTION

Attorneys named in Powers of Attorney for Personal care are only one kind of SDM. A Person ALWAYS has an SDM for health care even if he/she has never executed a Power of Attorney for Personal Care. The following is the list of SDMS for health care (treatment, admission to long-term care, and personal assistance services in long-term care) in Priority

1. Guardian of person with authority for treatment

- This person would be someone who has applied to court to become the GUARDIAN of the PERSON for the incapable person.

This is NOT the Guardian for Property of an incapable person and is NOT the Statutory Guardian of the incapable person. The same person may be appointed by the Court to be Guardian of the Person and Guardian for Property or this same person may be the Statutory Guardian for the Person but unless a person is the GUARDIAN OF THE PERSON they do not fall into this category of decisionmaker.

This person should produce a court order (a document) confirming his or her authority as Guardian of the Person and the scope of that authority (Appointed by process described in Section 55-61 of the *Substitute Decisions Act*).

2. Attorney in attorney for personal care with authority for treatment -

This person is the ATTORNEY as named in a POWER OF ATTORNEY for PERSONAL CARE only. This person should be able to produce a Power of Attorney for Personal Care (a document) that has been properly signed and witnessed and that is otherwise valid as proof of his or her authority and scope of authority.

This is NOT a person who is named as the incapable person's attorney for Property in a Continuing Power of Attorney for Property.

This person (the Attorney for Personal Care) ONLY gets authority to act as a substitute decision maker for health treatment, admission to a long-term care facility or personal assistance services in a long-term care facility if the person who is the grantor of the Power of Attorney for Personal Care has become mentally incapable for treatment, admission, or personal assistance services as the case may be, and requires such a decision to be made on his or her behalf.

3. **Representative appointed by CCB**

- This person is someone who has been appointed by the Consent and Capacity Board to make the decision currently required by the incapable person for treatment, admission to a long-term care facility, or personal assistance services in a long-term care facility. The Board may also authorize the Representative to make a wider range of decisions for the incapable person related to treatment, admission to a long-term care facility, or personal assistance services.

This application may be made by a person (for example he or she may be a friend or family member of the incapable person) who is at least 16 and who is mentally capable with respect to the required decision.

The Board will only consider this appointment if a relevant finding of incapacity has been made and the incapable person does not object. This application may also be made by the person who has been found incapable for a particular health purpose (treatment, admission, personal assistance services). SEE Consent and Capacity Board information Sheets - "Application to have a Representative Appointed" and "Applying to the Board to be Appointed a Representative" available on the CCB website. See also sections 33, 51, and 66 of the *Health Care Consent Act*.

4. **Spouse or partner.**

Two persons are "spouses" if they are "Members of the Opposite Sex and,

- a) married to each other; or
- b) living in a conjugal relationship outside marriage and,
 - i) have cohabited for at least one year, or
 - ii) are together the parents of a child, or
 - iii) have together entered into a cohabitation agreement under s.53 of the *Family Law Act*. "(see section 20(7) of the *Health Care Consent Act*)"

They are not spouses if they are living separate and apart within the meaning of the *Divorce Act* (Canada).

Two people are "partners" if they have lived together for at least one year and have a close personal relationship that is of primary importance in both person's lives. See *Health Care Consent Act* S.20(9). This can include same sex partners as well as friends who have lived together for at least one year (a non-sexual relationship) and "have a close personal relationship that is of primary importance" in both their lives.

5. **Child or parent or Children's Aid Authority or other person lawfully entitled to give or refuse consent to treatment in place of parent** - not include parent with right of access only - if CAS or person in place of parent, does not include parent.
 6. **Parent with right of access only.**
 7. **Brother or sister.**
 8. **Any other relative.**
People are relatives if related by blood, marriage or adoption.
see section 20(10)HCCA
- * If no person meets requirement as SDM, then the PGT is the incapable persons decision maker. Documents that purport to override this default to the PGT as last resort substitute decision maker are not appropriate and not legally enforceable.
- * If there is a conflict between persons in same category and they cannot agree and claim to be SDM above others PGT shall act as the decision maker. The PGT does not choose between the battling decision makers but "shall make the decision in their stead" (see section 20(6) of the *Health Care Consent Act*)

REQUIREMENTS FOR SDM - HCCA s.20

The SDM in the list may give or refuse consent for treatment, admission to a long-term care facility, or personal assistance services in a long-term care facility only if he or she is:

- i) capable with respect to treatment,
- ii) 16 unless he or she is the parent of incapable person,
- iii) no court order or separation agreement prohibiting access to incapable person or giving or refusing consent on his or her behalf,
- iv) is available, and
- v) willing to assume responsibility of giving or refusing consent.

RANKING

A Person lower on list may give consent only if no person higher that meets requirements. (see section 20(3) HCCA)

EXCEPTION

Family member present or contacted may consent or refuse consent if he or she believes:

- a) no person higher or in same paragraph exists,
- or
- b) if person higher exists, person is not guardian of person, POAPC, Board appointed representative with authority to consent and would not object to him or her making the decision. (see section 20(4) HCCA)

DEFINITION OF AVAILABLE

HCCA s.20(11) - a person is available if it is possible, within a time that is reasonable in the circumstances, to communicate with the person and obtain a consent or refusal.

PRINCIPLES FOR GIVING OR REFUSING CONSENT AS SDM - HCCA s.21

- * Wishes
- * Best Interests

WISHES - HCCA s.5

- * While capable a person may express wishes in respect to treatment, admission to care facilities, personal assistance services.
- * Manner of expression of wishes - in POAPC, in form prescribed by regulations, in any other written form, orally, in any other manner.
- * Later wishes expressed while capable prevail over earlier wishes.

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DEFINITION OF BEST INTERESTS HCCA s.21(2)

SDM to consider:

- a) values and beliefs that the SDM knows that the incapable person held when capable and believes that he or she would still act on
- b) other wishes of the incapable person with respect to treatment, admission, personal assistance services that are not required to be followed (ie those wishes expressed AFTER the person became incapable)
- c) whether treatment likely to:
 - i) improve the persons condition or well being
 - ii) prevent condition or well being from deteriorating
 - iii) reduce the extent or rate of deterioration of the persons condition or well being
- d) whether condition or well being is likely to improve or remain the same or deteriorate without the treatment
- e) if benefit outweighs risk of harm
- f) whether a less restrictive or less intrusive treatment would be as beneficial as the treatment proposed.

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