

A PERSON'S RIGHTS WHEN FOUND LACKING IN CAPACITY FOR CONSENT TO TREATMENT: HEALTH CARE CONSENT ACT (1996)

Q: What happens if I decide a person is incapable of making and consenting to a treatment decision?

You must tell the person and provide them with Rights Advice. Help them to understand by using plain language and other communication supports.

Rights Advice:

You would inform the person the following:

- Why they are incapable of consenting to a treatment decision. Give them examples they will understand.
- That you will contact their substitute decision maker (SDM) who will make the decision on their behalf.
- That they have the right to a 'review' (sometimes called an 'appeal') of your finding of incapacity to consent and your intention of contacting their SDM.

Q: What if the person wants my finding of incapacity reviewed/appealed?

- Do not provide your treatment, unless it is an emergency. To understand emergency treatment, refer to the HCCA 996, c. 2, Sched. A, s. 25 (1,2).
- Inform the person that you or someone else will help them to contact the Consent and Capacity Board.
- The Consent and Capacity Board will come to where the person is staying, usually within one week after they receive the application.
- The Board hears the appeal. They interview the person, the healthcare team, and they read the health records. The person's lawyer, if they have one, will submit evidence and give advice.
- The Board decides if the person has capacity to consent to treatment.

RIGHTS ADVICE SAMPLE SCRIPTS:

"I don't think you can make this treatment decision because you have problems with understanding relevant treatment information or appreciating the consequences of your decision."

"I will contact your substitute decision maker who will make the decision for you. They must try to follow your wishes. If they don't know your wishes, they try to decide what is best for you."

"If you don't agree with me about being incapable to make this treatment decision, you have the right to contact the Consent and Capacity Board. You can ask the Board to review my findings."

"The Board hears your application. They listen to you, your lawyer if you have one, to the healthcare team, and they read your health records."