

WHO IS A CAPACITY ASSESSOR?

A capacity assessor is a healthcare professional who (a) is a member of one of the Colleges named in the Substitute Decisions Act 1996; (b) has completed an approved training course; and (c) is covered by a minimum of \$1,000,000 in liability insurance. In addition to assessments of capacity for decisions related to personal care and long-term care admission, a capacity assessor is authorized to assess capacity to make property decisions.

WHEN DO YOU NEED TO INVOLVE A CAPACITY ASSESSOR?

A capacity assessor should be involved when:

- A Power of Attorney document requires a formal capacity assessment to determine incapacity; or
- One has reasonable grounds to believe that a person is incapable with respect to property decisions and is suffering or at risk of suffering serious harm as a result of his/her incapacity.

WHO IS AN EVALUATOR?

An evaluator is a healthcare professional who is a member of one of the Colleges specified in the Health Care Consent Act 1996 (see link in Online Resources). An evaluator can assess capacity related to decisions about personal assistance services as part of a care/treatment plan. These include hygiene, washing, dressing, grooming, eating, drinking,

elimination, ambulation, positioning or any other routine activity of living.

ONLINE RESOURCES:

Consent and Capacity Board

www.ccboard.on.ca/

Health Care Consent Act

www.ontario.ca/laws/statute/96h02

Substitute Decisions Act

www.ontario.ca/laws/statute/92s30

To speak to St. Joseph's Health System's Bioethicist, please call 905-522-1155 ext. 33866. If it is after business hours or on weekends, please speak to your healthcare team to have the Bioethicist on-call paged.

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*This guide provides general information about the current law in this subject area. However, legal information is not the same as legal advice, where legal advice is the application of law to an individual's specific circumstances. Although we have tried to make sure that the information in this guide is accurate and useful, we recommend that you consult a lawyer if you want professional legal advice in this subject area that is appropriate to your particular situation.



Capacity Assessment for Treatment Plans

*Ensuring that patients can make healthcare decisions for themselves**



CAPACITY ASSESSMENT

Seventy year-old Mohamed recently had a stroke and is unable to speak. He has difficulties swallowing and is at high risk of choking. The healthcare team is proposing that a feeding tube be inserted.

Isabella, a frail 84 year old woman, is recovering from a broken hip. She wants to go home, but doesn't seem to understand why it is so risky to do so.

Sixty-seven year-old Hadi recently immigrated to Canada and his English is very limited. He has recently been diagnosed with Alzheimer's disease. He also has bone cancer and a decision about whether or not to continue chemotherapy treatment needs to be made.

WHAT IS CAPACITY?

Persons are considered to have capacity with respect to making a treatment decision if they have the ability to understand the information that is relevant to the treatment decision and are able to appreciate what is likely to happen if he/she consents to or refuses the treatment. Unless there are reasonable grounds to suggest incapacity, people are generally assumed to be capable.

HOW IS TREATMENT CAPACITY ASSESSED?

Assessment of an individual's capacity to make treatment decisions is the responsibility of the healthcare practitioner who proposes the treatment. Capacity is primarily assessed by asking the individual questions related to the treatment decision.

Standard tests that measure cognitive ability might also be used to help decide if someone is capable.

It is important to note that capacity is decision-specific. This means a person might be able to make some decisions but not others.

WHAT FACTORS CAN AFFECT CAPACITY?

Treatable physical and psychological conditions including dehydration, infection, exhaustion and depression can cause a person to become incapable.

Incurable diseases such as Alzheimer's disease can also make people incapable.

WHAT INDICATORS SHOULD PROMPT FURTHER ASSESSMENT?

If an individual exhibits any of the following, further assessment of capacity is warranted.

- Confused and irrational thinking
- Noticeable forgetfulness
- Fluctuating wishes and alertness
- Level of suffering that impairs understanding

WHAT IS NOT EVIDENCE OF INCAPACITY?

Incapacity is not directly related to any of the following factors¹:

- Age
- Language barriers
- Psychiatric illness
- Physical disability and/or communication disorders
- Refusal of treatment
- Lower levels of education
- Cultural/Religious background
- Strange or unusual beliefs

¹Hébert, P.C. (1996). *Doing right: A practical guide to ethics for medical trainees and physicians*. Toronto: Oxford University Press.

DO INDIVIDUALS NEED TO BE INFORMED OF THE FINDINGS OF INCAPACITY?

Yes. Individuals need to be informed of a finding of incapacity and provided with information about their rights, including the right to appeal the decision through the Consent and Capacity Board (see online resources).