

Cutting Through the Foggy Myths Using Best Practice Guidelines in Long Term Care

# BP Blogger

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## Myth Busting: Consent and Capacity

### Myth 1: Residents can't make their own decisions

Ontario law tells us that LTC residents who are capable of making their own decisions, must make their own decisions. No one, including

family or health-care providers (HCP) can make a decision for them when they are capable of doing it themselves. Residents are free to ask family, friends or anyone to help them when making their health care decisions. In legal terms, this is called "consent and capacity". HCPs must ask a resident for permission before giving care or providing a treatment . . . this is called "consent". HCPs are required to give all the information needed for a resident to make a decision. It includes providing the benefits, risks and alternative options. Furthermore, "capacity" is the ability of the resident to understand and appreciate what could happen if they choose to accept the care or treatment, or

**Residents are capable to make their own decisions until proven otherwise**

what could happen if they decide to refuse what is being suggested. Each time a resident is asked to give consent their capacity must be determined. It is possible that a resident may not have been capable of consenting to admission to a long term care home but now that they are in LTC, they may be capable of making other decisions. For example, they remain capable of deciding whether they want to participate in a physiotherapy program. If a resident is not capable of giving consent then their substitute decision maker must be given all



the same information about benefits, risks and alternatives and make a decision that is in line with what the resident would have chosen if they had been able.

**A substitute decision-maker can only be someone named by the resident or determined by the law**

### Myth 2: Residents shouldn't make risky decisions

Residents who are capable of understanding and appreciating the risks in a situation have the right to make decisions that could be risky even if others disagree or think the decision could result in harm. In Ontario, residents' rights to make decisions are protected by law under the Health Care Consent Act (1996) and the Long-Term Care Homes Act (2007). Although it may be difficult for some families and health-care providers to accept that residents can choose to live with personal risk, it is important to respect the resident's decision, regardless of what you or others think. For example, a resident with diabetes may choose to eat a chocolate bar knowing that they may need extra insulin or refuse to go to hospital when family are pressuring them to go. It's important to point out that no one has the right to make decisions that will put others at risk of being harmed. For instance, a resident cannot insist that a health-care provider help them transfer using no assistive equipment when they have been assessed to be transferred always using a lift.

**Residents can choose to live with risk in LTC homes**

**Client-centred care involves advocacy and respecting residents' autonomy and participation in decision-making**

Refer to the RNAO Client Centred Care BPG  
[http://rnao.ca/sites/rnao-ca/files/Client\\_Centred\\_Care\\_0.pdf](http://rnao.ca/sites/rnao-ca/files/Client_Centred_Care_0.pdf)  
 • Check out Long-Term Care and Geriatric Resources at [www.the-ria.ca](http://www.the-ria.ca) & [www.rgpc.ca](http://www.rgpc.ca)  
 • Surf the Web for BPGs, resources and sites use in this issue are listed on pg 2.  
 • Review back issues of the BP Blogger for related topics [www.the-ria.ca](http://www.the-ria.ca)



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**Ask the resident first. Families cannot make decisions on behalf of residents who are capable of making their own decisions, nor can families override the decision made by a resident who is capable. Everyone must respect the resident's decision.**

a power of attorney for personal care on behalf of another person. Not all people will have named their preferred SDM in a completed Power of Attorney for Personal Care Document, but Ontario legislation has produced a list of people intended to be approached in ranked order, who are close to the resident and may have knowledge of the resident's values, beliefs and wishes. This allows them to consent or refuse treatments offered to the resident when the resident is incapable of making decisions for themselves.

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**Myth 3: Incapable means all or nothing**



law, a resident cannot consent to a treatment if they don't have the capacity to understand the treatment, therapy or care intervention and its risks and benefits. Every time a resident is asked for consent, health-care professionals must determine the resident's capacity. Residents' capacity may vary depending on their mental abilities, the complexity of decisions, and fluctuations in their health. For example a resident may be capable of consenting to taking medication, having a BP taken, blood work, or making choices at a meal, but be incapable of understanding and appreciating the risks, benefits and alternatives to having surgery.

It's not all or nothing. Every resident must be presumed to be capable of making decisions unless there is a valid reason to question their capacity. Under Ontario

**It's not all or nothing. Residents can be capable of making many decisions and at the same time, not capable of making specific decisions**



**Myth 4: Families can consent for residents anytime**



Families cannot override the decision made by a resident who is capable. The HCP must always find out if the resident is capable to give consent in the current situation, and ask them first for their consent for treatment. The Substitute Decision Maker (SDM) can only give consent when the resident is not capable of making a decision. If the HCP determines that the resident is not capable, then the HCP must contact the resident's SDM to explain the situation, provide them with the benefits and risks of the proposed treatment and any other options. The SDM then consents to, or refuses the treatment offered based on their knowledge of the resident's wishes, values and beliefs. There may be a court appointed guardian, or a named SDM by the resident, done while they are capable, in a legal document called a "Power of Attorney for Personal Care." This person may be anyone the resident chooses regardless of relationship, with whom they have discussed their beliefs, values and wishes for care should they become incapable. This named person cannot appoint anyone else to be SDM in their absence. Power of attorney for personal care document can only be created by the resident themselves. Family or the SDM cannot prepare

**The highest ranking person on this list who is available, capable and willing to make these decisions will become the substitute decision-maker for treatment.**

- Guardian
- POA for personal care
- Representative appointed by the consent & capacity board
- Spouse ( same sex or opposite sex; married, common-law at least one year or couple with a child) or partner
- Your child (if they are 16 years of age or older – all children rank equally) or parent
- Your parent with right of access only
- Custodial parents rank ahead of non-custodial parents
- Your brother or sister -all equally ranked
- Any other relative by blood, marriage or adoption
- The Office of the Public Guardian and Trustee.  
The provincial Public Guardian and Trustee is the substitute decision-maker of last resort if there is no other appropriate person to act for you.

**Check out these Best Practices, Guidelines & Websites**  
Answers to the Myths came from them. Find out more!

Health Care Consent Act, 1996  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_96h02\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm)

Long-Term Care Homes Act, 2007  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_07l08\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_07l08_e.htm)

National Initiative on Care of the Elderly (NICE) and  
<http://www.nicenet.ca/detail.aspx?dt=635&menu=43&app=198&cat1=571&tp=9>

Advocacy Centre for the Elderly (ACE). (2003).  
[http://www.ancelaw.ca/consent\\_and\\_capacity\\_-\\_publications.php](http://www.ancelaw.ca/consent_and_capacity_-_publications.php)  
and <http://www.ancelaw.ca/index.php>

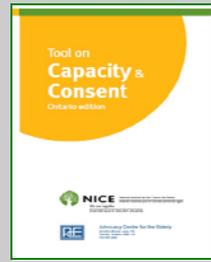
Tool on Capacity and Consent, Ontario Edition: National Initiative on Care of the Elderly and Advocacy Centre for the Elderly. NICE - Capacity and Consent, Ontario Edition 2010.

Wahl, J. The Legal Framework of Decisional Capacity  
<http://www.ancelaw.ca/appimages/file/Legal%20Framework%20Capacity.pdf>

RNAO Client Centred Care BPG [http://rnao.ca/sites/rnao-ca/files/Client\\_Centred\\_Care\\_0.pdf](http://rnao.ca/sites/rnao-ca/files/Client_Centred_Care_0.pdf)

Substitute Decision Maker - ranking list.  
<http://www.seniors.gov.on.ca/en/advancedcare/dontappoint.php>

Find more resources on these websites:  
[www.aphasia.ca](http://www.aphasia.ca) [www.cleo.on.ca](http://www.cleo.on.ca)  
[www.nicenet.ca](http://www.nicenet.ca)



Please note that the information in this BP Blogger refers to health care consent and capacity in Ontario, Canada. Check your jurisdiction, for specific legislation. This BP Blogger is not providing legal advice. To obtain legal advice, please contact a lawyer.