

HOSPICE PALLIATIVE CARE ONTARIO PRESENTS

Advance Care Planning In Ontario

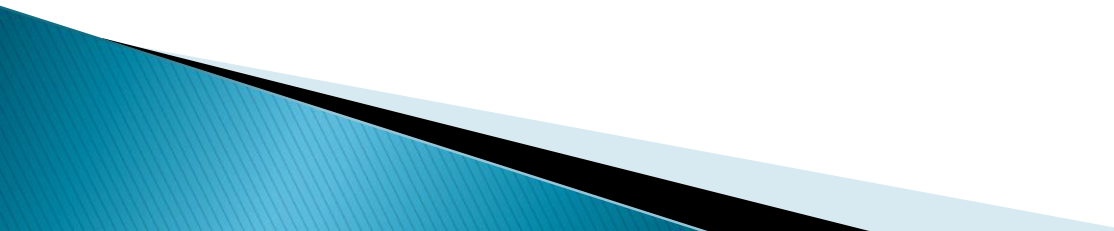
It's all about the
conversations!



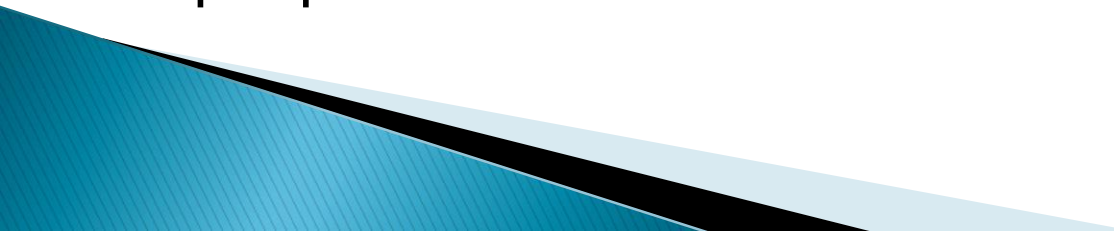
Ontario laws are unique in Canada

- ▶ **Substitute Decisions Act, 1992**
- ▶ **The Health Care Consent Act 1996**

Two stories

- ▶ **Kathy** is 44.
 - ▶ She fell while jogging and has hurt her left wrist and elbow. She goes to the emergency Room where an X-ray shows a fracture at the elbow that may require surgery.
 - ▶ **Sadie** is 95 and in a nursing home. Her memory is poor. Sometimes she doesn't recognize her son. She fell on the way from the dining room and now has a very painful hip and she won't stand on it.
- 

Ontario laws say–Health Care Consent must be informed

- ▶ In Ontario, before providing a patient with any treatment or care, the law requires health care providers to get informed consent, or refusal of consent, from a mentally capable person. Health practitioners must tell you about your illness and what may be done to treat you. You then have the right to make a decision and agree to or refuse the treatments offered. This is called health care consent.
 - ▶ But in emergencies, to save a life or to reduce suffering, people can be treated without informed consent
- 

Health Care Consent in Ontario

BUT.....In Ontario, health care providers are required to get that consent from a living and mentally capable person:

- ▶ normally that would be you
or
- ▶ If you are not mentally capable, your substitute decision maker(s).
- ▶ Consent is based on treatment for the current condition, not a future one

“From a person” means that Advance Directives, Living Wills, and Personal Directives have **no legal standing**.



Who is "Mentally Capable" and how is that decided?

The law assumes you are capable unless there is evidence otherwise.

Ontario law defines capacity for being able to make medical decisions as:

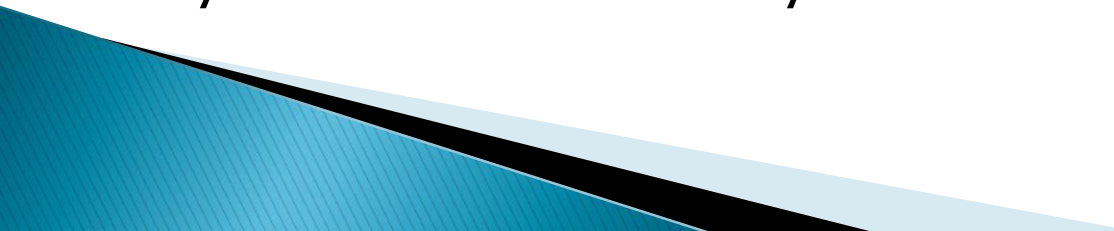
- ▶ Having the ability to understand information that has to do with making a decision about treatment, admission, or personal assistance service; and
- ▶ Having the ability to appreciate the likely consequences of a decision.

If your doctor or health care professional believes you to be mentally incapable for any particular health decision, then we will turn to someone else to make health decisions for you. That person is called your Substitute Decision Maker, or SDM

Who is “mentally capable”

Being capable depends on the question being asked. I might not be able to understand medical details of my illness or treatments that the doctor is describing, but I might be perfectly capable of deciding which person in my family I want to have with me or what I want for lunch. Being capable **depends on the question being asked.**

Who decides if I am mentally capable? That decision is made by the health care provider who is asking for your consent. Really? How?



Determining Mental Capacity

- ▶ Kathy is a young professional. When the surgeon explains that she has a fracture at her elbow and explains her treatment options, she asks intelligent questions about it:
 - “Is the part that is fractured just cracked or is it actually separated from the main bone?” “How will you put them together?” “If I have surgery will I still need a cast?” “How long will I have trouble to move the arm?” “Will I have to be off work?”
- ▶ The doctor determines that she clearly: understands the information she is being given and appreciates the likely consequences.

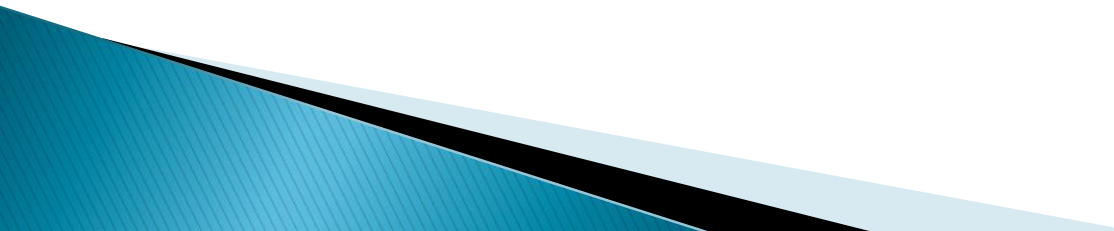
Determining Mental Capacity

- ▶ Sadie, on the other hand does not seem to understand. When the nurse explains she might have a broken hip and needs to go to the hospital, she says, “No, I want to go home. This is not my home. I can’t stay here. Can you help me? ”
- ▶ She clearly does not understand the **information** she is being given and is not able appreciate the likely **consequences**. For this **decision** she is not capable of giving **informed consent**

Informed Consent for Treatment


- ▶ Kathy is capable of making her own decisions and giving consent for treatment. The surgeon explains the surgery, the risks and benefits, and what would happen without the surgery. She clearly understands the treatment that is being discussed and the likely consequences and consents to the surgery. This fits all the criteria for informed consent from a mentally capable person.
- ▶ The nurse recognizes that Sadie is not capable of understanding what is happening to her and her treatment options and what those options mean for her. For informed consent we need to find a mentally capable person to speak for Sadie. That person would be her Substitute Decision Maker

Who is Sadie's Substitute Decision Maker? Who is yours?

- ▶ **THERE ARE LAWS THAT TELL US WHO IS OUR SDM– AUTOMATICALLY**
 - ▶ **The Health Care Consent Act** provides a ranked listing (hierarchy) of your possible automatic SDMs. You don't have to do anything to have this automatic SDM speak for you, they are authorized by law.
- 

SDM Hierarchy

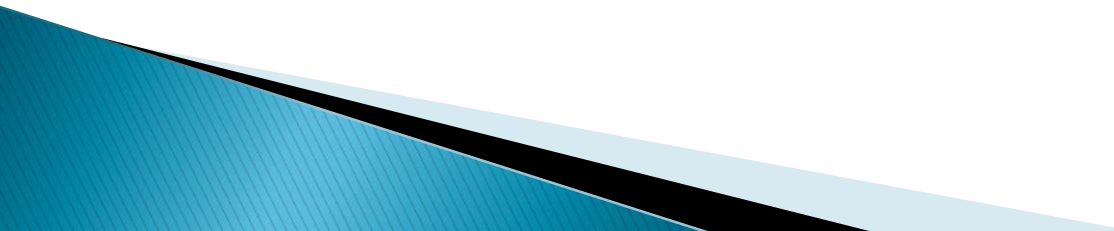
By default, your SDM(s) will be the person or people highest ranked on the hierarchy who meet the criteria to be an SDM



Court Appointed Guardian	Legally Appointed SDMs
Attorney for Personal Care	
Representative Appointed by Consent and Capacity Board	
Spouse or Partner	Automatic Family Member SDMs
Parents or Children	
Parent with right of access only	
Siblings	
Any other relatives	
Public Guardian and Trustee	SDM of last resort

Ontario's Health Care Consent Act, 1996

Back to Sadie

- ▶ So back at the nursing home, The nurse checks the chart and finds that Sadie is a widow. She has not completed a POA document. She has two children and five grandchildren. Because her husband is no longer living, her children are her automatic substitute decision makers. Because they are equally ranked, they must agree. Her daughter is called. She calls her brother. After talking to her brother the daughter calls back and gives consent for Sadie to be transferred to the hospital for treatment.
- 

In summary

- ▶ The person, or persons, in your life ranked highest in the Substitute Decision Maker Hierarchy who meet(s) the requirements to act as a substitute decision maker will automatically be your SDM(s) for health care.
- ▶ Or if you prefer to have someone else other than **your automatic SDM** then **you can choose** and name a person, or more than one person, to act as **your SDM** by preparing a document called a Power of Attorney for Personal Care (POAPC).

Power of Attorney for Personal Care


The POA for Personal Care is a written document, in which you name someone to be your “attorney” (SDMs). It is a legal document if it is done correctly, and does not have to be prepared by a lawyer.

To be legally valid, the person writing the Power of Attorney for Personal Care, must:

- Be mentally capable,
- Sign the document voluntarily
- Have the document signed in front of two witnesses

POA Outranks family member SDM's

By default, your SDM(s) will be the person or people highest ranked on the hierarchy who meet the criteria to be an SDM

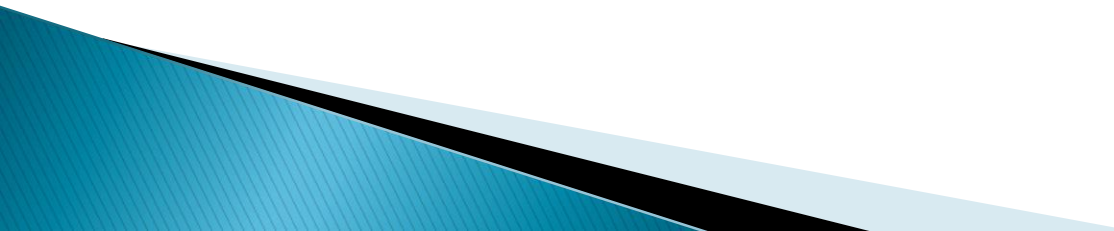


Court Appointed Guardian	Legally Appointed SDMs
Attorney for Personal Care	
Representative Appointed by Consent and Capacity Board	
Spouse or Partner	Automatic Family Member SDMs
Parents or Children	
Parent with right of access only	
Siblings	
Any other relatives	
Public Guardian and Trustee	SDM of last resort

Ontario's Health Care Consent Act, 1996

Power of Attorney for Personal Care

How do I get this paperwork?

- ▶ Call your local Service Ontario office
 - ▶ Call 1-800-668-9938 and it will be mailed
 - ▶ On line at: attorneygeneral.jus.gov.on.ca
 - ▶ <https://advancecareplanningontario.ca>
- 

Advance Care Planning in Ontario

- **Confirming your substitute decision maker(s) (SDMs)**

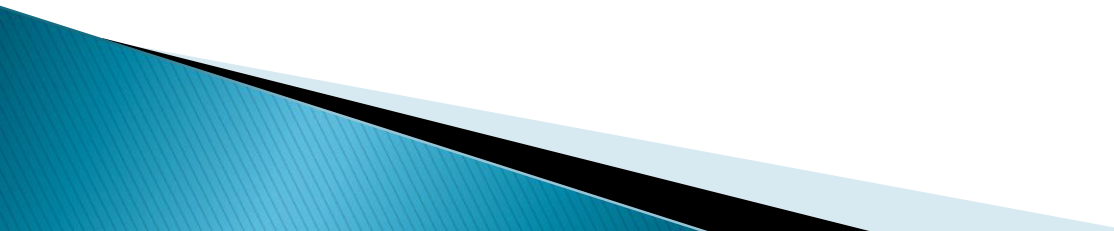
And

- **Communicating your wishes, values and beliefs about care to help your SDM(s) make health and personal care decisions for you if you become mentally incapable of speaking for yourself. These are conversations.**


Conversations

Conversations with our SDM can help us figure out what **quality of life means** to us – and what **values, beliefs, and wishes** we use to make our health care decisions. Having those conversations helps us understand ourselves better, and that way we are more prepared for decisions we might face in the future, and our Substitute Decision Maker is better prepared to make future health care decisions for us if we are not capable of speaking for ourselves.

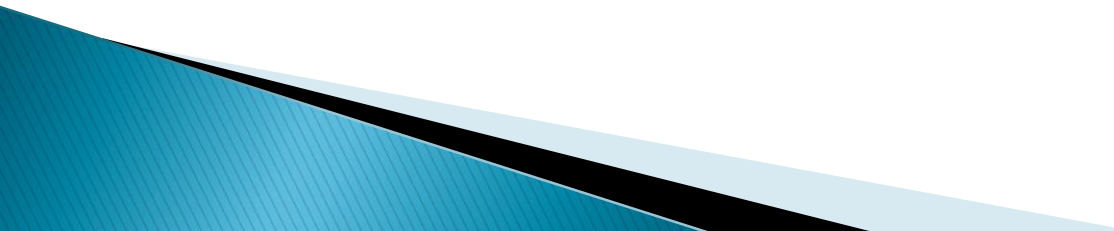
These conversations are ongoing as we age and our circumstances and those of our SDM's change



Advance Care Planning in Ontario

- ▶ We cannot hope to know what choices we might have to make in the future, or what decisions others might have to make for us. Advance Care Planning is not about making statements about specific treatments you would want or not want. It is about figuring out what is important about our life that makes our life worth living.
 - ▶ Advance Care Planning is about identifying our Substitute Decision Maker and preparing them to make decisions about health care that we would want them to make if we could speak for ourselves.
- 

Topics not covered today

- ▶ What are the requirements to be an SDM
 - ▶ What happens when there is more than one SDM and they don't agree
 - ▶ How to identify your values and wishes and explain them to your SDM
 - ▶ How the ACP conversation changes when we are facing a serious and life-threatening illness. These conversations are called Goals of Care conversations
 - ▶ DNR and the DNR-C form and when it is used
- 

Advance Care Planning Website / Workbook
<https://advancecareplanningontario.ca>

Advocacy Centre for the Elderly
<http://www.advocacycentreelderly.org/>

For POA forms
attorneygeneral.jus.gov.on.ca
1-800-668-9938

Atul Gawande “Being Mortal”

Resources

Thank you!

- ▶ Questions?
- ▶ If you know anyone else who might like to hear this talk, they can contact me at:
 ken.hook@icloud.com