



# Guidelines for registrants for patients found incapable of making treatment decisions under the HCCA

## Policy 5.3

<b>Section:</b>	Professional Practice		
<b>Approved By:</b>	Council	<b>Public:</b>	Yes
<b>Approved Date:</b>	March 27, 2015	<b>Review Schedule:</b>	Every 3 Years
<b>Effective Date:</b>	March 27, 2015	<b>Last Reviewed:</b>	March 2024
<b>Amended Date(s):</b>	March 27, 2018	<b>Next Review Date:</b>	March 2027

### Purpose

A registrant of the College who proposes a treatment<sup>1</sup> is responsible for obtaining informed consent from either the patient, if capable, or a substitute decision maker, if the patient is found to be incapable. Registrants who obtain consent have a professional accountability to be satisfied that the patient is capable of giving consent.

Under the *Health Care Consent Act, 1996* (HCCA), the College is required to establish guidelines for registrants who have found a patient to be incapable. These guidelines set out the information to be provided to the patient, as well as the circumstances and conditions under which the information should be provided. These guidelines have been developed to assist registrants in their discussions with those patients they find to be incapable under the HCCA. These guidelines apply unless the emergency provisions of the HCCA are applicable.

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<sup>1</sup> Treatment, in this context, is defined as anything that is done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purposes, and includes a course or plan of treatment.

## Policy

1. If the registrant proposing a treatment determines that the patient is incapable of making the decision and the registrant believes that the patient is able to understand the information, the registrant informs the patient that a substitute decision maker will be asked to make the final decision. This is communicated in a way that takes into account the particular circumstances of the patient's condition and the registrant-patient relationship.
2. If there is an indication that the patient disagrees with this information, and, if it relates to the finding of incapacity or to the choice of substitute decision maker, the registrant informs the patient of their options to apply to the Consent and Capacity Board for a review of the finding of incapacity, and/or for the appointment of a representative of the patient's choice.
3. If the patient expresses a desire to exercise these options, the registrant is expected to provide assistance.
4. If there is an indication that the patient disagrees with the finding of incapacity when the finding was made by another health care practitioner, the registrant explores and clarifies the nature of the patient's disagreement. If it relates to the finding of incapacity or to the choice of substitute decision maker, the registrant informs the health care practitioner who made the finding of incapacity and discusses appropriate follow-up with such health care practitioner.
5. The registrant uses their professional judgment to determine whether the patient is able to understand the information. For example, a young child or a patient suffering advanced dementia is not likely to understand the information. It would not be reasonable in these circumstances for the registrant to inform the patient that a substitute decision maker is going to be asked to make a decision on their behalf.
6. The registrant uses their professional judgment to determine the scope of assistance to provide to the patient in exercising their options. The registrant documents their actions, according to departmental policy.