

SUBSTITUTE DECISION MAKERS (Who provides consent if you are not mentally capable)

In Ontario, Health care professionals are required to get an “Informed consent” before they provide treatments or care. That informed consent must come from you, if you are mentally capable, or from your Substitute Decision Maker (SDM) if you are not mentally capable.

The Ontario Health Care Consent Act, Section 21, includes a hierarchy (a ranking list) that provides you with an **automatic** Substitute Decision Maker. The person or persons in your life that are the highest ranked in this hierarchy and that meet the requirements to act as a Substitute Decision Maker(s) will be your Substitute Decision Maker(s) for health care.

1. Guardian of the Person	Someone appointed by the court to be your SDM
2. Attorney named in a Power of Attorney for Personal Care	Power of Attorney for Personal Care is a legal document that you may complete that names the person (or people) who you have chosen to be your SDM. This person(s) will be prioritized over any of the people listed below.
3. Board-Appointed Representative	One of your family or friends could apply to the tribunal, known as the Consent and Capacity Board, to be named as your “Representative”
4. Spouse or partner	A spouse or partner can be same sex, opposite sex, someone you have lived with at least one year or someone you are married to. (if you are separated or divorced, that person would not be your SDM).
5. Child or parent	This could also be a children’s aid society or other person who is lawfully entitled to give or refuse consent in the place of the parent. Child and parent equally rank. More than one person could be entitled to be your SDM as long as they meet the requirements.
6. Parent with right of access	This would apply when a child is not mentally capable of making treatment decisions and the parent does not have custody of the child but only an order for access
7. Brother or sister	If you have more than one sister or brother, they are all entitled to be your SDM. They can decide amongst themselves, who would be the SDM or more than one of them could act as your SDM together
8. Any other relative	People are relatives if they are related by blood, marriage or adoption
9. Public Guardian and Trustee	The Public Guardian and Trustee is the last resort to act as your SDM if no person in your life meets these requirements

To be a Substitute Decision Maker, the person must meet the following requirements:

- Willing to act as your Substitute Decision Maker
- Mentally capable to make the needed health decisions for you
- Available (in person, by phone or by some other means) when a decision needs to be made
- Not prohibited by a court order from acting as your substitute decision maker and
- At least 16 years of age

If there is more than one person entitled to be your SDM on the same level in the hierarchy, they must decide amongst themselves whether one or more of them will act or all of them will act as your SDM. That’s their choice. If more than one person on the same level in the hierarchy acts as your SDM, they must agree on any decisions for you. If they disagree, then the doctor must turn to the Public Guardian and Trustee for your health care decisions.

For further information please see The Ontario Health Care Consent Act, Section 21 at: <http://www.ontario.ca/laws/statute/96h02>