

The Learning Company Communications and Ethics

HCCA – Health Care Consent Act

The purposes of this Act are,

- (a) to provide rules with respect to consent to treatment that apply consistently in all settings;
- (b) to facilitate treatment, admission to care facilities, and personal assistance services, for persons lacking the capacity to make decisions about such matters;
- (c) to enhance the autonomy of persons for whom treatment is proposed, persons for whom admission to a care facility is proposed and persons who are to receive personal assistance services by,
 - (i) allowing those who have been found to be incapable to apply to a tribunal for a review of the finding,
 - (ii) allowing incapable persons to request that a representative of their choice be appointed by the tribunal for the purpose of making decisions on their behalf concerning treatment, admission to a care facility or personal assistance services, and
 - (iii) requiring that wishes with respect to treatment, admission to a care facility or personal assistance services, expressed by persons while capable and after attaining 16 years of age, be adhered to;
- (d) to promote communication and understanding between health practitioners and their patients or clients;
- (e) to ensure a significant role for supportive family members when a person lacks the capacity to make a decision about a treatment, admission to a care facility or a personal assistance service; and
- (f) to permit intervention by the Public Guardian and Trustee only as a last resort in decisions on behalf of incapable persons concerning treatment, admission to a care facility or personal assistance services.

Treatment

Consent to Treatment

No treatment without consent

- A health practitioner who proposes a treatment for a person shall not administer the treatment, and shall take reasonable steps to ensure that it is not administered, unless,
 - (a) he or she is of the opinion that the person is capable with respect to the treatment, and the person has given consent; or
 - (b) he or she is of the opinion that the person is incapable with respect to the treatment, and the person's substitute decision-maker has given consent on the person's behalf in accordance with this Act.

Elements of consent

- The following are the elements required for consent to treatment:
- The consent must relate to the treatment.
- The consent must be informed.
- The consent must be given voluntarily.
- The consent must not be obtained through misrepresentation or fraud.

Components of Consent

- The nature of the treatment.
- The expected benefits of the treatment.
- The material risks of the treatment.
- The material side effects of the treatment.

- Alternative courses of action.
- The likely consequences of not having the treatment.

Informed consent

- A consent to treatment is informed if, before giving it,
 - o that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
 - o the person received responses to his or her requests for additional information about those matters.

Plan of Treatment

If a plan of treatment is to be proposed for a person, one health practitioner may, on behalf of all the health practitioners involved in the plan of treatment,

- propose the plan of treatment;
- determine the person's capacity with respect to the treatments referred to in the plan of treatment; and
- obtain a consent or refusal of consent in accordance with this Act,
 - o from the person, concerning the treatments with respect to which the person is found to be capable, and
 - o from the person's substitute decision-maker, concerning the treatments with respect to which the person is found to be incapable.

Withdrawal of Consent

A consent that has been given by or on behalf of the person for whom the treatment was proposed may be withdrawn at any time,

(a) by the person, if the person is capable with respect to the treatment at the time of the withdrawal;

(b) by the person's substitute decision-maker, if the person is incapable with respect to the treatment at the time of the withdrawal.

Capacity

Capacity depends on treatment

A person may be incapable with respect to some treatments and capable with respect to others

Capacity depends on time

A person may be incapable with respect to a treatment at one time and capable at another

If, after consent to a treatment is given or refused on a person's behalf, the person becomes capable with respect to the treatment in the opinion of the health practitioner, the person's own decision to give or refuse consent to the treatment governs

Consent on Incapable Person's Behalf

List of persons who may give or refuse consent

If a person is incapable with respect to a treatment, consent may be given or refused on his or her behalf by a person described in one of the following paragraphs: (if they have been given previous authority)

1. The incapable person's guardian of the person.
2. The incapable person's attorney for personal care.
3. The incapable person's representative appointed by the Board under.
4. The incapable person's spouse or partner.

5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent.
6. A parent of the incapable person who has only a right of access.
7. A brother or sister of the incapable person.
8. Any other relative of the incapable person.

Requirements

A person (as described above) may give or refuse consent only if he or she,

- (a) is capable with respect to the treatment;
- (b) is at least 16 years old, unless he or she is the incapable person's parent;
- (c) is not prohibited by court order or separation agreement from having access to the incapable person or giving or refusing consent on his or her behalf;
- (d) is available; and
- (e) is willing to assume the responsibility of giving or refusing consent

Best interests

In deciding what the incapable person's best interests are, the person who gives or refuses consent on his or her behalf shall take into consideration,

- (a) the values and beliefs that the person knows the incapable person held when capable
- (b) any wishes expressed by the incapable person with respect to the treatment
- (c) the following factors:
 1. Whether the treatment is likely to,
 - i. improve the incapable person's condition or well-being,
 - ii. prevent the incapable person's condition or well-being from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the incapable person's condition or well-being is likely to deteriorate.
 2. Whether the incapable person's condition or well-being is likely to improve, remain the same or deteriorate without the treatment.
 3. Whether the benefit the incapable person is expected to obtain from the treatment outweighs the risk of harm to him or her.
 4. Whether a less restrictive or less intrusive treatment would be as beneficial as the treatment that is proposed

Protection from Liability

Apparently valid consent to treatment

1. If a treatment is administered to a person with consent that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for administering the treatment without consent.
2. If a treatment is not administered to a person because of a refusal that a health practitioner believes, on reasonable grounds and in good faith, to be sufficient for the purpose of this Act, the health practitioner is not liable for failing to administer the treatment.