

How Health Care Decisions are Made in BC

If You are Found Incapable of informed Consent

“To make things clear and easier for my family and the health system, it helps if I make a Representation Agreement before a health crisis occurs.”



The Health Care Consent and Care Facility Admission Act and Health Care Consent Regulation outlines the requirements for health care consent in BC. The legislation came into effect in February 2000 and describes how decisions are made if a patient/client/resident is determined incapable of informed consent. It applies to adults. In BC, the age of adulthood is 19 years.

Is there a committee of person in place?

If a health care decision needs to be made, the health care provider first checks if you have a court-appointed committee of person. This is rare because it is costly, takes time, and is difficult to reverse. The procedure is sometimes called civil death because it removes your civil rights and you become a non-person.

In BC, Adult Guardianship (also called Committeeship) happens when someone (usually a relative) hires a lawyer and applies to the Supreme Court of BC to be appointed as your committee of person (personal guardian). Before appointing someone, the judge must first declare you mentally incompetent to make decisions about your health and personal care matters. They can base this finding on evidence from two BC physicians. For more details, read [Adult Guardianship/Committeeship in BC](#) or see page 3 under More information from Nidus.

If you have a court-appointed committee of person, a health care provider offering health care will go directly to them for consent on your behalf, as you have already been determined incapable.

What assumptions does the law make about me?

The BC legislation for health care consent is designed to give adults every chance to make their own decisions. It is based on the principle of self-determination, like Representation Agreements. Other laws, like for Adult Guardianship or Committeeship, are based on best interest — what someone else thinks is best for you, from their perspective.

How is incapability determined, if no committee of person?

If there is no committee of person appointed by a judge of the Supreme Court of BC, your incapability is determined by the health care provider offering the health care.

If there is no committee of person, the health care provider must first try to get consent from you. If there is a Representation Agreement in place, your representative is involved to help you make your own decisions.

You are presumed to be capable of giving, refusing or revoking (cancelling or withdrawing) consent unless and until you are determined incapable.

The health care provider bases their determination of your incapability for informed consent on whether you can demonstrate two things:

1. You understand the information provided by the health care provider such as what kind of health care is being offered, its purpose, and the benefits and risks; and
2. You understand that the information applies to you.

For details about informed consent under BC law, please read [Health Care Consent in BC: Your Rights and the Law](#) or see page 3 under More information from Nidus.

Sometimes it is difficult to know the difference between ‘capable’ and ‘incapable.’ You may be capable of deciding some things and not others, or your capability might be different today than it is next week.

Informed consent is determined by a health care provider at the time health care is offered. You may be found incapable at this time but if you become capable before health care is started or while it is going on, you will decide.

What about communication?

The health care provider can NOT decide you are incapable of consent to health care only because of how you communicate.

The health care provider must communicate with you in a way that fits with your skills and abilities. The law says a health care provider **may** allow your spouse, family or friends to help with understanding your communication.

A representative named in your Representation Agreement (RA7 or RA9) has legal authority to help with communication and help you to make your own decision. Having a representative means getting help from those who know and care about you, without having to be labelled incapable. A representative is there to support you across the continuum of decision-making needs.

How are decisions made if I am found incapable of informed consent?

If you are found incapable of informed consent, then the health care provider offering health care to you must get consent from one of the authorities below, in this order:

1. As mentioned earlier, if you have a court-appointed **committee of person**, then you have been declared incapable by a judge and the committee of person will consent on your behalf. A committee of person has authority for all kinds of health care unless the judge put restrictions in the court order. Read [Adult Guardianship/Committeeship in BC](#), or see More information from Nidus, end of this page.
2. Your **representative** — the person(s) you choose and authorize for health care in a legal document called a Representation Agreement. The duty of a representative is to advocate with you and for your wishes, values and beliefs. Read [Representation Agreements in BC for Health Care](#)
3. A **stand-alone Advance Directive** — a document with written instructions about health care you do or do not want. The health care provider can only follow your stand-alone Advance Directive if the instructions clearly relate to the health care decision at hand. For details, read [Advance Directives in BC](#)
4. **Temporary Substitute Decision Maker (TSDM)** — someone who is selected by the health care provider, from a list in the law, when no other authority above is in place of may not apply to the decision. A TSDM is a temporary role and is part of the default-scheme for health care decision-making. For details, read [The Role and Scope of Authority of a TSDM](#)

To view legislation and regulation

Go to www.bclaws.ca > Laws of BC > Public Statutes and Regulations > H > Health Care Consent and Care Facility Admission Act (see link for Regulations, click for Health Care Consent Regulation).

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EXAMPLE: *Albert is a widower with three adult children. He recently needed surgery to insert a pacemaker. Unfortunately, he developed a blood clot during surgery and had a stroke. When his son Patrick stopped in to see his father, he learned about the stroke. Patrick found his dad confused and groggy. The hospital resident doctor came by to talk to Albert about his condition and to get consent for medication and some tests. Albert's speech was unclear and he did not seem to understand when Patrick asked if he wanted a glass of water. Patrick knew his dad did not respond well to anaesthetic or to painkillers. Patrick asked the doctor questions about his dad, and the doctor asked if Albert had a Representation Agreement. Patrick wasn't sure. He said his sister might know. The doctor said he would come back to get consent.*

As it turned out, Albert made a Will — but he is not dead. Albert does not have a Representation Agreement in place and no stand-alone Advance Directive, if it would even apply.

Any one of Albert's three adult children could be selected to be his TSDM. The doctor could select Patrick as TSDM to give or refuse consent for the medication and tests right now. Because the authority of a TSDM is 'temporary,' the doctor might select Ashley or Paul as TSDM at another time.

All three of Albert's children want to ensure he gets the best rehabilitation services possible. The TSDM role only covers health care but Albert needs help in all life areas, not just health care. They also think it is better for Albert and easier on the health care system if there is certainty and continuity for health care decisions. They do not want to apply to be committee of person because of how it stigmatizes Albert, especially if he gets better and wants to reverse it. The three children help Albert make a Representation Agreement under section 7 (RA7All).

More information from Nidus

For other fact sheets and information related to health care consent, go to www.nidus.ca > Information (top menu bar) > [Health Care Consent](#)

- Health Care Consent in BC: Your Rights & the Law
- Role and Scope of Authority of a TSDM for Health Care Consent in BC
- Duty for Notice when a TSDM is Selected for Major Health Care in BC
- Giving Consent to a Plan for Minor Health Care in BC
- Representation Agreements for Health Care in BC
- Advance Directives in BC
- Adult Guardianship/Committeeship in BC