

# Notice for Major Health Care

## When a TSDM is Selected to Consent on the Adult's Behalf

*This fact sheet does not apply if you have a representative appointed in a Representation Agreement and they have authority for health care. The procedures discussed in this fact sheet are designed to protect the rights of adults who did not choose a representative to act for them.*

### What is a Notice for Major Health Care?

A "Notice of Incapability and Substitute Consent (Major Health Care)" is a mandatory form required under the Health Care Consent and Care Facility Admission Act, section 14 (4).\* The form that must be used is provided in the Health Care Consent Regulation.

A health care provider must complete a Notice of Incapability and Substitute Consent when:

- The health care provider determines that an adult is incapable of making a decision about the major health care that is being proposed;
- The health care provider has selected someone to be the adult's Temporary Substitute Decision Maker (TSDM) because they believe there is no other authority in place; and
- The TSDM has made a decision to give or refuse consent on the adult's behalf for the major health care being proposed.

The health care provider completes the Notice after the TSDM has made a decision to give or to refuse consent. The Notice must list what major health care is being offered, who is selected as the adult's TSDM, what decision the TSDM made on the adult's behalf, and when that decision was made. The health care provider then signs and dates the Notice.

*\*See a copy of the Notice attached at the end of this fact sheet.*

*(You can also find the notice at [www.bclaws.ca](http://www.bclaws.ca) > Laws of British Columbia > Statutes and Regulations > H > Health Care (Consent) and Care Facility (Admission) Act > Regulations > Health Care Consent Regulation > [Form 1](#))*

### What is major health care?

Major health care is defined as:

- Major surgery.
- Any treatment involving a general anesthetic.
- Major diagnostic or investigative procedures.
- Radiation therapy.
- Intravenous chemotherapy.
- Kidney dialysis.
- Electroconvulsive therapy.
- Laser surgery.
- Any other health care that may be designated by regulation as major health care in the future.

### Who is considered a health care provider?

The Health Care Consent and Care Facility Admission Act defines a health care provider as someone who is licensed or registered to provide health care in BC. Those who are most likely to provide major health care include:

- Physicians and surgeons
- Nurses
- Dentists

For a full list of health care providers, see the Nidus fact sheet on *Health Care Consent: Your Rights and the Law*.

**EXAMPLE:** Cathy was in a car accident and was admitted to hospital. Cathy has been confused and sleeping a lot. The doctor wants to do a major investigative procedure, but has determined that Cathy is not able to give informed consent. There is no Representation Agreement in place, so the doctor must select a TSDM. After finding out that Cathy has no spouse, the doctor selects Cathy's daughter, Audrey, as the TSDM. Audrey gives consent for the major investigative procedure. The doctor completes a Notice of Incapability and gives it to Cathy and Audrey.

## Who receives a copy of the Notice?

The law says the health care provider must inform the adult (patient) and any spouse, near relative or close friend of the adult who accompanies the adult about the Notice and its contents — the finding of incapability, the major health care being offered, who they chose as the TSDM, and the TSDM's decision.

The Notice would also be included in the adult's medical chart or records.

## When is the Notice given?

The law says that the health care provider must fill out a Notice of Incapability and Substitute Consent each time a TSDM makes a decision to give or refuse consent to major health care. However, the law is not clear about when the health care provider must give the Notice to the adult and those accompanying the adult. The law does not say the health care provider must inform the adult before the treatment is given, but this would be good practice.

One of the intentions of the legislation governing health care consent is to ensure an adult has a voice in decisions related to their care. If the TSDM has consented to treatment and the health care provider does not give the Notice before the treatment starts, the adult and their supporters will not have the opportunity to request that the TSDM's decision be reviewed and possibly changed. If the health care provider does not offer a copy of the Notice, Nidus suggests you ask for it.

In practice most of the treatments that qualify as 'major health care' will take time to schedule and prepare for (e.g. dental surgery), so the Notice can be given in advance.

Before the major health care begins, the health care provider must check again to see if the adult is now capable of giving or refusing consent themselves. If the adult is still incapable, the health care provider must confirm this in writing and must re-confirm the TSDM's decision. This must be done within 21 days of beginning the health care. There is no mandatory form used for this, but a written note will be included in the adult's medical chart or records.

## When is a TSDM selected?

A TSDM is only selected if an adult is incapable of informed consent and does not have:

- Someone appointed as Committee of Person (guardian) by a judge after a court hearing, or
- A representative the adult appointed in a Representation Agreement that includes authority for health care, or
- An Advance Directive with an instruction that applies to the specific health care situation.

## Who can be selected as a TSDM?

The health care provider must select someone from a list outlined in the law, according to the following order:

1. Your spouse;
2. An adult child;
3. A parent;
4. A sibling;
5. A grandparent;
6. A grandchild;
7. Other relative;
8. A close friend;
9. A person who is immediately related by marriage (for example, an in-law).

The Public Guardian and Trustee staff (government office) are the last resort if no one else is available.

The health care provider must also make sure the person is qualified to be a TSDM.

For more details, see the Nidus fact sheet on *Health Care Consent: How decisions are made if you are incapable*.

**EXAMPLE:** After the major investigative procedure, Cathy's doctor determines that she needs dental surgery (with a general anesthetic) to repair some of the damage from the car accident. The doctor believes Cathy is incapable of informed consent and selects her daughter, Audrey, as the TSDM for the dental surgery decision. Audrey gives consent for the surgery, which is scheduled to take place in six weeks. Two weeks before the dental surgery, the doctor re-assesses Cathy and determines that she is still incapable of consent. The doctor also double-checks with Audrey to re-confirm that she is consenting to the surgery on Cathy's behalf. The doctor writes this down and puts it in Cathy's medical chart.

## When is a Notice not required?

A health care provider is not required to complete a Notice of Incapability and Substitute Consent (Major Health Care) if:

- The adult is capable of giving or refusing informed consent for themselves.
- The proposed health care is not defined as major health care.
- The adult made a Representation Agreement (under Section 9 or under Section 7) that includes authority for health care, and the representative is available.
- The adult made an Advance Directive that provides a clear instruction to give or refuse consent and it applies to the specific major health care being proposed.
- The court appointed someone to be the adult's Committee of Person (guardian). This person has authority to act on the adult's behalf for health and personal care. (In BC, adult guardianship-Committeeship -is the last resort.)

## Additional Resources

Nidus has many resources on our website. Click on the links below or find them at [www.nidus.ca](http://www.nidus.ca) > Information tab.

Health Care Consent fact sheets:

- [How decisions are made if you are incapable](#)
- [Your Rights and the Law](#)
- [Restrictions on the Authority of a Temporary Substitute Decision Maker](#)

[Refusing Health Care: What are My Rights?](#)

[Representation Agreements--Overview Information](#)

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## Definitions

- An adult in British Columbia is anyone who is 19 years of age or older.
- Spouse refers to the person the adult is legally married to or lives with in a marriage-like relationship (common law). There is no time period a couple has to be together to be recognized as spouses in a marriage-like relationship.
- Near relative refers to a person who is 19 years or older and is the adult's child, a parent, a grandparent, an adult brother or sister, any other adult who is related by birth or adoption, or a spouse of any of these.
- Close friend is defined as a person who is 19 years or older and who has a long-term, close personal relationship involving frequent personal contact with the adult, but who does not receive compensation for providing personal care or health care to the adult.

**FORM 1 – NOTICE OF INCAPABILITY AND SUBSTITUTE CONSENT  
(MAJOR HEALTH CARE)**

[en. B.C. Reg. 40/2002, s. (c); am. B.C. Reg. 431/2004. s. 5.]

**Health Care (Consent) and Care Facility (Admission) Act  
Section 14 (4) (b) of the Act**

To \_\_\_\_\_  
[name of adult for whom substitute consent has been given (please print)]

I, \_\_\_\_\_, am your physician/other health care provider and I  
[name of health care provider (please print)]  
have proposed the following health care for you:

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I have determined, using the legal test of incapability stated in section 7 of the Health Care (Consent) and Care Facility (Admission) Act, that you are incapable of giving or refusing consent to the health care described above.

To the best of my knowledge, you do not have a committee, or representative, who is authorized to make a decision for you about the health care described above.

Therefore, I have chosen \_\_\_\_\_ as temporary  
[name and phone number of Temporary Substitute Decision Maker (please print)]  
substitute decision maker for you and he/she has  given  refused [CHECK ONE BOX ONLY]  
substitute consent to the health care described above.

If you disagree with the decision of your temporary substitute decision maker, you may ask your attending physician or one of the nurses caring for you how to have the decision reviewed.

The decision to  give  refuse [CHECK ONE BOX ONLY] substitute consent to the health care described above was made on \_\_\_\_\_ at \_\_\_\_\_ AM/PM.  
[dd/mm/yyyy] [time]

\_\_\_\_\_  
[signature of health care provider] \_\_\_\_\_ position/title \_\_\_\_\_ [dd/mm/yyyy] \_\_\_\_\_ AM/PM  
[time]