

## The Role and Scope of Authority of a Temporary Substitute Decision Maker (TSDM) for Health Care Consent in BC

### What is a TSDM?

TSDM stands for Temporary Substitute Decision Maker. It is the name of a role when you (the adult/patient/client/resident) are determined incapable of informed consent for health care that is offered and no other legal authority is in place to consent on your behalf.

A TSDM is the 'default' and is selected by the health care provider from a list in the law. The TSDM role only applies to **health care**.

TSDM is a **temporary** role. Sometimes a different TSDM is selected for different decisions — it depends on who is available at the time, their willingness to act, and if they qualify.

For certainty and continuity, you can make a Representation Agreement — an essential legal planning document in BC for health and personal care matters. It is the way to choose and authorize who YOU want as your decision maker, such as a spouse or a parent or an adult child or a friend.

### What authorities takes priority over a TSDM?

To learn about other authorities and legal planning documents, read [How Health Care Decisions are Made if You are Incapable](#), or see page 3 *More information from Nidus*.

### What is informed consent and how is incapability determined?

For details on informed consent and about capability to consent, read [Health Care Consent in BC: Your Rights & the Law](#)

### What legislation governs a TSDM?

The Health Care Consent and Care Facility Admission Act is the governing legislation for a TSDM. Section 16 of that legislation outlines who can be selected to be a TSDM and the qualifications a TSDM must meet. Section 17 outlines the authority of a TSDM, section 18 has key restrictions on the authority of a TSDM, and section 19 outlines the duties of a TSDM.

### When is a TSDM selected and what happens?

A TSDM is selected when:

1. A health care decision needs to be made and you do not have a court-appointed committee of person to consent on your behalf, or if none, a representative (they help you make your own decision—the opposite of a committee);

2. The health care provider offering the health care determines you are incapable of informed consent to the specific health care; and
3. No other legal authority is in place that covers the decision; and
4. It is a type of decision a TSDM can make.

When a TSDM is selected and gives consent, the health care provider must confirm in writing (up to 21 days or less BEFORE the health care begins), that you are still incapable of informed consent and that the TSDM gave consent for the health care to begin.

If you are found capable: 1) BEFORE the health care begins, you are asked for consent; or 2) AFTER it begins, it is stopped so you can decide.

### Who can be selected as your TSDM?

A potential TSDM must be selected in the following order:

- 1) Your spouse (legally married or in a marriage-like relationship). There is no minimum time you must have been together.

*If there is no spouse who qualifies, the provider will continue down the list to find someone who is related to you by birth or adoption:*

- 2) An adult child (if more than one, only one is selected, birth order does not matter);
- 3) A parent;
- 4) A sibling;
- 5) A grandparent;
- 6) A grandchild;
- 7) Other relative.

*If no one related by birth or adoption is available or qualified, the provider will look for:*

- 8) A close friend (defined in the legislation as an adult who has a long-term, close personal relationship involving frequent personal contact with you, but who does not receive compensation for providing personal care or health care to you);
- 9) A person who is immediately related to you by marriage (an in-law).

The legislation says that if no one from the above list is available or considered qualified, or there is a dispute about who should be selected, the Public Guardian and Trustee (PGT, a government official) can authorize someone to be your TSDM or the PGT staff will act as your TSDM.

## What are the qualifications of a TSDM?

To qualify as a TSDM, an individual must:

- Be at least 19 years of age (in BC, the age of adulthood or age of majority is 19 years);
- Have been in contact with you during the previous 12 months (a phone call or birthday card has been accepted as contact);
- Have no dispute with you;
- Be capable of informed consent — giving, refusing, or revoking consent — and willing to follow the TSDM duties.

## What are the duties of a TSDM?

The duties of a TSDM are:

1. The TSDM must consult with you as much as possible. If the TSDM was authorized by the PGT, the TSDM must also consult with any near relative or close friend who asks to assist.
2. The TSDM must make the decision according to any specific instructions or wishes you expressed (verbally or in writing) — when you were considered capable of informed consent — and that apply to the specific circumstance.
3. If instructions or wishes are not given or do not apply, the TSDM must make the decision according to your best interests. In doing so, they must consider:
  - Your current wishes, known beliefs and values;
  - Whether your condition or well-being may be improved by the proposed health care;
  - Whether your condition or well-being may be improved if the proposed health care is not provided;
  - Whether the expected benefit of the proposed treatment outweighs the risk of harm to you; and
  - Whether a less restrictive or less intrusive form of health care offers the same benefit.

Information about risks and benefits and less intrusive alternatives will be provided by the health care provider(s) offering the proposed health care. Sometimes there will be differences among medical opinions. For example, it may be difficult to predict how you will respond to the health care offered — people can react differently.

There are different actions for consent:

- Giving consent (yes);
- Refusing consent (no); and
- Revoking or withdrawing consent (stop/cancel). This can happen after giving consent and then, over time, if there are no benefits or there is increased risk, consent may be revoked or withdrawn.

## What decisions can a TSDM make?

A TSDM can make decisions on your behalf about certain health care that is offered to you by a health care provider. See next heading.

A TSDM can give consent for a Plan for Minor Health Care, as defined in the legislation. See page 3 under More information from Nidus.

## What restrictions does a TSDM have?

A TSDM has restrictions or limits on their authority. Some restrictions are unique to the TSDM role.

- No authority for decisions about your personal care matters, or your financial or legal affairs.
  - For example, the TSDM role does NOT include authority for decisions about: where you live including admission to a long term care facility; who you have contact with; consent for personal care and support services (if you need help with activities such as shopping, meals, cleaning, bathing); consent about restraints; consent for your transfer from a facility to a hospital; paying bills including arranging direct bill payment for facility care; approving use of your funds for health care needs; accessing tax returns that may be useful for obtaining subsidies for health care benefits or services; settling an insurance claim or hiring a lawyer on your behalf; applying for financial benefits or entitlements on your behalf.
- No authority for health care decisions in an emergency situation.
  - A TSDM is not selected in a health care emergency; a health care provider (preferably two) makes the decision for you.
  - Emergency is defined as a situation when the health care provider is of the opinion that you are incapable of informed consent and you need health care immediately or urgently to save your life, treat severe pain, or to prevent serious physical or mental harm.
- Limits on authority to refuse life supporting health care for you (in a non-emergency).
  - A TSDM cannot make a decision to refuse life supporting health care unless there is substantial agreement among your health care providers that:
    - The decision is medically appropriate; and
    - The TSDM follows their duties when deciding.

- No authority for the following matters listed in the Health Care Consent Regulation.
  - › Experimental health care where the foreseeable risks are not outweighed by the expected therapeutic benefits;
  - › Psychosurgery (surgery to destroy or remove small areas of brain tissue or to implant electrodes for stimulation in the treatment of psychiatric illness);
  - › Removal of tissue for implantation in another person (being a living donor) or for medical education;
  - › Research in a health care or medical research program that has not been approved by a committee referred to in section 2 of the Regulation;
  - › Any treatment, procedure, or therapy that uses negative stimuli to produce a change in behaviour.
- Limits on authority for the following matters listed in the Health Care Consent Regulations.
  - › No authority for decisions about electro-convulsive therapy (ECT - 'shock' treatment), unless recommended in writing by your treating physician and at least one other medical practitioner (physician) who has examined you;
  - › No authority for decisions about abortion, unless recommended in writing by your treating physician and at least one other medical practitioner (physician) who has examined you.
- No authority for requesting or consenting to medical assistance in dying on your behalf.
- No authority to make or sign-off on a Do Not Resuscitate Order or a Medical Order for Scope of Treatment (MOST) or a living will on your behalf. These are not part of BC law and cannot be used as substitute consent.
- Limits on access to information and records related to your health care.
  - › A TSDM has access to information and records related only to the specific decision they are making on your behalf.
  - › Remember, a TSDM is only selected when a specific health care decision is needed and only after it is determined you are incapable of informed consent for the specific decision at hand.
- Extra procedures required if a TSDM is making decisions about major health care.
  - › If a TSDM is selected to make a decision about major health care, the health care provider has a duty to provide specific information to you and certain others. See below for More information from Nidus.
  - › Major health care is currently defined as: risky tests; major surgery; any treatment involving a general anesthetic; kidney dialysis; radiation therapy; intravenous chemotherapy; laser surgery; electro-convulsive therapy (see limits for this, second bullet in left column of this page).
- No legal authority to help you to make your own decisions or to engage in assisted or supported decision making with you.
  - › A TSDM only has authority to act on your behalf (make substitute decisions) after you have been determined incapable.
  - › Although the TSDM has a duty to consult you, they do not have a duty to comply with (follow) your current wishes.
- No authority for health care related to treating your mental disorder, if you are involuntarily committed under BC's Mental Health Act.
  - › However, health care that is not related to your mental disorder, like dental care or treatment for pneumonia, would require informed consent and, if you are incapable of informed consent, and there is no other authority in place, a TSDM can be selected.
- No authority about sterilization (birth control) for non-therapeutic purposes.

### More Information from Nidus

For other fact sheets, go to [www.nidus.ca](http://www.nidus.ca) > Information (top menu bar) > [Health Care Consent](#)

- Health Care Consent in BC: Your Rights & the Law
- How Health Care Decisions are Made if You are Found Incapable of Informed Consent — explains various legal authorities.
- Duty for Notice When a TSDM is Selected for Major Health Care in BC
- Giving Consent to A Plan for Minor Health Care
- Representation Agreements in BC for Health Care
- Advance Directives in BC
- Adult Guardianship or Committeeship in BC

### To view legislation and regulation

Go to [www.bclaws.ca](http://www.bclaws.ca) > Laws of BC > Public Statutes and Regulations > H > Health Care Consent and Care Facility Admission Act (see link for Regulations > Health Care Consent Regulation).

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