

Comments on Tool Kit for Doctors: to Support Family Caregivers By Nidus Personal Planning Resource Centre and Registry

Following are specific comments concerning two points listed in the *Tool Kit for Doctors* as posted at https://www.doctorsofbc.ca/sites/default/files/family_caregiver_resource_guide_for_physicians_-_toolkit.pdf

Page 2:

“Ensure that you know who is the Temporary Substitute Decision Maker (TSDM) or healthcare representative for the patient as it may not be the caregiver.”

WHO IS THE TSDM?

The excerpt above, from page 2 of the Tool Kit, suggests that a TSDM is assigned to a patient by a single health care provider and this authorizes that TSDM for any and all health care decisions that may arise in the future. This is not the case.

A previous health care provider may select a particular person to be a TSDM after going through the necessary procedures. This does not mean a doctor can simply ‘use’ the same TSDM.

The doctor will need to select a TSDM if they are offering health care to the patient and they have first determined the patient is unable to give or refuse informed consent.*¹

- A TSDM is selected from a ranked list in the Health Care Consent and Care Facility Admission Act section 16 – when a decision needs to be made and the adult is not capable of informed consent.
- If the decision is about major health care (for example, kidney dialysis, laser surgery, or intravenous chemotherapy) a Notice of Incapability must also be completed by the doctor/health care provider.
- A TSDM has ‘temporary’ authority. This includes their authority to access information – it must be related to the specific decision they are being asked to make.
- The authority of a TSDM is more limited than that of a representative named in a Representation Agreement.
- A TSDM has different duties than a representative.
- A TSDM must meet qualifications set out in the law. A TSDM cannot delegate their authority to someone else.

WHO IS THE REPRESENTATIVE?

Doctors and patients and caregivers are much better served and protected if the patient has made a Representation Agreement (that includes health and personal care) under the Representation Agreement Act. If there is no Representation Agreement, it is an excellent time for the doctor to mention the topic and make a referral to Nidus or the patient’s legal advisor. Defaulting to the TSDM scheme will require significantly more ‘charting’ (record keeping) for doctors.

¹ The exception to this requirement is if a TSDM has given consent to a plan for minor health care, which can be for up to one year. However, if the adult has made a Representation Agreement in the meantime that includes minor health care, the TSDM’s authority is ended. (A representative could sign a new plan for minor health care.)

A representative's authority is usually in effect when the Agreement is executed, which means immediately. The adult does not have to be found incapable of informed consent. This is important as a representative is not only available to act on the adult's behalf, they are authorized to assist the adult – for example by accessing information from and releasing information to the physician.

It is true that a representative may not be the person accompanying the adult/patient to the appointment with the doctor. However, the doctor should have a copy of the Representation Agreement in the patient's medical chart so they know who the authorized representative is. A representative can permit someone else to access information about the adult – for example, test results. We recommend the doctor ask for that permission in writing and keep it in the medical chart. A representative cannot delegate authority for consent or decision making to someone else.

Page 2:

“Maintain a registry of identified caregivers.”

A number of questions arise concerning this point:

- How will you obtain consent?
- What information will be kept?
- Who does the information belong to?
- Who will have access to the information and under what circumstances?
- What is the purpose of such a registry? What need is being addressed?
- Is the caregiver also a patient of the same doctor?