

CONSENT FOR MEDICAL & DENTAL TREATMENT

FOR ADULTS WITH COGNITIVE IMPAIRMENT

Adults have the right to both consent to, and to refuse consent for, medical treatment. If an adult with a disability lacks the capacity to make decisions about treatment, “substitute consent” may need to be sought.

CAPACITY FOR CONSENT

A person is considered to have the capacity to consent to (or refuse) medical treatment if they understand and are able to weigh up information regarding:

- The nature and purpose of the proposed treatment
- The side effects and risks associated with the proposed and alternative treatments
- The consequences of not undertaking or of delaying the treatment

Consent is only valid if it is given freely, without undue influence. The person must be able to communicate the decision to consent or refuse consent.

WHEN CONSENT IS NOT NEEDED

Tasmania's *Guardianship and Administration Act 1995* provides for a medical or dental practitioner to proceed with treatment without the consent of either the patient or a substitute decision maker –

- For minor treatment including:
 - Non-intrusive examinations for diagnostic purposes
 - First aid (medical and dental)
 - The administration of non-prescription pharmaceutical drugs
- When urgent dental or medical treatment is required, to
 - Save the person's life
 - Prevent serious damage to the person's health
 - Prevent the person from suffering significant pain or distress (s 40 of the Act)
- When there is no person responsible (see overleaf) AND the person does not object to the treatment (s 41).

However, certain treatments cannot be carried out without consent. These include the administration of certain addictive drugs and medication to control the behavior of the person; ECT; any treatment that involves a substantial risk to the person (such as death, brain damage, loss of a limb or organ); and the removal of all or a substantial number of teeth (see Regulation 12 of the *Guardianship and Administration Regulations 2017*).

PROVISIONS FOR SUBSTITUTE CONSENT

Mental health treatment for a person with a mental illness is provided for in the *Mental Health Act 2013*.

For people and/or treatment not covered by the Mental Health Act, the Guardianship and Administration Act applies, with the following provisions for substitute consent:

Person Responsible

Can consent to any medical treatment that is not “special treatment”. The person responsible is, in order of priority:

- 1 The person’s guardian
- 2 The person’s spouse
- 3 The person having the care of the other person
- 4 A close friend or relative

Guardians

Guardians can make personal and lifestyle decisions, including health care decisions, on behalf of an adult with decision-making impairment resulting from a disability.

An enduring guardian can be appointed by a person who has capacity, and will come into effect in the event the person loses capacity.

The Guardianship and Administration Board can appoint a guardian for someone who has a disability resulting in a lack of capacity to make decisions and is in need of a guardian. The powers of the guardian will be specified in the order and may include authority to consent to health care. The Board can appoint a private individual, such as a close friend or family member, or the Public Guardian.

The Guardianship and Administration Board

The Board itself can consent to medical treatment if it is satisfied that the person lacks capacity to consent, the treatment is lawful, and the treatment is in the person’s best interests.

“Special Treatment”

Guardians and persons responsible are limited in the scope of medical treatment to which they can consent and are not permitted to consent to “special treatment”. Special treatment requires the consent of the Board and includes:

- Treatment that is intended or likely to lead to permanent infertility
- Termination of a pregnancy
- Removal of tissue or organs for transplant
- Psychosurgery
- Treatment involving aversive stimulus

Advance Care Directives

An Advance Care Directive (ACD) is a formal instruction about health care that a person consents to or refuses in the future, in the event they become unable to make decisions.

For an advance care directive to be valid and relied upon by a medical practitioner there are several relevant factors:

- The person must have had capacity at the time the ACD was made
- It must have been made free from undue influence
- The consent or refusal must be specific enough to the situation at hand and to the proposed treatment
- There have been no significant changes to the facts and circumstances on which the ACD was based.

FOR MORE INFORMATION

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