



PLEASE NOTE

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This document is *not* the official version of these regulations. The regulations and the amendments printed in the [Royal Gazette](#) should be consulted to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the [Table of Regulations](#).

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CHAPTER C-17.2

CONSENT TO TREATMENT AND HEALTH CARE DIRECTIVES ACT

REGULATIONS

Pursuant to section 36 of the *Consent to Treatment and Health Care Directives Act* R.S.P.E.I. 1988, Cap. C-17.2, Council made the following regulations:

1. In these regulations Definitions
 - (a) “approved assessment tool” means a clinical aid approved by the Minister that is designed to evaluate capacity; approved assessment tool
 - (b) “approved training” means a program of training, approved by the Minister, in capacity assessment using the approved assessment tool. (EC356/00) approved training
2. An approved assessment tool Use of assessment tool
 - (a) may be used in conducting an assessment of capacity pursuant to section 7 of the Act; and
 - (b) shall be used in conducting a reassessment of capacity pursuant to section 9 of the Act. (EC356/00)
3. (1) Subject to subsection (2), a finding of incapacity made pursuant to section 7 of the Act shall be recorded in writing. Written finding of incapacity
 - (2) Form A of the attached Schedule A Form A
 - (a) may be used to record a finding of incapacity pursuant to section 7 of the Act, where there is no request for reassessment pursuant to section 9 of the Act; and
 - (b) shall be used to record a finding of incapacity pursuant to section 7 of the Act, where there is a request for reassessment pursuant to section 9 of the Act. (EC356/00)
4. (1) A health practitioner who has successfully completed the approved training may conduct a reassessment pursuant to section 9 of the Act. Who conducts reassessment
 - (2) A reassessment of capacity made pursuant to section 9 of the Act shall be recorded on Form B of Schedule A. (EC356/00) Form B
5. Form C of Schedule A may be used for an agreement to act as a substitute decision-maker pursuant to section 11 of the Act. (EC356/00) Agreement, Form C

SCHEDULE

Form A Finding of Incapacity (Section 7 of the Act)

I, (health practitioner - specify profession), of (address) have assessed the capacity of (full name of person) (p.h.n. or other identifier) at (place of assessment), pursuant to section 7 of the Consent to Treatment and Health Care Directives Act.

It is my opinion that the above-named person is incapable of making a decision to give or refuse consent to the following proposed treatment:

My opinion is based on the following criteria:

Please check "yes" or "no" to each statement

The person is able to

- understand the information that is relevant to making a decision about treatment yes ___ no ___
understand that the information applies to his or her particular situation yes ___ no ___
understand that he or she has the right to make a decision about treatment yes ___ no ___
appreciate the reasonably foreseeable consequences of a decision or lack of a decision yes ___ no ___

Additional Comments

Note to the Practitioner:

The health practitioner shall inform the person of their right to request a reassessment of their capacity. A request may also be made by a third party on behalf of the person. If reassessment is requested or indicated, the health practitioner will initiate the process of the reassessment in accordance with the Act; if not, the health practitioner will proceed to obtain a substitute decision-maker.

(date) (signature of practitioner)

Form C
Agreement to Act as a Substitute Decision-Maker
(Section 11 of the Act)

I
(substitute decision-maker's full name)

have been informed that
(full name of person)

has been found incapable of consenting to the proposed treatment(s)

My relationship to the incapable person is
(see priority order below)

- 1. (a) I am at least sixteen years old;
- (b) I am capable of giving consent for the proposed treatment on behalf of the above named person;
- (c) I have knowledge of the circumstances of, and have been in recent contact with, the person; and
- (d) I am a substitute decision-maker pursuant to section 11 of the *Consent to Treatment and Health Care Directives Act*.

2. Where the conditions stated in subsection 11(6) of the Act apply, I am the public official empowered with the duty of public guardianship pursuant to subsection 11(6) of the Act.

I hereby certify that I meet

- (a) the requirements of section 1 above; or
- (b) where subsection 11(6) of the Act applies, the requirements of section 2 above and agree to serve as substitute decision-maker for the above-named person.

My mailing address, telephone and fax number are:

.....
(mailing address)

..... (telephone number) (facsimile number)

..... (date) (signature of substitute decision-maker)

If agreement to act as a substitute decision-maker has been obtained via the telephone, the conversation must be witnessed by a third party who will sign below.

..... (date) (signature of third party witness)

Priority Order of Substitute Decision- Makers

Note: The health practitioner must make reasonable inquiry regarding the existence of a substitute decision-maker and determine who is entitled to make a decision.

1. Proxy-appointed by the individual when capable.
 2. Guardian if having authority to give or refuse consent to treatment.
 3. Spouse - means a person of the opposite sex,
 - (a) to whom the person is married, or
 - (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least three years,
 - (ii) are in a relationship of some permanence and are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 52 of the *Family Law Act* R.S.P.E.I. 1988, Cap. F-2
 4. Son, daughter, or parent; or a person who has assumed parental authority and who is lawfully entitled to give or refuse consent to treatment on the person's behalf
 5. Brother or sister
 6. Trusted friend
 7. Other relative
 8. Public Guardian - If no one listed above is available*, capable, and willing to assume responsibility for making a decision, or if there is disagreement among persons of the same class (subsection 11(6))
- *Available - subsection 11(7) of the Act states a person is available if it is possible for the health practitioner, within a time that is reasonable in the circumstances, to communicate with the person and obtain a decision.