



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

Form B
Reassessment of Capacity
(Section 9 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)

Consent to Treatment and Health Care Directives Act.

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

.....
.....

Attach results of approved assessment tool

Additional Observations:

.....
.....

.....
(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 an individual who, in respect of another person,
 - (a) is married to the other person;
 - (b) has entered into a marriage with the other person that is voidable or void;
 - (c) is not married to the other person but is cohabiting with him or her in a conjugal relationship and has done so continuously for a period of at least three years; or
 - (d) is not married to the other person, but is cohabiting with him or her in a conjugal relationship and together they are the natural or adoptive parents of a child.
 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.

(EC669/09)