

Capacity and Consent

Capacity: A person is incapable of giving or refusing consent to care or medical treatment if he/she is not able to understand the information relevant to the decision or if he/she is not able to appreciate the reasonably foreseeable consequences of such a decision. The health care professional proposing the treatment course of action assesses capacity. ⁽¹⁾

Consent has many elements such as lack of coercion, given by patient or legally authorized substitute decision maker, a reference to the particular administrator and treatment, and comes with full disclosure (e.g. risks, benefits, side effects, alternatives). ⁽¹⁾

Why is it important?

- The Health Care Consent Act (HCCA) is an Ontario law based on capacity to consent; it governs health practitioners, including physicians ⁽²⁾
- Ontario HCCA is also relevant to the Ontario Substitute Decisions Act- a person found to lack capacity for personal care would need a substitute decision maker ⁽³⁾

Common Causes

- 73 % of Canadians die from complex chronic diseases and some will lack capacity; for example, progressive dementing illnesses will affect the person's decision-making ability at some point ^{(1) (4)}

Key Considerations

- A person will be able to appreciate the consequences of the decision if the following occurs: ⁽¹⁾
 - Acknowledges that the condition for which treatment is being recommended can affect him/her
 - Understands how proposed action, or lack of action, can effect quality of life
 - Explain why he/she is making a decision in a way that aligns with previously expressed values (e.g. realistic expectations, can communicate choice, can manipulate information rationally ⁽⁴⁾
- If the individual lacks capacity to consent, a substitute decision maker can be used
- A substitute decision maker can be named in the Power of Attorney-chosen by the patient- and directed by an Advance Directive (a documented expression of wishes written by the patient, when they were capable, with respect to the medical treatment and personal care decisions) ⁽¹⁾
- It is important to have these conversations earlier on regarding substitute decision makers, advance directives, advance care planning, treatment options, financial plans etc. with family members, lawyers, and health care professionals

References

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