



Information for medical treatment decision makers

If you are a person's medical treatment decision maker, you have legal authority to make medical treatment decisions for them. You only have authority to do this if the person does not have decision-making capacity to make their own decision(s).

The *Medical Treatment Planning and Decisions Act 2016* specifies a list of people who can be a person's medical treatment decision maker.

If you have been formally appointed, you are at the top of this list. (If more than one person is listed in the appointment form, you are the person's medical treatment decision maker if you are the first person listed who is reasonably available and willing and able to make the decision).

Medical treatment decision maker list

Whoever is first in the list below, is considered a person's medical treatment decision maker. They must be reasonably available, and willing and able, to make the medical treatment decision on behalf of the person. Where there are two or more relatives who are first on this list, the eldest is the medical treatment decision maker.

1. The person's appointed medical treatment decision maker
2. A guardian appointed by VCAT to make decisions about medical treatment for the person
3. The first of the following people who is in a close and continuing relationship with the person:
 - a. the person's spouse or domestic partner
 - b. the person's primary carer (not a paid service provider)
 - c. an adult child of the person

- d. a parent of the person
- e. an adult sibling of the person.

When you act

Health practitioners need their patient's consent before providing medical treatment.

If their patient does not have decision-making capacity to consent to the proposed treatment, the health practitioner follows these steps:

- If the patient has made an advance care directive in which they have consented to or refused the treatment (in an instructional directive), the health practitioner will follow this.
- If not, the health practitioner will ask you, as the patient's medical treatment decision maker, to make the medical treatment decision for the patient.

Medical treatment is any of the following treatments by a health practitioner:

- treatment with physical or surgical therapy (such as dressing a wound or an operation)
- treatment for mental illness
- treatment with
 - prescription pharmaceuticals
 - an approved medicinal cannabis product
- dental treatment.

How you make decisions when acting as someone's medical treatment decision maker

The Medical Treatment Planning and Decisions Act sets out how you must make decisions when acting as a person's medical treatment decision maker.

You must make the medical treatment decision that you reasonably believe is the decision that the person would have made, if they had decision-making capacity to make the decision.

Consider the preferences and values of the person

To make the decision that you reasonably believe is the decision that the person would have made, you must:

- First, consider any valid and relevant values directive in an advance care directive that the person made, if any.

Their values directive records their values and preferences for their medical treatment, and it guides you when you make a decision on their behalf.

- Next, consider any other relevant preferences that the person has expressed, and the circumstances in which those preferences were expressed.

For example, the person may have written down their wishes, or may have told close family members.

- If you cannot identify any relevant preferences of the person, you must give consideration to the person's values.

They may have expressed their values, or you may be able to infer them from their life.

Consider the proposed medical treatment

As a person's medical treatment decision maker, you must also consider:

- the likely effects and consequences of the medical treatment, including the effectiveness of the medical treatment
- whether the likely effects and consequences are consistent with the person's preferences or values

- whether there are any alternatives, that would be more consistent with the person's preferences or values. (An alternative can include refusing medical treatment).

Consult

In the process of making the decision for the person, you must consult with anyone that you reasonably believe the person would want you to.

Act in good faith and with due diligence

You must act in good faith and with due diligence.

If you cannot find out the person's preferences or values

If you cannot find out the person's preferences or values, you need to make a decision that promotes their personal and social wellbeing. In doing this, you need to consider the person's individuality.

You need to consider the proposed treatment, in the same way as described above. The one difference is that you consider whether the proposed treatment or any alternatives would be better in promoting the personal and social wellbeing of the person, rather than whether it would be more consistent with the person's preferences or values.

Contact the Office of the Public Advocate (OPA) on 1300 309 337 for more information or at:

www.publicadvocate.vic.gov.au



If you are asked to make a medical treatment decision that relates to treatment for mental illness, contact OPA for more information.

