

Notes to Accompany User Guide to GAB Consent to Medical Treatment for People with Disabilities – March 2004

It is unlawful (*Guardianship & Administration Act 1995*) to carry out medical treatment on a person with a disability who is incapable of consenting to the proposed treatment unless either:

- A substitute consent for the treatment has been given (ie by a person responsible)
- The circumstances are such that consent is not required eg emergency or minor treatment.

It is therefore critical for GPs to have the person responsible present when undertaking medical treatment on a person with a disability. This includes the nursing home setting. This may require some liaison and planning by the group home or nursing home to ensure the person responsible is aware of the medical appointment.

How do you know the person is capable of giving consent?

GP needs to determine if the person is:

- a) incapable of understanding the 'nature and the effect' of the proposed treatment or
- b) incapable of communicating a consent or refusal to the proposed treatment

If a GP is unsure whether a person is capable of giving consent a useful aid can be found at:

www.utoronto.ca/jcbl_ace (Aid to Capacity Evaluation) or see Tunzi, M (2001) Can the Patient Decide? Evaluating Patient Capacity in Practice *Am Fam Phys* 64(2) 299-306

Definitions:

Person responsible A guardian, relative, spouse, *unpaid* carer or close personal friend
The person responsible can consent to all forms of medical or dental treatment except that classified as special

Minor procedure Any non intrusive examination (eg eye ENT, chest) made for diagnostic reasons
Non prescription drugs
First Aid

Drugs of Addiction Include Schedule 4 drugs eg benzodiazepines, antipsychotic agents and cyproterone acetate

*Guardianship Application** When a guardian is required to make personal & lifestyle decisions for an adult with a disability. First discuss with Guardianship Board (Tel. 62333085) to see if guardianship necessary, then fill in the form. You will be required to attend a hearing.

Medical Consent Application Where treatment is required in the best interests of a person with a disability and consent cannot be obtained through the usual processes, a one off consent, can be given by the Guardianship & Administration Board to authorise a specific course of treatment.

General Medical Treatment The form of treatment which will most successfully promote a persons health and is consistent with best medical practice

Dispute about Treatment or Risky Treatment

If there is a dispute about treatment eg between the person & GP or between person responsible and other relatives & friends or if the treatment is experimental or risk benefit ratio is higher than normal: then the person responsible can consent but application **should also** be made to the Guardianship Board

There are some occasions where the GP is unsure which treatment is going to be best and there may be some months of trial and close observation until the doctor and the patient are happy with medications. In that case, it may be best to apply for a short term guardianship order *instead of or together with* a medical consent order so that the Guardian can monitor the progress of a particular case and give consent to changing treatments in accordance with changing conditions. It is less onerous for all parties concerned to make a single guardianship application, in these circumstances, than to make repeated medical consent applications

Application to the Guardianship Board*

To determine if a referral/application to the Guardianship Board is required for any matter, the following 3 criteria must be satisfied:

1. Person must have a disability which would affect their decision making capacity
eg intellectual disability, dementia, acquired brain injury, mental illness
2. The person must lack decision making capacity
3. There must be a situation which requires a decision to be made

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