

Form A
Declaration of Capacity to Consent to Treatment
(Section 53 - Hospitals Act)

I, _____ (full name), a _____ (title)
on the staff of _____ (name of hospital or psychiatric
facility), personally examined _____ (full name of person) of
_____ (address of person) on ___/___/____ (dd/mm/yyyy)
at _____ a.m./p.m. at _____ (location of examination).

It is my opinion that the person (check one)

- is capable of consenting to the proposed treatment or treatments; or
 is not capable of consenting to the proposed treatment or treatments.

In arriving at this opinion I have considered

- (a) whether the person understands the condition for which the specific treatment is proposed;
- (b) the nature and purpose of the specific treatment;
- (c) the risks and benefits involved in undergoing the specific treatment; and
- (d) the risks and benefits involved in not undergoing the specific treatment.

The following information supports my opinion:

- 1) Observations from my examination of the patient:

- 2) Information from other sources:

Sources of above information (*identify specific sources*):

(date of signature)

(signature)

(printed name)

Notes:

- 1) Section 2A of the *Hospitals Act* states:
 - 2A For the purpose of this Act, any reference to a psychiatrist carrying out a capacity or competency assessment means
 - (a) for the purpose of a person in a psychiatric facility, a psychiatrist as defined in clause (r) of Section 2; and
 - (b) for the purpose of a person in a hospital, the attending physician or other suitable health professional determined by the hospital.
- 2) Sections 54(2) to 54D of the *Hospitals Act* state:
 - 54 (2) Where a patient in a hospital or a psychiatric facility is found by declaration of capacity to be incapable of consenting to treatment, consent may be given or refused on behalf of the patient by a substitute decision-maker who has capacity and is willing to make the decision to give or refuse the consent from the following in descending order:
 - (a) a person who has been authorized to give consent under the *Medical Consent Act*;
 - (b) the patient's guardian appointed by a court of competent jurisdiction;
 - (c) the spouse or common-law partner, if the spouse or common-law partner is cohabitating with the patient in a conjugal relationship;
 - (d) an adult child of the patient;
 - (e) a parent of the patient or a person who stands *in loco parentis*;
 - (f) an adult brother or sister of the patient;
 - (g) any other adult next of kin of the patient; or
 - (h) the Public Trustee.
 - (3) Where a person in a category in subsection (2) fulfils the criteria for a substitute decision-maker as outlined in subsection (5) but refuses to consent to treatment on the patient's behalf, the consent of a person in a subsequent category is not valid.
 - (4) Where two or more persons who are not described in the same clause of subsection (2) claim the authority to give or refuse consent under that subsection, the one under the clause occurring first in that subsection prevails.
 - (5) A person referred to in clauses (c) to (g) of subsection (2) shall not exercise the authority given by that subsection unless the person
 - (a) has been in personal contact with the patient over the preceding twelve-month period;
 - (b) is willing to assume the responsibility for consenting or refusing consent;
 - (c) knows of no person of a higher category who is able and willing to make the decision; and
 - (d) makes a statement in writing certifying the person's relationship to the patient and the facts and beliefs set out in clauses (a) to (c).

- (6) The attending physician is responsible for obtaining consent from the appropriate person referred to in subsection (2).

- 54A The substitute decision-maker shall make the decision in relation to specified medical treatment
 - (a) in accordance with the patient's prior capable informed expressed wishes; or
 - (b) in the absence of awareness of a prior capable informed expressed wish, in accordance with what the substitute decision-maker believes to be in the patient's best interest.

- 54B In order to determine the best interest of the patient for the purpose of clause (b) of Section 54A, regard shall be had to
 - (a) whether the condition of the patient will be or is likely to be improved by the specified medical treatment;
 - (b) whether the condition of the patient will improve or is likely to improve without the specified medical treatment;
 - (c) whether the anticipated benefit to the patient from the specified medical treatment outweighs the risk of harm to the patient; and
 - (d) whether the specified medical treatment is the least restrictive and least intrusive treatment that meets the requirements of clauses (a), (b) and (c).

- 54C Whoever seeks a person's consent on a patient's behalf is entitled to rely on that person's statement in writing as to the person's relationship with the patient and as to the facts and beliefs mentioned in clauses (a) to (c) of subsection (5) of Section 54, unless it is not reasonable to believe the statement.

- 54D (1) Where a substitute decision-maker approves or refuses treatment on behalf of a patient pursuant to subsection (2) of Section 54, the Supreme Court of Nova Scotia (Family Division) or the Family Court where there is no Supreme Court (Family Division) may review the provision or refusal of consent when requested to do so by the psychiatrist or the patient to determine whether the substitute decision-maker has rendered a capable informed consent.
(2) Where the court finds that a substitute decision-maker has not rendered a capable informed consent, the next suitable decision-maker in the hierarchy in subsection (2) of Section 54 becomes the substitute decision-maker.

Form A added: O.I.C. 2007-239, N.S. Reg. 236/2007.