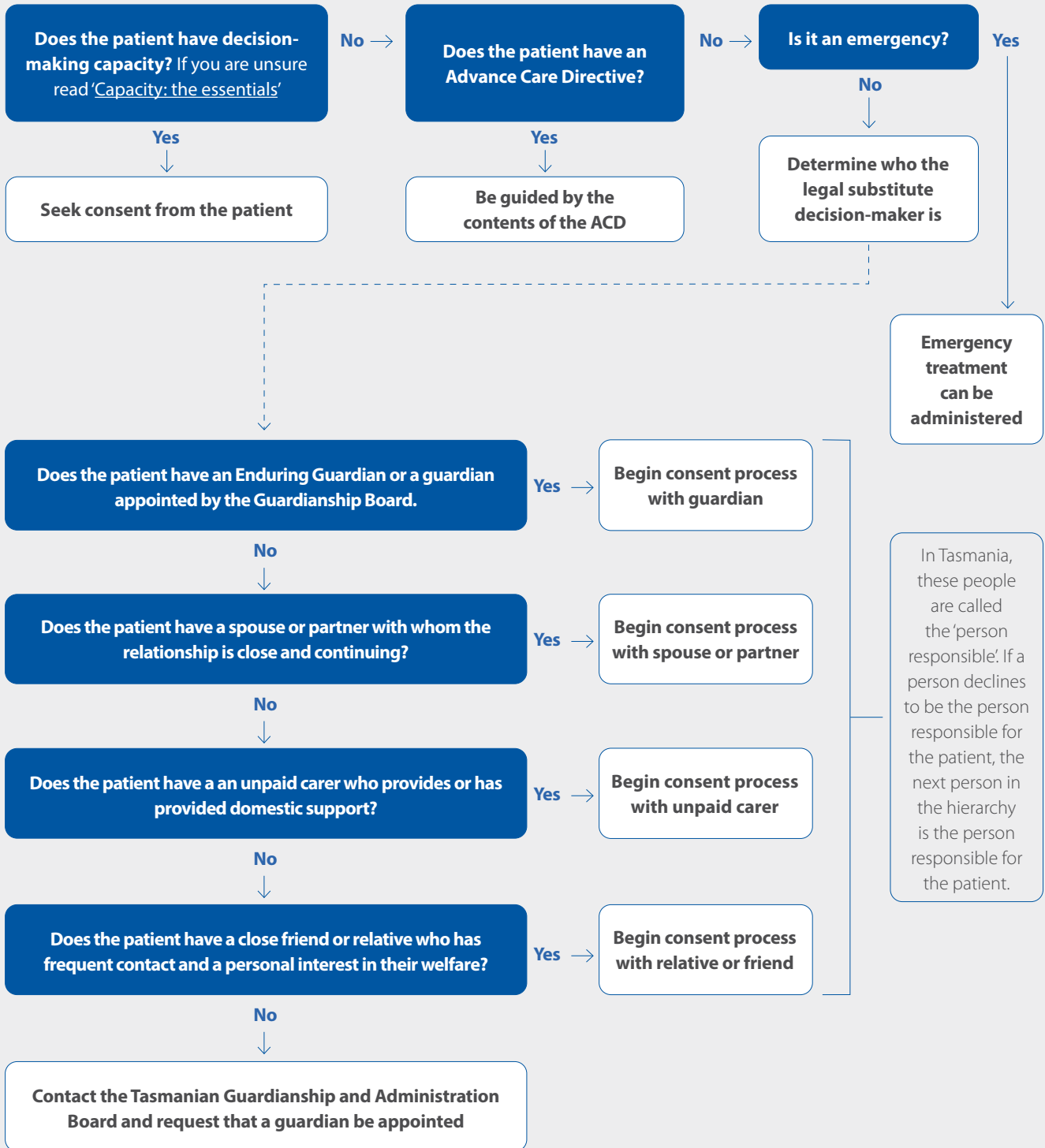


Capacity: Substitute decision-makers for health care

Tasmania

Many doctors will encounter situations where there is a need to provide care for a patient who has limited or no capacity to make health care decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. It is your legal obligation to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



Emergencies

You should assess if the decision needs to be made urgently. Where the patient is unable to give consent, treatment should be provided if it is required to save a person's life or prevent serious injury to the patient's health, subject to any guidance in an advance health directive that is in place.

Supported decision-making

Although you may have determined that the patient's capacity is limited, they may be capable of making their own decisions with appropriate support. There is increasing recognition of the concept of 'supported decision-making'. Rather than substituting another person into the role of 'decision-maker', the person receives assistance from a support person with understanding options, working out what their preference is, and communicating the decision. If a person has capacity to make a decision with support, then the person's decision is final even if it conflicts with their support person's judgement. This allows the person with disabilities to exercise their autonomy in decision-making to the greatest extent possible.

The concept and terminology related to supported decision-making are interpreted slightly differently depending on the organisation or state where you provide care. You should check your organisation's policies for specific information to help determine your obligations to your patient and their appointed support person.

Advance care directives (ACDs)

An advance care directive is a formal record of a person's preferences for future care if they lose capacity and therefore cannot provide consent to medical treatment. If your patient does not have capacity you should explore whether they have an ACD. You must refer to an ACD if there is one.

In Tasmania, there is not a single form that ACDs must take. However, the Tasmanian Government has provided [one](#) to assist people create an ACD. An ACD can be added to a patient's My Health Record so that it is visible to their treating doctors.

The laws regarding ACDs are different across the country so it is important to make sure you understand the requirements where you practise. For more information, forms and resources for practitioners in Tasmania or any other state or territory, please visit [QUT End of Life Law for Clinicians](#) and [Advance Care Planning Australia](#).

Determining the legally-appropriate substitute decision-maker

There is a hierarchy for identifying the patient's substitute decision-maker for a discussion about treatment options. This hierarchy is important to consider if that patient loses capacity and there is not a valid ACD in place. Each state and territory have different legislation that outlines who is the correct substitute decision-maker for these health care decisions. In Tasmania, this person is called the 'person responsible'.

It is the responsibility of the doctor to identify who the correct person responsible is. As illustrated in the flowchart, it is not automatically a patient's next of kin.

Decision-making principles

All substitute decision-makers should act in the patient's best interests. The goal is to give the patient the best opportunity of having their health promoted and maintained in a way that they would have wanted. They should be guided by what they believe the patient would have wanted, not what the decision-maker themselves might want in the same situation.

Types of decisions

In Tasmania, an Enduring Guardian or a guardian can make most medical treatment decisions. They will be limited by any limitations set in the Enduring Guardian document or by the Guardianship and Administration Board.

A person responsible can provide consent to medical treatment. However, unlike in other states or territories, the Tasmanian legislation does not grant the person responsible specific power to refuse treatment or withdraw consent. However, they can withhold consent which may have the same effect as refusing treatment.

Dealing with conflict

There may be times where conflict arises about the decisions of the person responsible, from other family members or people close to the patient. There may be differences of opinion or you or someone else may suspect that the patient is or was subjected to undue influence. People have different views on autonomy and how it should be respected. In these situations of conflict, we recommend that you call Avant or seek legal advice. You may need to approach Office of the Public Guardian to intervene.

Additional resources

For more information on assessing capacity, please see the [Avant factsheet: Capacity: the essentials](#).

For information on advance care planning and directives in Tasmania please visit Tasmanian [Department of Health website](#)

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