

The information in this fact sheet is also relevant to guardians with the power to make health care decisions (they are appointed by the Guardianship and Administration Tribunal (GAAT)) and personal attorneys (appointed under an Enduring Power of Attorney or Advance Health Directive). Refer to fact sheets on Enduring Power of Attorney and Advance Health Directive for additional information.

What is a Statutory Health Attorney?

A Statutory Health Attorney is someone with automatic authority to make health care decisions on behalf of an adult whose ability to make decisions is permanently or temporarily impaired.

The Statutory Health Attorney has a very serious responsibility because he/she can consent to most health care issues, including withdrawing life sustaining measures.

There is no need to fill out forms or formally appoint a Statutory Health Attorney. A person automatically acts in this role when the need arises because of their relationship with the patient (e.g. spouse or primary carer).

Why would a Statutory Health Attorney be needed?

A Statutory Health Attorney is needed when decisions about health care have to be made and the adult is too ill or incapable of making decisions. For instance, consent may be needed for medical treatment or an operation while the adult is unconscious. Alternatively the adult could have dementia or an intellectual/psychiatric disability; or an acquired brain injury.

As well as having impaired decision-making ability, the adult who needs a Statutory Health Attorney has not:

- set out relevant directions for his/her medical treatment in an Advance Health Directive, or
- appointed an attorney for personal matters (under an Enduring Power of Attorney or Advance Health Directive), or
- had a guardian appointed (by GAAT) for health care matters.

For more information, please read the fact sheets on Enduring Power of Attorney, Advance Health Directive and the Adult Guardian as guardian of last resort.

What sorts of decisions can a Statutory Health Attorney make?

The Statutory Health Attorney can consent to most health care issues, including withdrawing or withholding life sustaining measures. However, he/she cannot consent to:

- tissue donation (permission for organ transplants cannot be given while the adult is alive)
- sterilisation (vasectomy, tubal ligation or hysterectomy)
- termination of pregnancy, or
- special medical research or experimental health care.

Who can be a Statutory Health Attorney?

You do not need to have any special expertise to be a Statutory Health Attorney, although you must be over 18 and capable of making decisions about health care.

The law lists those who can act as a Statutory Health Attorney. In order of preference (provided they are readily available and culturally appropriate), these people are:

- the patient's spouse (if the relationship is close and continuing)
- the patient's primary carer, but not a paid carer (although you may receive a carer's pension)
- a close adult friend or relative
- the Adult Guardian as a last resort.

Who is the Adult Guardian?

The Adult Guardian is an independent statutory official authorised by law to make health care decisions (as a last resort) for adults with impaired capacity.

What if the adult has no history of impaired decision-making and is only incapable of making decisions for a short time?

In this situation, the Statutory Health Attorney acts only when there is a need to do so. Once the adult recovers and starts making informed decisions about his/her medical treatment, the authority of the Statutory Health Attorney ends.

How do you know if the adult is capable of making health care decisions?

Someone with the capacity to make health care decisions should:

- understand the nature and effect of his/her decision (including the consequences of refusing treatment)
- freely and voluntarily make the decisions, and
- communicate the decision in some way.

Who decides if the adult is capable, or incapable, of making health care decisions?

Before someone acts as Statutory Health Attorney, a health professional assesses the adult's capacity to make health care decisions. The health professional does not have to be a psychiatrist unless he/she is unsure whether or not the patient lacks capacity to consent for a particular treatment, or where the incapacity is borderline and a second opinion is needed.

What type of assessment is involved?

The health professional considers the type and complexity of the decision that needs to be made. For instance, someone with an intellectual disability may be able to consent to a flu vaccination, but not to surgery.

The health professional also considers other relevant issues, for instance:

- a person with dementia may have fluctuating capacity, depending on the time of day
- a person depressed about his/her frailty or chronic illness may have trouble making a major decision
- a person may be under pressure by family members in conflict over a health care decision to be made, and not able to make a decision freely.

Where there are several health care decisions to be made, is the assessment carried out before each decision?

Yes, unless the adult has such an impaired capacity that it is obvious that he/she cannot make decisions.

What are the responsibilities of a Statutory Health Attorney?

The Statutory Health Attorney must be responsible and readily available to make important health care decisions. If you are a Statutory Health Attorney...

- Advise the adult's doctor that you are eligible to make decisions and willing to give consent.
- If the adult is permanently unable to make health care decisions, provide the doctor with contact numbers (including mobile and other emergency telephone numbers).
- Ensure that the adult carries a card with your contact details.
- If you go on holidays (especially overseas), arrange for a suitable relative to act as Statutory Health Attorney while you are away.

What happens if the Statutory Health Attorney is unavailable, and no arrangements have been made for someone else to take on the role?

In this case, the Adult Guardian may make the decision as Statutory Health Attorney of last resort.

What ethical and legal principles are used in making decisions?

According to the health care principle in the *Powers of Attorney Act 1998*, health care decisions must maintain or promote the adult's health or wellbeing or be in the adult's best interests. (This principle is also contained in the *Guardianship and Administration Act 2000* for guardians.)

If you are a Statutory Health Attorney...

- When other treatments are available, choose the one that is least intrusive for the adult.
- As much as possible, seek the adult's views and wishes. Together with the doctor's opinion, take these views and wishes into account when you make a decision.

What if the decision is not one that the adult wants?

The Statutory Health Attorney may have to make a decision that the adult does not want—but that decision can still be made, provided it is in the adult's best interests, and the adult has minimal or no understanding of one of the following:

- what the health care involves; or
- why it is required and the health care causes no distress or only temporary distress.

What if someone else is equally eligible to be the adult patient's Statutory Health Attorney and disagrees with the attorney?

If disagreements arise, the Adult Guardian may offer informal mediation. If this fails to resolve the dispute, the Adult Guardian can make health care decisions acting as Statutory Health Attorney of last resort.

What happens if the Statutory Health Attorney cannot make the decision, or another relative claims that the attorney has made the wrong decision?

If refusing to make a decision is contrary to the health care principle (explained earlier), then the Adult Guardian may act as Statutory Health Attorney of last resort.

This also applies if the Statutory Health Attorney makes a decision that is contrary to the health care principle.

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