

## HEALTH CARE DECISION-MAKING IN QLD: ABRAHAM

### Facts: Young man, named Abraham.

Abraham was involved in a motor vehicle accident and has been brought to Emergency in an ambulance. Abraham is unconscious and the treating team is unclear about the full circumstances of his health, apart from his obvious injuries from the accident.

Abraham will undergo emergency procedures, investigations and surgery, but there are questions about likely further surgeries and investigations as to their success/failure.

### Question: Who is the decision maker for A?

#### *Important preliminary notes:*

- Consult the Queensland Capacity Assessment Checklist in the [Queensland Capacity Assessment Guidelines](#).
- Ensure to monitor the capacity of A. If A's capacity changes (eg if A regains capacity), start the flowchart again.<sup>1</sup>

All adults are presumed to have capacity to decide whether or not to receive health care, except when it can be shown they lack capacity.<sup>2</sup>

Any person with capacity to consent to healthcare, also has capacity to refuse health care or withdraw consent to health care at any time.

→ Does A have capacity?<sup>3</sup>

The general test for capacity is whether a person can:<sup>4</sup>

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<sup>1</sup> [Queensland Capacity Assessment Guidelines](#) s 3, principle 2.

<sup>2</sup> [Queensland Capacity Assessment Guidelines](#) s 3, principle 1.

<sup>3</sup> *Powers of Attorney Act 1998* (Qld) schedule 3; *Guardianship and Administration Act 2000* (Qld) schedule 4.

<sup>4</sup> [Queensland Capacity Assessment Guidelines](#) s 4.

1. Understand the nature and effect of decisions about health care;
2. Freely and voluntarily make decisions about health care; and
3. Communicate the decision in some way.

→ Yes. → A makes relevant healthcare decision for himself.

→ No. → Is urgent health care required to meet imminent risk of life or health or to prevent significant pain or distress?<sup>5</sup>

→ Yes. → Is there an Advanced Health Directive that prohibits the relevant health care from being carried out?

→ Yes. → Health care cannot be carried out, given it is expressly prohibited by an Advanced Health Directive.<sup>6</sup>

→ No. → Health care, other than special health care, of an adult may be carried out without consent.<sup>7</sup>

→ No. → Given A lacks capacity, then consent must be obtained from a substitute decision-maker.

→ Does A have an Advanced Health Directive that gives information on what to do in this particular circumstance?

→ Yes. → Matter dealt with as per that direction, provided that A has not regained capacity.

→ No. → Has QCAT appointed one or more guardians to make health decisions for A?

→ Yes. → Matter dealt with as per that direction.

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<sup>5</sup> S 63(1) *Guardianship and Administration Act 2000* (Qld).

<sup>6</sup> S 63 (2) *Guardianship and Administration Act 2000* (Qld). Cf. [Queensland Capacity Assessment Guidelines](#) p 45.

<sup>7</sup> S 63(1) *Guardianship and Administration Act 2000* (Qld).

→ No. → Has A made one or more enduring documents that recognise an enduring power of attorney for health matters?

→ Yes. → Matter dealt with as per that direction, provided that A has not regained capacity.

→ No. → Matter can only be dealt with by statutory health attorney, who can make any decision about any health matter that the adult could lawfully make if the adult had capacity for that matter.

→ The statutory health attorney is the first in listed order of the following people:

- a. Spouse – if relationship is close and continuing;
- b. Person who is 18+ years old who has care and is not paid carer;
- c. Person who is 18+ years old who is close friend or relation and not paid carer.

Person provides care if: provides domestic services and support; or arranges for the adult to be provided with domestic services and support.

Disagreement re health matter – s 42 Guardianship and Administration Act 2000 (Qld).

If no one readily available or culturally appropriate to exercise power for that matter, Public Guardian is the adult's statutory health attorney for that matter.