

WHEN INDIVIDUALS CHOOSE TO LIVE AT RISK

WHAT IS AN ETHICAL AND LEGAL APPROACH TO INTERVENTION?

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Connect, Collaborate, Create
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LEARNING OBJECTIVES

- Describe components of complex situations when individuals choose to live at risk
- Discuss how these risk situations can be approached using an ethical perspective
- Determine which legal solution best fits the particular fact situation

OUTLINE

- **What we are talking about**
- **Who we are talking about**
- **Complexities of these situations**
- **Ethical process of decision-making**
- **Legal considerations**

WHAT IS LIVING AT RISK?

Acting in a way that has potential to negatively impact the person (risk to self) or others (risk to others) in physical, emotional, or psychological ways.

WHO ARE WE TALKING ABOUT?

- Yu Yan and community outings alone
- Stuart and eating when at risk of aspiration
- Susan who wants to return home from hospital although she is at medical risk
- Cameron who refuses home support to care for his wounds and help him bathe

WHY DO WE STRUGGLE WITH THESE SITUATIONS?

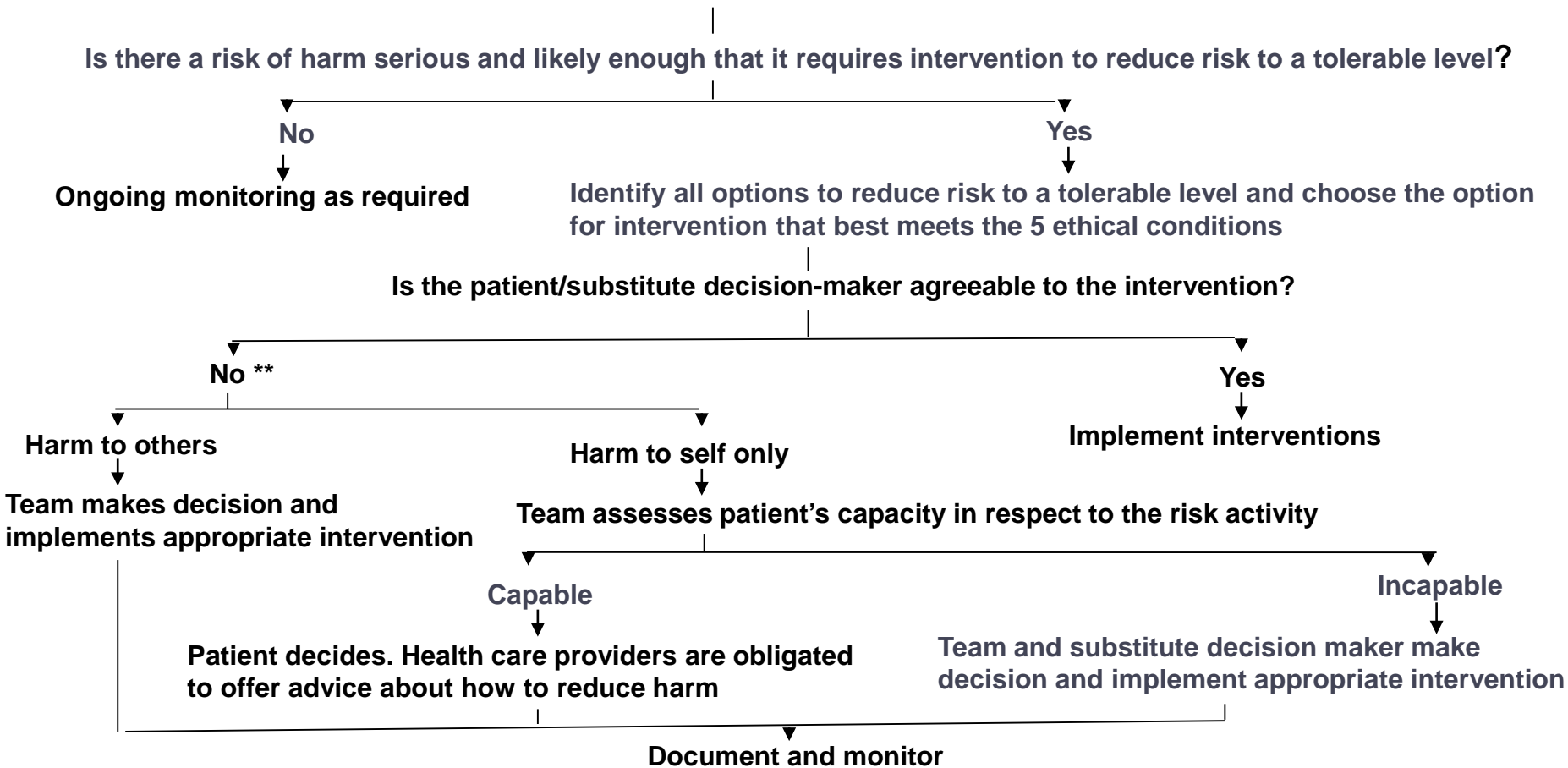
1. **Respect for individual autonomy**
2. **Assessment is complex**
3. **Determining what is “too risky”**
4. **HCPs are trained to focus on safety**
5. **Harming patients is contrary to codes of ethics**
6. **Our own anxiety and biases**
7. **Concerns about legal issues**

HOW MIGHT WE APPROACH THESE CASES AND COMPLEXITIES FROM AN ETHICAL PERSPECTIVE?

- Susan is 65 years old, in hospital
- Borderline intellectual functioning, hx of progressive cognitive decline
- Depressive disorder, anxiety
- Addison's disease, epilepsy, GERD, 90 lbs
- 5 hospital admissions in 5 months
- Receives home support but partner interferes at times
- Partner dominates Susan
- Susan wants desperately to go home, team concerned



Starting with consideration of benefits of activity & how the patient's wishes can be met, team assesses nature & risk of harm



**** Consider if the BC Mental Health Act or the BC Adult Guardianship Act is applicable**

EVALUATING AND ASSESSING RISK OF HARM

- **Personal biases and tolerance**
- **Nature of possible harm**
- **Probability of possible harm**
- **Severity of possible harm**

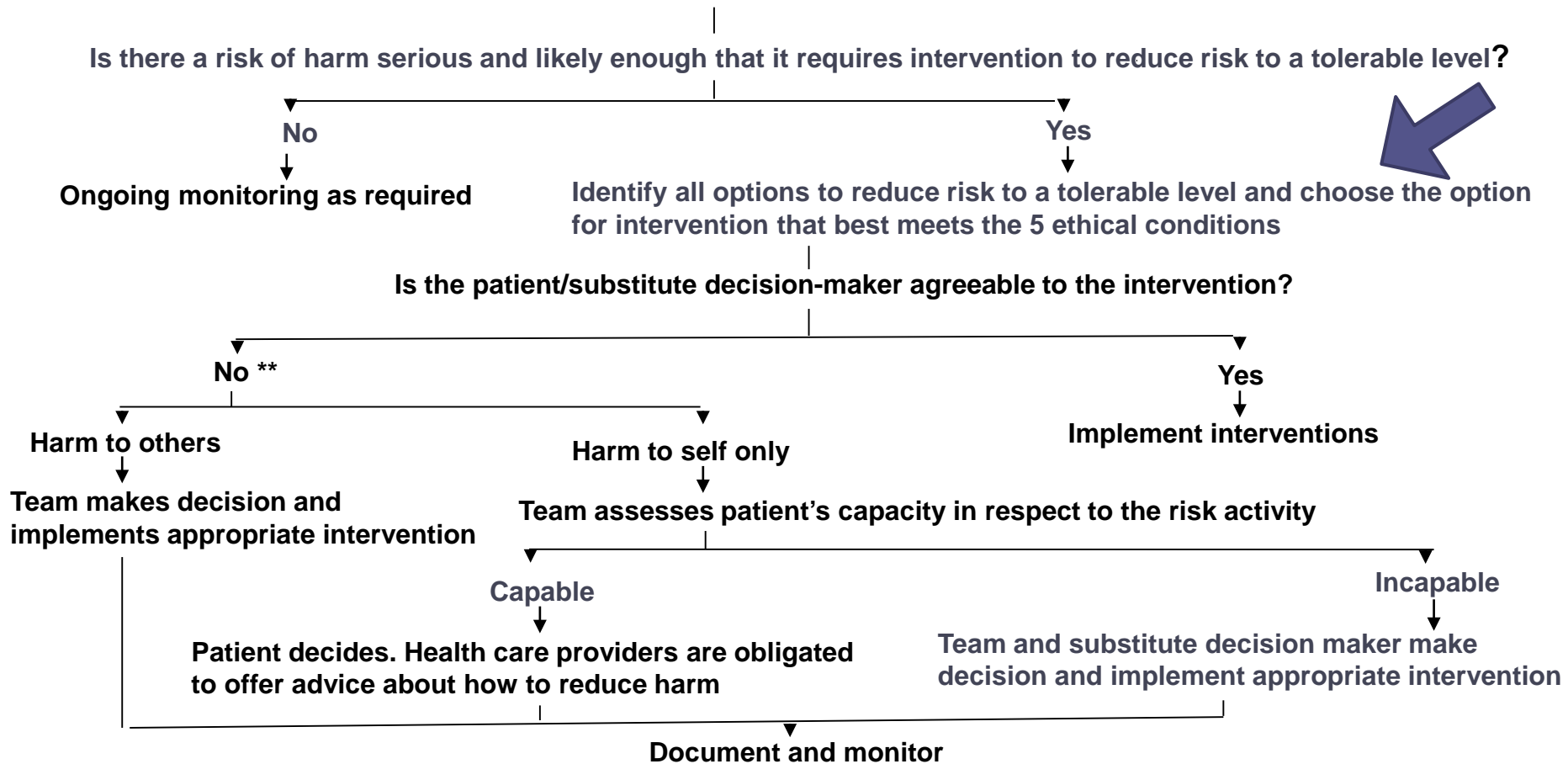
Risk of Harm Assessment Matrix

Severity of harm

5 = Catastrophic					
4 = Serious					
3 = Moderate					
2 = Minor					
1 = Insignificant					
	1 = Rare	2 = Unlikely	3 = Moderate	4 = Likely	5 = Certain

Probability of harm

Starting with consideration of benefits of activity & how the patient's wishes can be met, team assesses nature & risk of harm

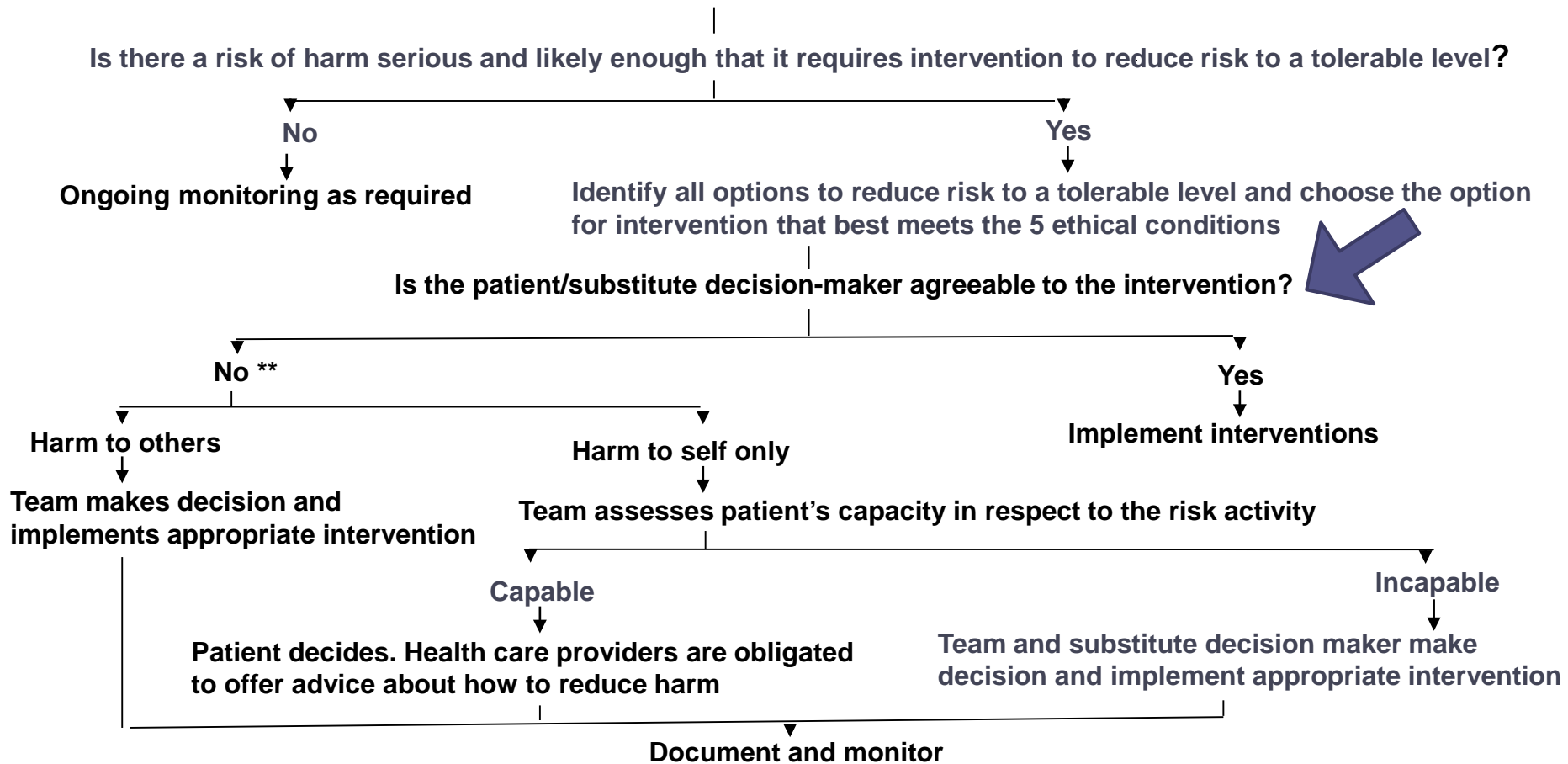


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ETHICAL CONDITIONS FOR INTERVENING AGAINST A PATIENT'S WISHES

- **The intervention is effective**
- **It is the least intrusive of the effective options**
- **It does not cause greater harms than it seeks to prevent**
- **It is not discriminatory**
- **It is considered justifiable by the patient (if this is possible)**

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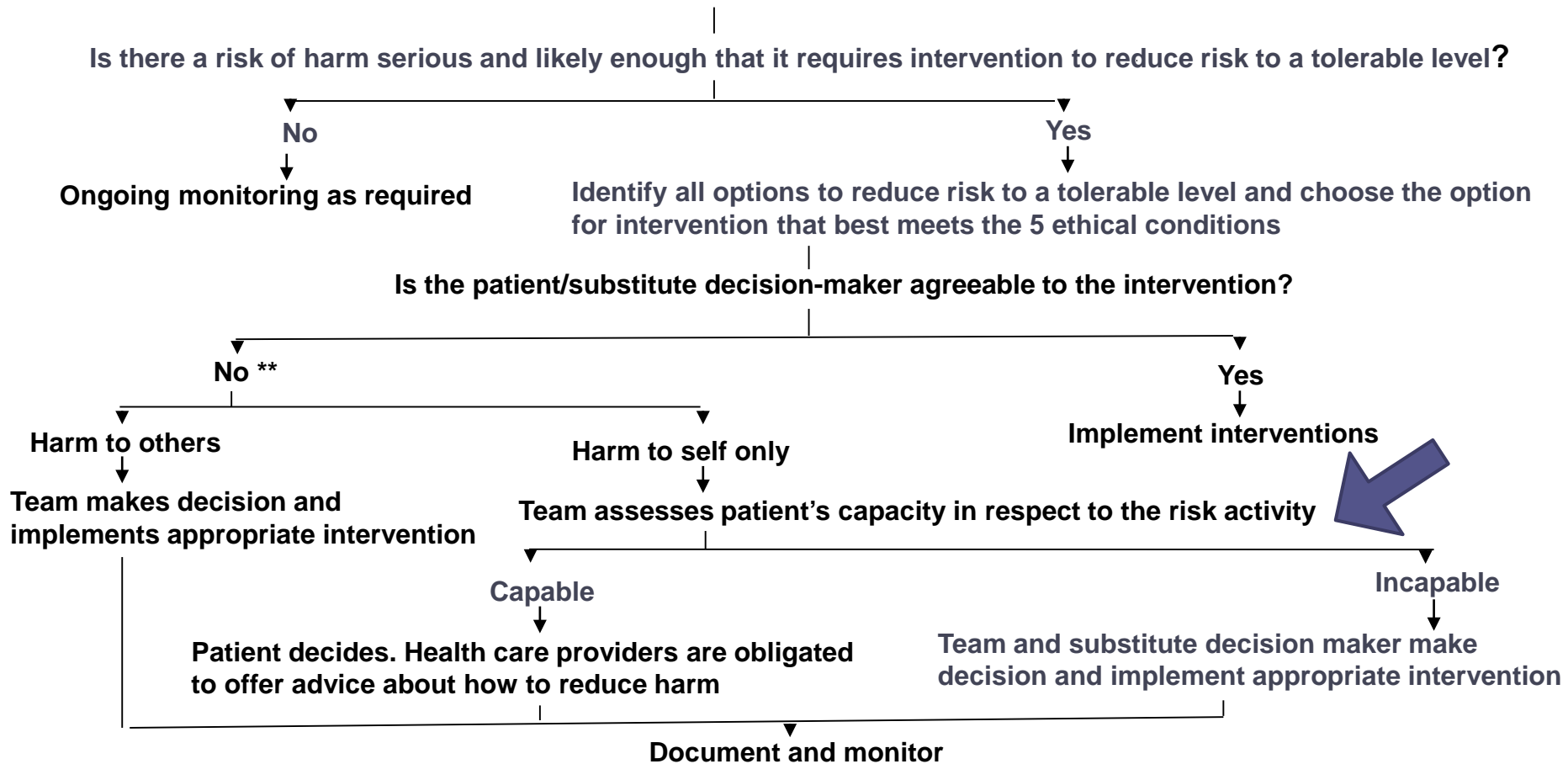
ESTABLISHING CAPACITY

- **Relates to the activity in question**

Individual

- **Must understand the nature, degree, and consequences of the risks**
- **Must understand that the consequences relate to the person themselves**
- **Must be able to demonstrate preferences**
- **Must act free of undue influences**

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ETHICS CONCLUSION

- **Justification for interventions**
- **Legal risk considerations**
- **Documentation**
- **Possible outcomes**

HOW EXISTING LEGISLATION RELATES TO THESE SITUATIONS



SUBSTITUTE DECISION MAKERS (SDM)

- **What legislation allows the appointment of an SDM?**
- **What is the scope of their authority?**
- **Who appoints the SDM?**
- **What are the SDM's duties?**
- **What are the options if no SDM can be appointed or none has been appointed?**

RELEVANT LEGISLATION

- *Power of Attorney Act (EPOA)*
- *Representation Agreement Act (ss. 7 and 9 RA)*
- *Health Care (Consent) and Care Facility (Admission) Act (TSDM)*
- *Patients Property Act (committee of person/estate); statutory property guardianship*

ADVANCE DIRECTIVES (AD)

- **Legal option for capable individual to make decisions in advance without need for SDM**

IF NO SDM APPOINTED AND NO AD:

- *Mental Health Act*: do the four criteria under s. 22 apply?
- Does the decision to be made involve psychiatric treatment?
- Is facility admission, treatment and care possible under ‘extended leave’?

ABUSE OR (SELF)NEGLECT?

- *Adult Guardianship Act:*
- Is the adult unable to seek support and assistance?
- Support and assistance plan
- Support and assistance order
- S. 59: 'emergency'

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- *Power of Attorney Act* [RSBC 1996] chapter 370
- *Representation Agreement Act* [RSBC 1996] chapter 405



THANK YOU AND QUESTIONS