Do I need the consent of the Public Advocate for emergency treatment?

Health practitioners need a patient's consent before providing medical treatment.

However, under the *Medical Treatment Planning and Decisions Act 2016* consent is not needed in an emergency.

Under section 53 of the Act, consent is not needed for medical treatment that the health practitioner believes on reasonable grounds is **necessary as a matter of urgency** to:

- save the person's life **or**
- prevent serious damage to the person's health **or**
- prevent the person from suffering or continuing to suffer significant pain or distress.

This is a clinical decision of the health practitioner. Where such a decision is made, it is advisable to record this on the patient's clinical record.

Under the Act, emergency treatment must not proceed if:

- the health practitioner is aware that the patient has refused the particular treatment in an instructional directive in an advance care directive
- there is a valid relevant refusal of medical treatment certificate made before 12 March 2018 in accordance with the *Medical Treatment Act 1988.*

In an emergency, a health practitioner is not required to search for an advance care directive that is not readily available.

Other circumstances where emergency treatment should also not proceed are if:

- a patient with decision-making capacity refuses the emergency treatment.
  However the health practitioner would need assurance that the patient understands their circumstances.
- a patient's medical treatment decision maker refuses the treatment — apart from palliative care*.
  However the health practitioner would need assurance that the medical treatment decision maker:
  - » understands the patient's circumstances and
  - » has made the decision that they reasonably believe is the decision that the patient would have made.

* Palliative care includes treatment that is to prevent the patient from suffering or continuing to suffer significant pain or distress. A patient's medical treatment decision maker is **not** able to refuse this type of treatment.

Acting in good faith protection

A health practitioner who, in good faith and without negligence, reasonably believes they have complied with the Act, is not liable for unprofessional conduct or professional misconduct.

The process if it is not emergency treatment

See overleaf for the process for the Public Advocate where it is not emergency treatment.

Significant treatment decisions by the Public Advocate

Under the Act, if it is not an emergency, the Public Advocate makes significant medical treatment decisions for a patient if they:

- do not have decision-making capacity to make the medical treatment decision and
- do not have a relevant instructional directive and
- do not have a medical treatment decision maker.

Please note, in making a significant treatment decision, the Office of the Public Advocate (OPA) does **not** provide an emergency response service.

This is because the delegate of the Public Advocate must follow the process set out in section 61 of the Act.

This requires the delegate of the Public Advocate to make the medical treatment decision that they reasonably believe the patient would have made if they had decision-making capacity to do so, and to act with due diligence.

Under the Act, among other things, they must:

- consider the patient's preferences and values (if the patient made a values directive in an advance care directive, they consider this first)
- consider the effects and consequences of the medical treatment
- consult with anyone that they reasonably believe the patient would want consulted.

If you are unsure whether to seek a decision by the Public Advocate call the OPA Advice Service on 1300 309 337.

The material in this fact sheet is intended as a general guide only. The Office of the Public Advocate expressly disclaims any liability howsoever caused to any person in respect of any action taken in reliance on the contents of this publication.

Office of the Public Advocate
1300 309 337
www.publicadvocate.vic.gov.au