

# Medical Decisions

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What is “consent”?  
Who decides if the patient can’t make decisions?



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### Important Notice!

The law changes. This guide is up to date to March 2, 2017. This guide is meant as legal information, not legal advice. If you need advice on a specific situation, consult a lawyer or notary. This guide only applies in Quebec.

# Agreeing to or Refusing Treatment

## Adults can accept or refuse treatment

The general rule is that adults have a right to make their own decisions about medical treatment. Legally, you become an adult at age 18.

Adults are free to accept or refuse medical treatments suggested to them.

In legal terms, this agreement or refusal is called “consent.”

To consent, patients need information. The next section explains this.



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### Under 18?

There are special rules for people under 18. They are not discussed in this guide. See Éducaloi's website for more information: [www.educaloi.qc.ca](http://www.educaloi.qc.ca)

## Medical team must provide information

When they propose a treatment, health professionals must give patients certain information:

### Information for Patient

- the diagnosis, so the medical situation of the patient
- type of treatment proposed
- purpose of the treatment
- treatment options
- the most common risks of the treatment
- risks that are rare but could be serious

Health professionals must also answer patients' questions.

In some specific situations, more information must be given. This is the case, for example, if the treatment is new or experimental or if the treatment is purely cosmetic. In these cases, all the possible risks must be explained.



### **What is medical “treatment”?**

It includes tests, exams, various treatments, a stay in a health care facility and generally any kind of medical or psychological treatment. It can also include the choice of environment for a patient, such as a long-term care facility.

## Medical team must check for agreement or refusal

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Before giving treatments, health professionals must ask patients whether they agree to or refuse the treatment.

They must do this each time treatment is proposed.



## Special situations: agreement not required!

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There are a few situations in which treatment can sometimes be given without consent. Here are examples:

- life-threatening emergencies and consent can't be obtained in time
- patients who are a danger to themselves or others

## Patient must have ability to make decisions

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To make their own decisions, patients must understand important information given by health professionals. They must also understand the impact of the decisions they make. The law sometimes calls this giving “informed” consent.

Health professionals must check for informed consent before treating.

They must also check whether an illness is affecting the patient's ability to understand.

Of course, there can be grey areas: the ability to make an informed decision is not always clear cut. The law will usually give priority to the patient's right to decide over the wisdom of the patient's decision.

But the more the decision seems unreasonable in the circumstances, the more the patient's ability to make an informed decision will be questioned.

To learn what happens when a patient can't make an informed decision, see the next section.



## Patient Not Able to Make Decisions

Sometimes, patients can't make their own decisions about medical treatment.

For example, this can happen if they are unconscious.

It can also happen if a serious condition interferes with their ability to understand information and grasp the impact of their decisions. This could be the case with advanced Alzheimer's, for example.

What happens then? The law sets out some rules. See the next sections.

## Patient made advance medical directives?

First, the medical team must check if the patient made advance medical directives. In this document, you can express your wishes about certain kinds of health care in advance.

If the patient made directives, the medical team must respect them. Learn more about directives in the third part of this guide.

If there are no directives, someone must decide for the patient. This is explained below.

## No directives? Someone else decides

The law sets out a list of people who can decide for the patient, and in what order.

The list goes in this order:

- person named in a protection mandate that has been activated, a tutor or a curator
- a husband, wife or partner
- a close relative or other person with a special concern for the patient



### Protection mandates, tutors and curators

A protection mandate is a document that names someone to take care of you and your affairs if a court finds that you are incapacitated. Incapacitated means a serious health issue is affecting your decision-making ability.

Tutors and curators are people named to care for people who need special protection.

To learn more about protection mandates, tutors and curators, see Éducaloi's website: [www.educaloi.qc.ca](http://www.educaloi.qc.ca)

## How the other person decides

The person deciding for the patient must follow some guidelines:

- act in the patient's best interests
- try to do what the patient would have wanted
- consider any wishes the patient expressed in advance (discussed later in this guide)
- make sure the treatment has benefits
- make sure the treatment is not too risky

The person called on to decide for the patient can consult people around the patient, such as family members.

This person can also look at those parts of the patient's medical records needed to make a decision.



## Ways to Express Your Wishes in Advance

You can find more information on ways to express your wishes in advance in the Health section of Éducaloi's website: [www.educaloi.qc.ca/en/categories/health](http://www.educaloi.qc.ca/en/categories/health)

You can also order print documents on these topics. To learn how to order, see the back cover of this guide.

It's important to know that you must express your wishes while you still have all your mental abilities and understand the impact of your decision.



### **Tell people about your wishes.**

Aside from expressing your wishes in one of the ways described in this section, it is a good idea to talk to people close to you about them. This helps ensure your wishes are respected.



## Advance medical directives

This is a document that lets you mention your wishes for certain kinds of medical treatment in certain situations.

You can make them with a notary, or by using a free form from the Quebec health insurance board.

To get the form, see the contact information at the back of this guide.

You can then register your directives in the list kept by the health insurance board and also put them in your medical file.

If your directives are in the list or your file, and you can't make your own medical decisions, the directives must be respected.

### Situations

Directives can only apply in these situations:

- a serious, incurable condition and you are the end of life
- a severe and permanent loss of mental functions (e.g., a coma you will never come out of)

### Treatments

In directives, you can only agree to or refuse these treatments:

- CPR (re-starting your heart and breathing)
- kidney dialysis
- help to breath with a machine
- forced or artificial feeding
- forced or artificial hydration (giving liquids)

## Protection mandates

A protection mandate is a document that lets you name someone to take care of you and your affairs if a court finds you are incapacitated.

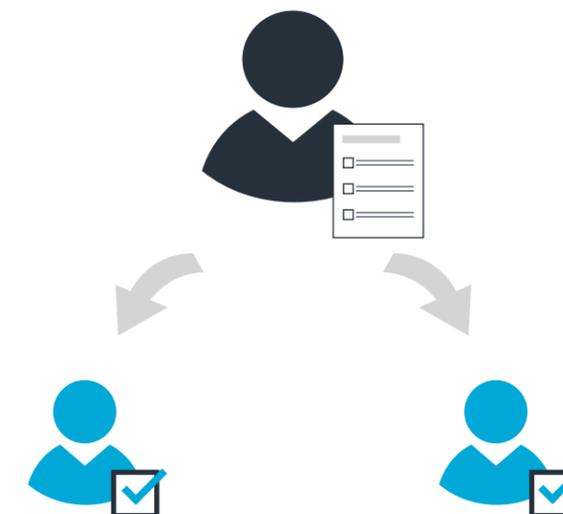
Incapacitated means your decision-making abilities are affected by a serious health issue.

You can name one person or several people. You can name them to act together, or divide responsibilities between them.

You can include instructions about how you want your affairs managed. And you can give instructions about medical care you agree to or don't want.

If you are found to be incapacitated, the person who must make medical decisions for you will consider any wishes you expressed in a protection mandate.

Two of the main ways to make a mandate are with a notary or using a free form from a government agency called the public curator (Curateur public). To get the form, see the contact information at the back of this guide.





### **Conflict between a protection mandate and directives?**

If there is a conflict between the wishes in these two documents, health professionals must follow the directives.

## Living wills

In this document, you can express your wishes for medical treatment you want or don't want.

It will only be used if you can't make your own medical decisions. At that point, the person who decides for you can consider wishes in a living will, if you made one.

There are no special formalities around making a living will: you can write one yourself. But it can be a good idea to sign and date it.

Many people have heard of the term living will, but the document more widely used in Quebec at this time to express medical wishes is the protection mandate. Advance directives are relatively new.

## Forms of hospitals and other health institutions

Many institutions ask patients they are treating to fill out forms called "level of medical intervention" or something similar.

They are filled out based on an exchange between the patient (or person acting on behalf of the patient) and a health care professional.

These forms indicate the patient's preferences regarding treatment. They are filed in a patient's record.

For example, they can include preferences about CPR (restarting the heart and breathing), giving of nutrients and liquids by inserting a tube, and blood transfusions.

This document is an indication of wishes, but does not replace asking a patient for consent to treatment.

Sometimes the wishes of a patient about CPR are in a separate document.



## Donating organs or the body

You can express your wishes in advance about what will happen to your organs and body after death.

### Organ donation

There are several ways to agree to donation:

- Sign the back of your Medicare card.
- Fill out a form available from the Régie de l'assurance maladie (Quebec health insurance board).
- Have a notary make a document.
- Express your wishes orally in front of two people.



### Donating your body for teaching or research

This means that instead of removing organs to transplant into someone else, your body will be used by an educational institution for teaching or medical research.

After study on the body is finished, it can be recovered for cremation or burial.

How to donate your body:

- Fill out the card available on this website: [www.sante.gouv.qc.ca](http://www.sante.gouv.qc.ca) (Go to “Assistance Measures and Programs”, then “D - Donating Your Body to Science.”) Keep the card with your important cards or papers.
- Put your wishes in a will, protection mandate or other document made by a notary.

### Your wishes about donation are not known at your death?

The person allowed by law to make medical decisions for you can give permission for donation.

## Informally

You can also express your wishes for future medical care in informal ways.

These can include telling people around you, writing your wishes down or recording a video.



But these informal ways can have some disadvantages: it might be harder to confirm what you wanted, and to track down any document or recording you made.

### General Legal Information

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#### **Éducaloi**

[www.educaloi.qc.ca](http://www.educaloi.qc.ca)

Switch to English. See especially the Health section.

### Problems or Complaints in the Health and Social Services Network

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#### **Service Quality and Complaints Commissioner**

For contact information, go to [www.sante.gouv.qc.ca](http://www.sante.gouv.qc.ca)

Switch to English. Go to the bottom of the page. Click on “The Health-Care System in Brief.” Then go to “The Health and Social Services Network Complaint Examination System.” Scroll to the bottom of the page.

#### **Users’ and Residents’ Committees**

All health and social services institutions have either a users’ or residents’ committee.

Ask the institution you are dealing with for the contact information of the committee.

### Protection Mandate Form

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#### **Curateur public du Québec (public curator)**

[www.curateur.gouv.qc.ca](http://www.curateur.gouv.qc.ca)

Switch to English. Click on “Preparing your mandate in three steps” in the middle of the page.

### Advance Medical Directives Form

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#### **Call the Régie de l’assurance maladie du Québec (RAMQ)**

- Montreal: 514-864-3411
- Elsewhere in Quebec: 1-800-561-9749 (toll free)
- Form available in English

### Organ Donation

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[www.signezdon.gouv.qc.ca](http://www.signezdon.gouv.qc.ca)

Switch to English.

### Donating Your Body to Science

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[www.sante.gouv.qc.ca](http://www.sante.gouv.qc.ca)

Switch to English. Go to “Assistance Measures and Programs.” Then go to “D - Donating Your Body to Science.”

### Quebec-Government Health Information Website

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[www.sante.gouv.qc.ca](http://www.sante.gouv.qc.ca)

Switch to English.

# Éducaloi explains the law to Quebecers in everyday language.



Read about these and other topics at [www.educaloi.qc.ca](http://www.educaloi.qc.ca):

- Health care decisions
- Protections for vulnerable people
- Protection mandates
- Advance medical directives
- Living wills
- Donating organs or your body
- The health and social services network



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