

Health Care Consent for People Living with Dementia

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Presenters Disclosures

FACULTY:

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Relationships with commercial interests:

➤ NONE

Session Timetable

- Introductions - 5 minutes
- Case/Clinical - 8 minutes
- Ethics - 8 minutes
- Legal - 10 minutes
- Table discussion & questions - 10 minutes
- Questions/discussion - 20 minutes
- Summary - 4 minutes

LEARNING

OBJECTIVES



Scenario



INFORMED

CONSENT

Nature of
Condition

Consequences

**MUST
UNDERSTAND**

Risks /
Benefits

Alternatives

Consent must be voluntary

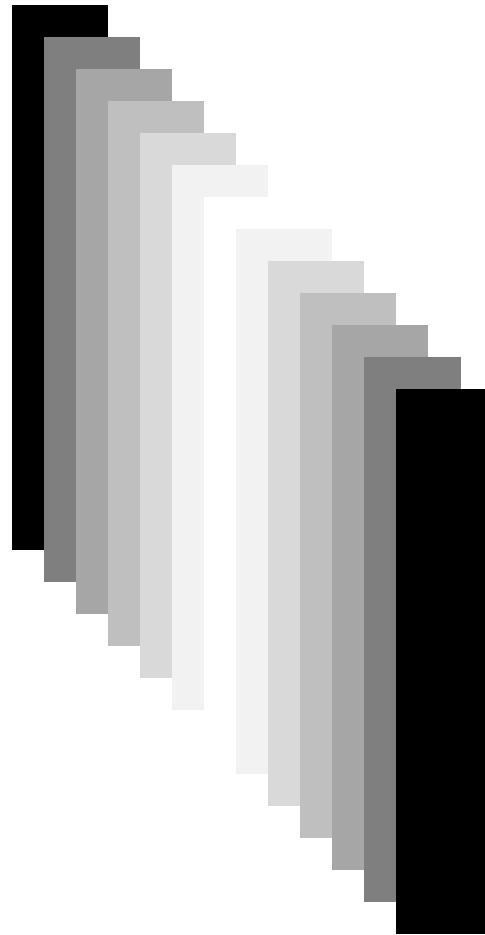
Many shades of grey

Who Decides?

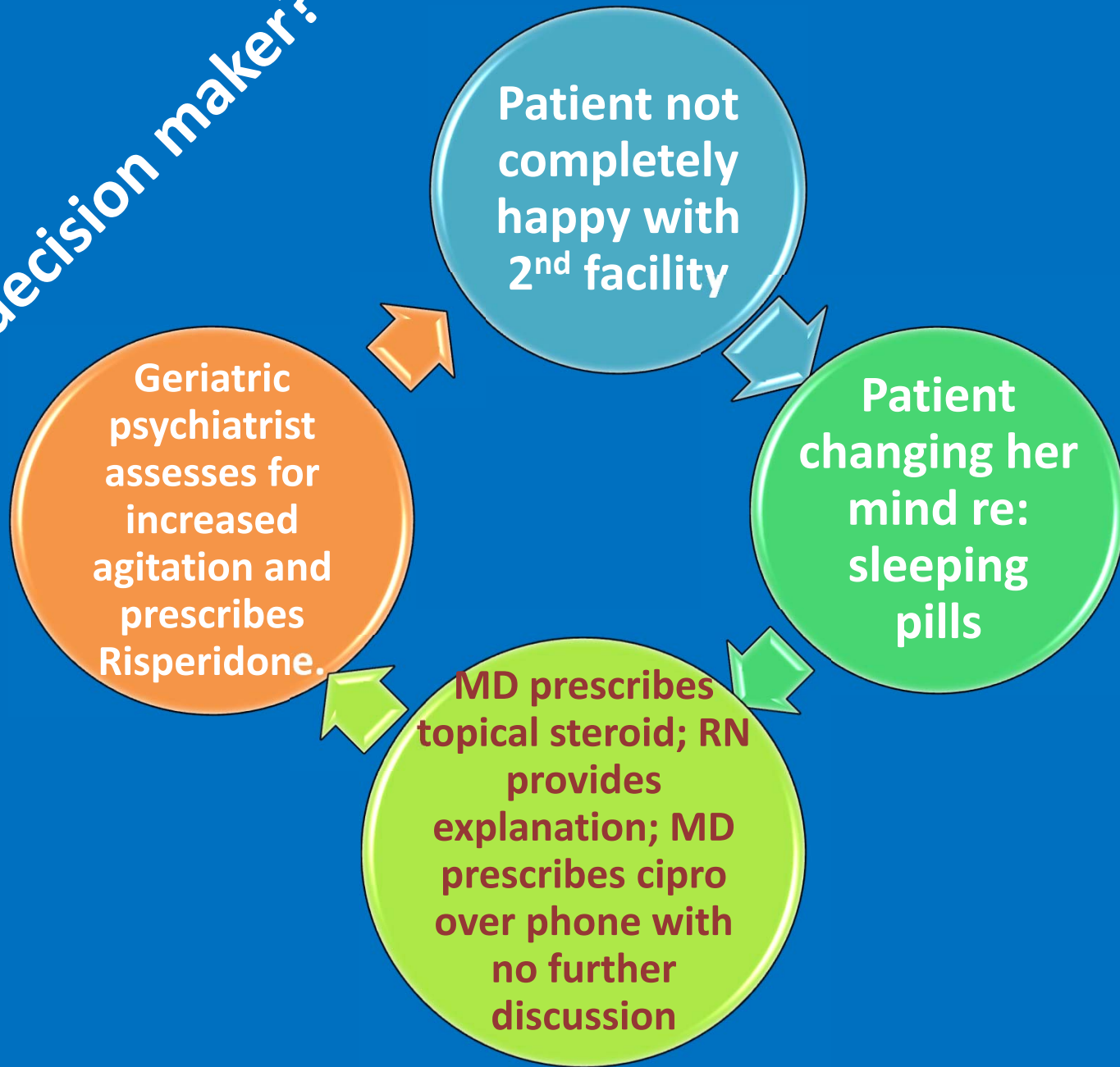
What?

When?

Why?

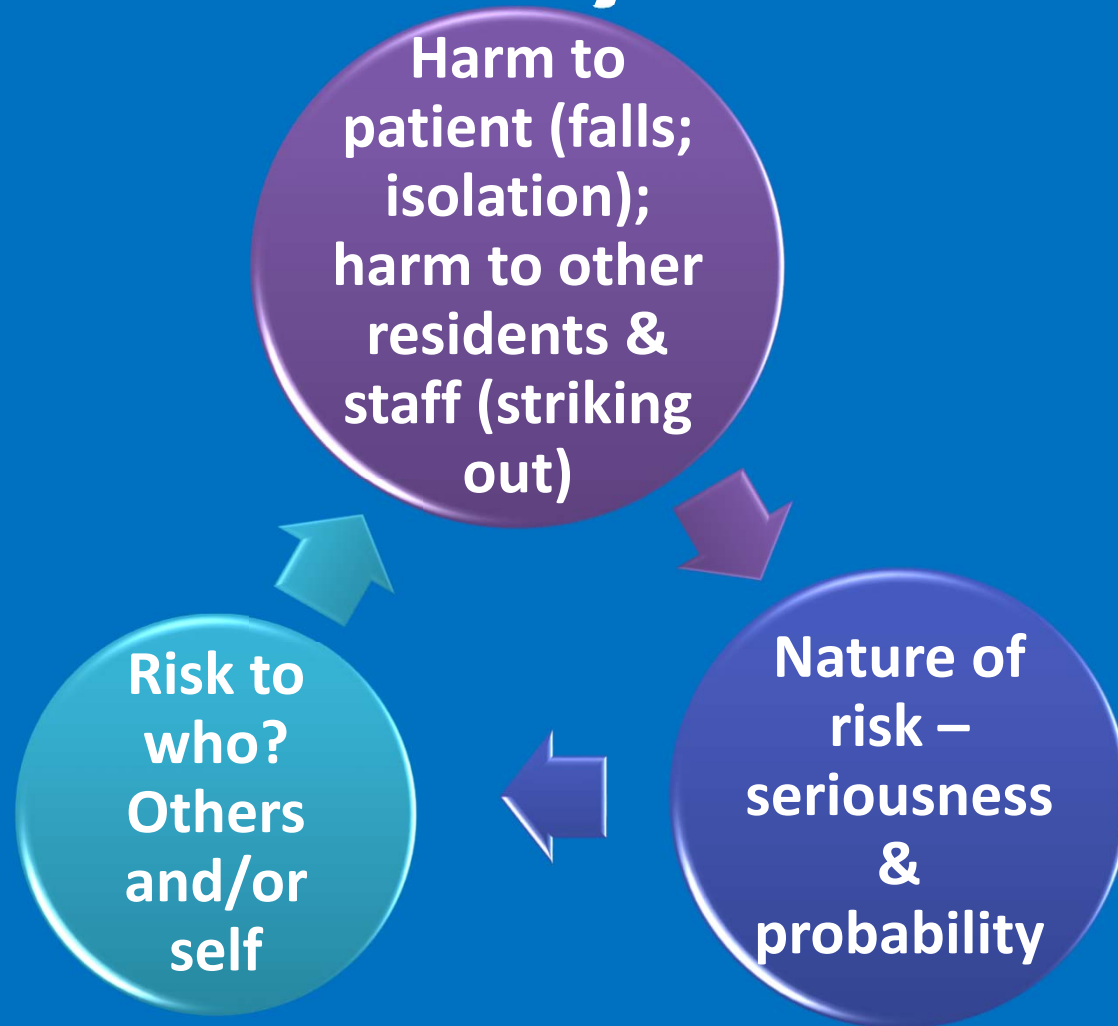


Who is the decision maker?



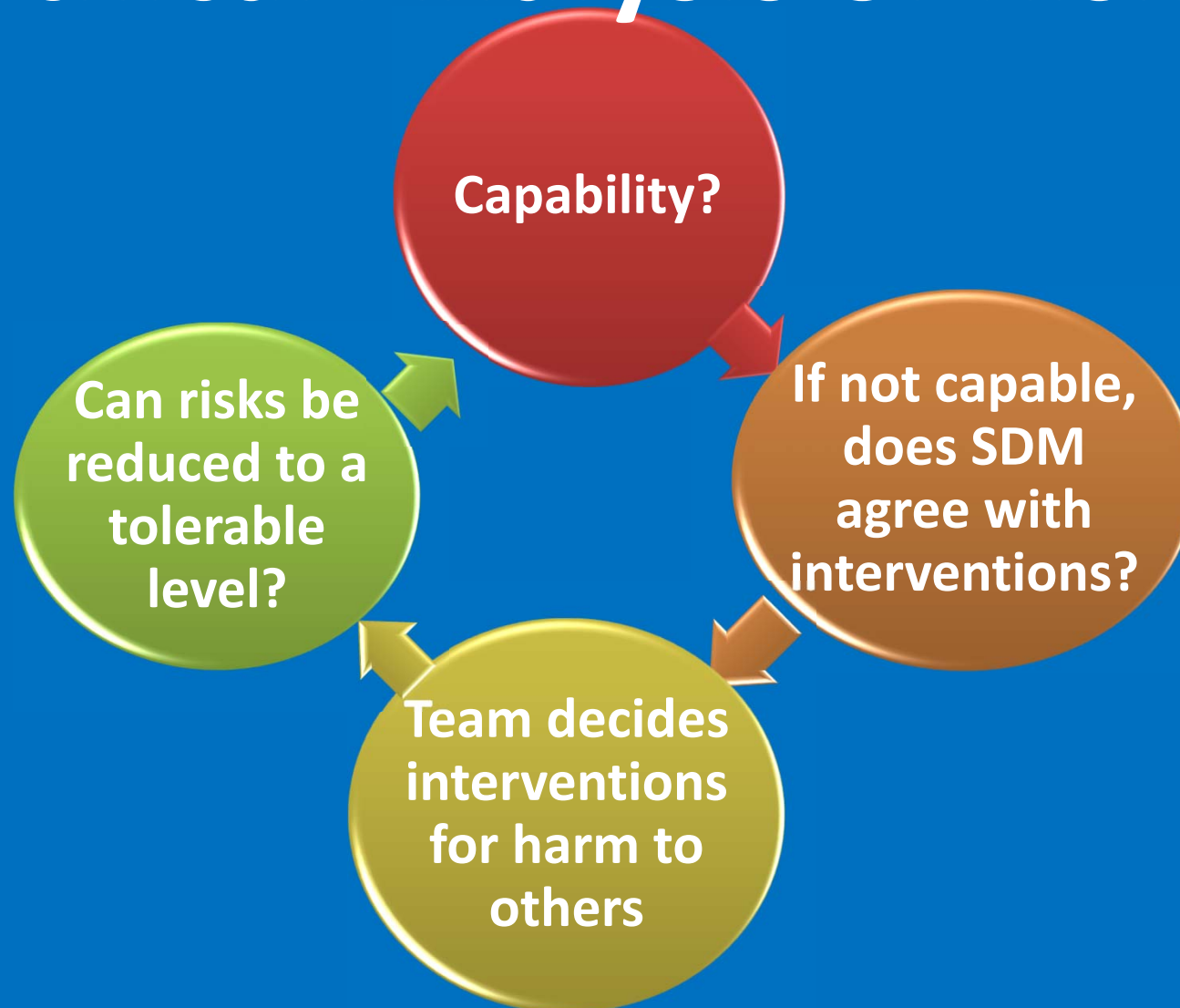
Harm to self and others

Ethical Analysis of Risk



Harm to self and others

Ethical Analysis of Risk



Ethical conditions when intervening in risk activities



Intervention should be:

- Effective
- Not create greater harms than you seek to prevent
- Minimal yet effective
- Not discriminatory
- Acceptable to the patient/client/resident

Disclaimer

This presentation is NOT legal advice

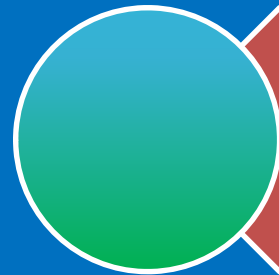
Informed Consent



**Consent
must be**

- Capable
- Informed
- Voluntary

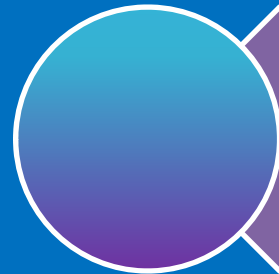
I am going to talk about



**Health care
consent**



**Substitute
decision making**



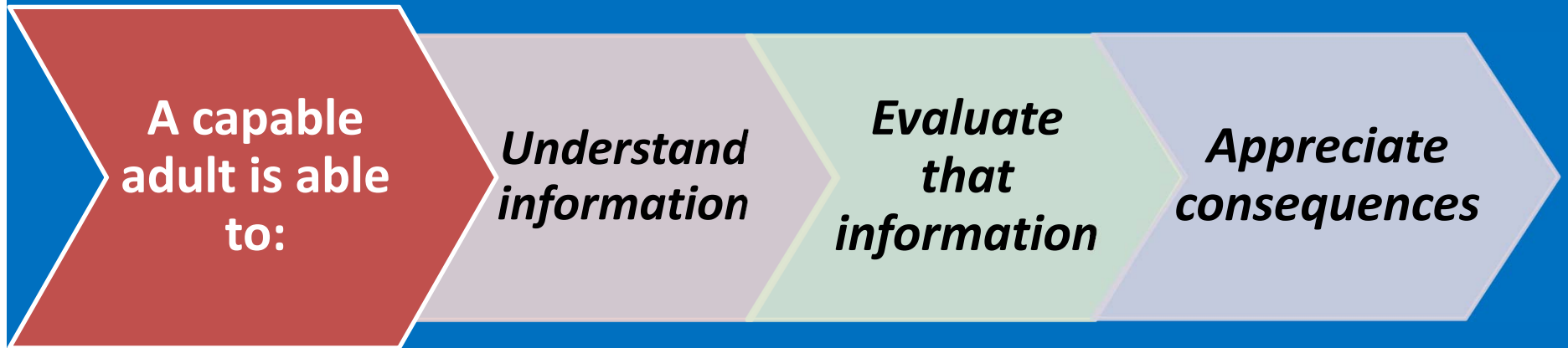
**Advance planning
for health care**

Presumption of capacity

At law every adult is presumed to be capable of making their own decisions, regardless of



Capacity to consent



***Capacity
is
decision-
specific***

Capacity for what decision?

What information is relevant?

Few people do not have capacity to make any decision

Capacity to do what?

Make a will?	Make a Power of Attorney?
Marry?	Divorce?
Accept Surgery?	Refuse treatment/meds?
Mediate?	Instruct a lawyer?
Enter a contract?	Sell real estate?
Donate money?	Participate in research?

Capacity is
not fixed.
It can:

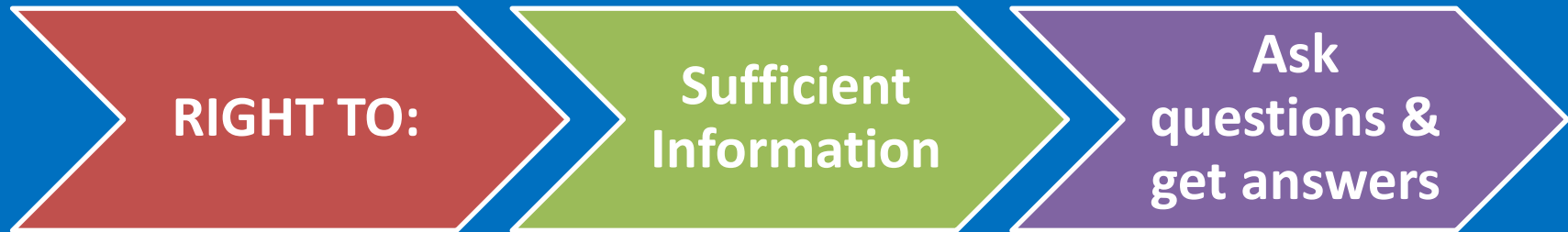
Fluctuate, increase or decrease

Be linked to medications

Be affected by time of day

be undermined by trauma or stress

Informed consent



**Implies a right to your time
and attention**

People with disabilities

Person has a legal right to:	You have a legal duty to:
<u>Support</u> with communication and understanding	<u>Communicate</u> in a manner appropriate to the adult's skills and abilities

Consent must be voluntary

You must be aware of:



3 kinds of substitute decision makers for health care in BC

**Committee
of Person**

- **Guardian**

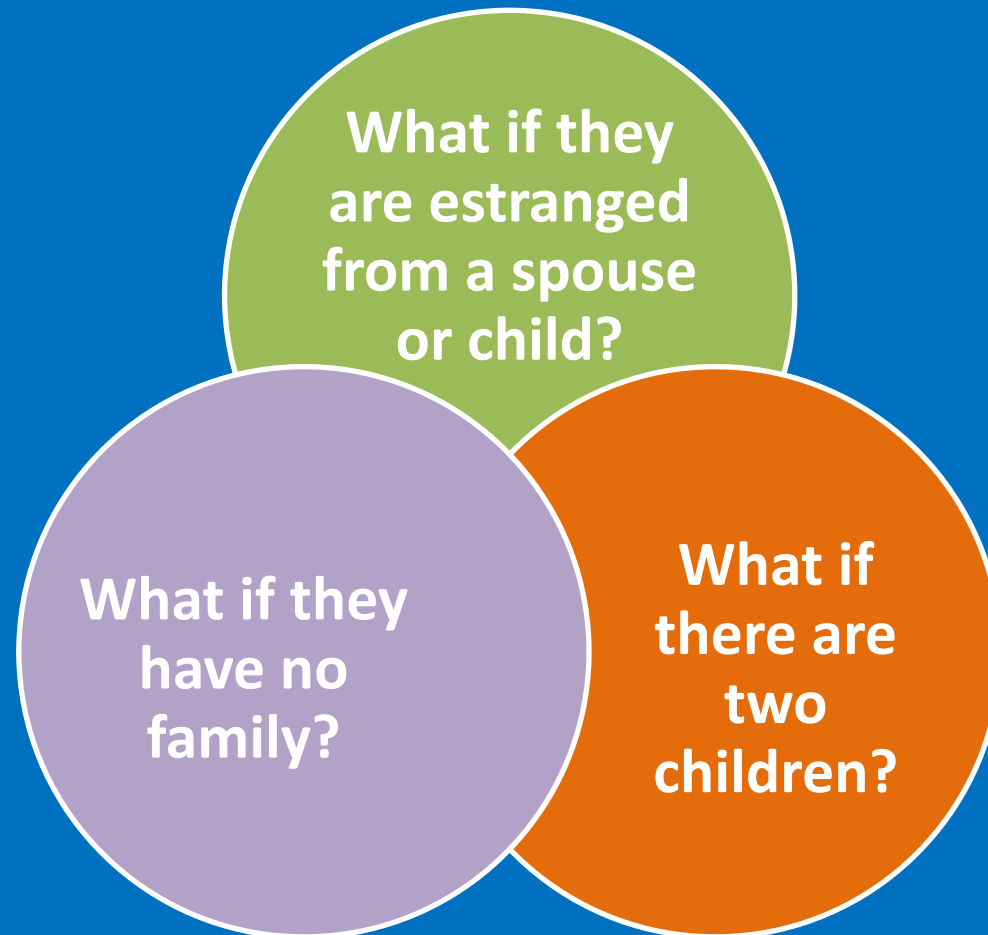
Representative

- **Representation
Agreement Act**

**Temporary
Substitute
Decision
Maker**

- **Health Care (Consent) and
Care Facility (Admission)
Act**

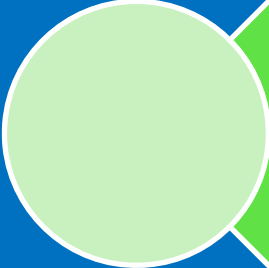
Temporary substitute decision maker



The TSDM's duty to consult



Must consult with the adult to the extent reasonably possible



Comply with wishes expressed while capable



Consider best interests if their instructions or wishes are not known

Table Discussion Questions

1. What are the key barriers for getting consent and how would you deal with these challenges?
2. How do you determine capacity?

It's Simple?



On the one hand there are laws and principles that are relatively easy to understand



On the other hand social and clinical contexts can create a minefield



We are compelled do the right thing (clinically, ethically and legally) that results in appropriate care that minimizes harm, maximizes benefit, and respects the known wishes of the adult.

LEARNING

OBJECTIVES

Strategize on how best to include individuals as much as possible in the consent process

List the components of informed consent and decision-making capacity

Recognize when consent is required and who should give it

Recognize the impact of cognitive decline on the ability to give or refuse consent

List the responsibilities of a Substitute Decision Maker



References

- Young, Jenny & Everett, Bethan. (2018). *When patients choose to live at risk: What is an ethical approach to intervention? British Columbia Medical Journal 60(6):314-318.*