



DEALING WITH SPECIAL HEALTH CARE MATTERS

If you are a guardian, attorney for personal matters or statutory health attorney for an adult with impaired decision-making capacity, you normally have the authority to make health care decisions on behalf of the adult.

However, some medical procedures cannot go ahead without the consent of the Guardianship and Administration Tribunal. These procedures are known as 'special health care'.

WHAT MEDICAL PROCEDURES ARE CONSIDERED 'SPECIAL HEALTH CARE'?

The *Guardianship and Administration Act 2000* (the Act) includes the following medical procedures as special health care:

- donation of tissue from the adult to someone else for transplant (e.g., bone marrow or an organ)
- sterilisation of the adult
- termination of a pregnancy of the adult
- participation by the adult in special medical research or experimental health care
- prescribed special health care.

These procedures cannot be carried out on an adult who has impaired decision-making capacity for the particular decision without the written consent of the Tribunal.

WHY IS THE TRIBUNAL'S CONSENT NEEDED FOR SPECIAL HEALTH CARE?

These particular procedures go beyond the boundaries of ordinary health care because they are intended for the benefit of someone else (as in the case of tissue donation) or they have a crucial effect on the adult's rights and freedoms (as in the case of sterilisation).

The Act protects the rights of the adult by limiting the powers of decision makers in such sensitive matters. The Tribunal can give consent for procedures classified as 'special health care' to be carried out on the adult but an attorney or guardian cannot.

WHAT DOES THE TRIBUNAL CONSIDER BEFORE GIVING CONSENT TO SPECIAL HEALTH CARE MATTERS?

In general, the Tribunal has to decide whether or not the procedure is necessary for the adult's health and well-being. This means answering two crucial questions:

- Is it the option that is least restrictive of the adult's rights? and
- Is it needed to promote or maintain the adult's health and well-being?

If the Tribunal is satisfied that the answer to both these questions is yes, it is likely to give its consent. However, these questions don't apply in the case of tissue donation because this procedure is intended primarily for the benefit of someone else. In this situation, the Tribunal must consider what decision the adult would make if their decision-making capacity was not impaired.

The Tribunal has to take several matters into account before giving consent to special health care:

- the principle of keeping treatment to the minimum necessary to preserve the adult's health and wellbeing
- the wishes of the adult
- the views of any guardians appointed by the Tribunal
- the views of anyone appointed as attorney for personal matters for the adult
- the views of the adult's statutory health attorney
- the adult's situation (including their medical condition)
- any alternative procedures that may be available in either the short or long term

The Tribunal will require specific reports from relevant health professionals before conducting a hearing.

Examples of Special Health Care Matters are:

- **Donation of tissue**

The Tribunal cannot consent to this procedure if the adult objects. If the Tribunal does give its consent, it must name the recipient in its consent order. There should be or have been a close personal relationship between the adult and proposed recipient.

- **Special medical research or experimental health care**

The Tribunal cannot consent to the adult's participation in special medical research or experimental health care if they object or have indicated, in an advance health directive, an unwillingness to participate in such procedures.

The Tribunal has the power to consent to the adult's participation only when the procedures:

- relate to a condition that the adult suffers from or has a significant risk of being exposed to; and
- promote knowledge that can be used in the diagnosis and treatment of a condition that the adult suffers from.

- **Sterilisation**

The Tribunal has the power to consent to sterilisation only when:

- it is necessary for purely medical reasons; or
- the adult is, or is likely to be, sexually active and there is no suitable method of contraception; or
- the adult is female and has problems with menstruation or the cessation of menstruation and sterilisation is the only means of overcoming the problems.

- **Termination of pregnancy**

The Tribunal has the power to consent to the termination of the adult's pregnancy only if it is satisfied that it is necessary to preserve the adult from serious danger to her life or health (physical or mental).

HOW DO I APPLY FOR CONSENT TO SPECIAL HEALTH CARE?

Contact the Tribunal Registry and talk to staff about the proposed special health care. Registry staff will offer you advice and supply you with a form called Application for Consent for Special Health Care. When the form is complete, return it to the Tribunal Registry. You will need to supply evidence, such as medical reports, to support your application.

To find out more about special health care provisions, please refer to the Act available at www.gaat.qld.gov.au.

9th Floor
259 Queen Street
GPO Box 1639
Brisbane Q 4001
Telephone: (07) 3234 0666
Telephone - Cost of Local Call: 1300 780 666
Facsimile: (07) 3221 9156
Website: www.gaat.qld.gov.au
ABN: 13 846 673 994