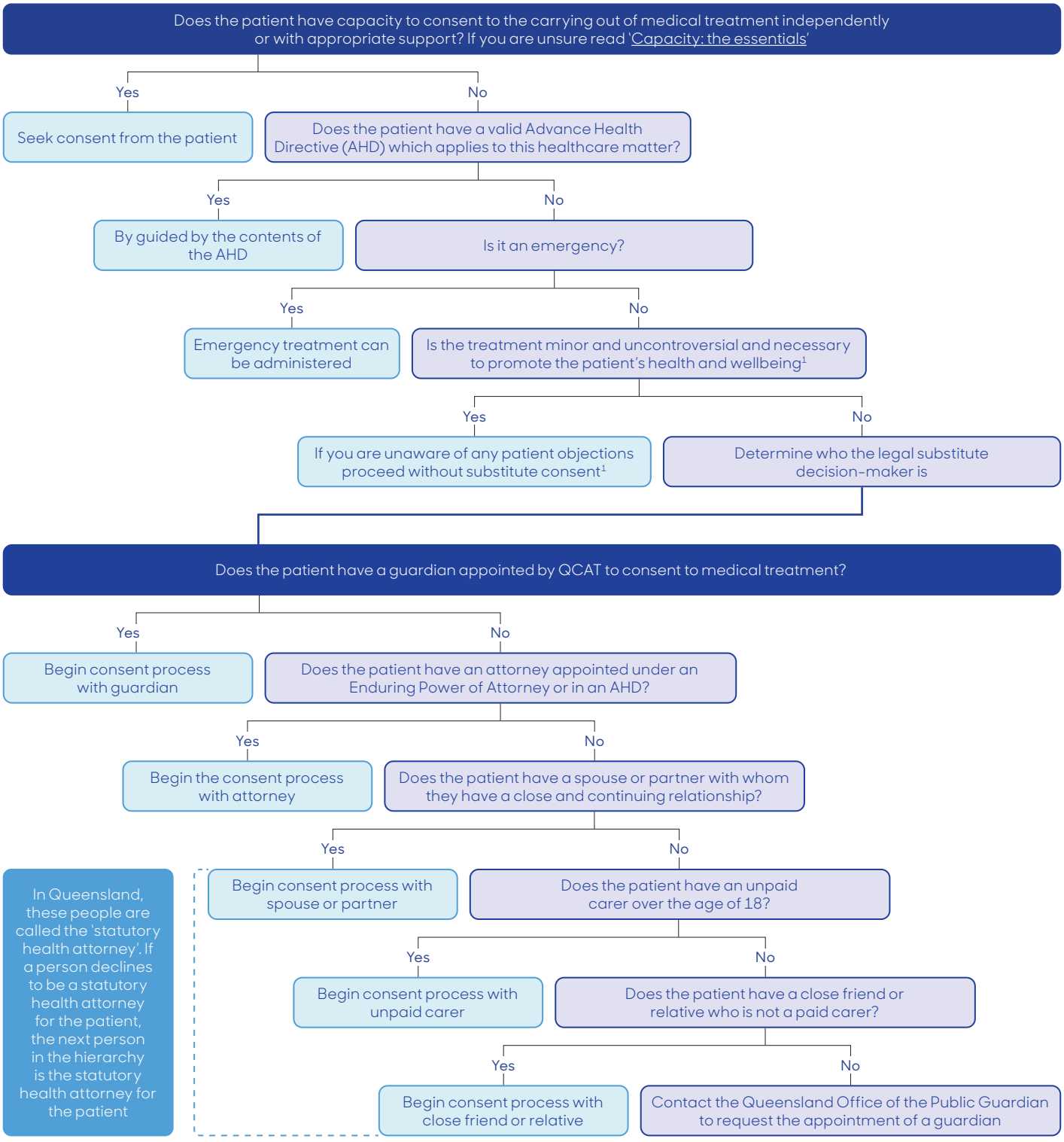
Avant
By doctors for doctors

Substitute decision-makers for healthcare Queensland

You may need to provide care for a patient who has limited or no capacity to make healthcare decisions for themselves. For these situations, the law has established mechanisms for you to seek consent to provide treatment. You need to understand which person, document or institution to turn to in these circumstances. Use this decision-making flowchart to assist you.



[1] Minor, uncontroversial healthcare (s 64 Guardianship and Administration Act 2000 (Qld)).
Healthcare may be provided without substitute decision-maker consent where:

- The adult lacks capacity for the health matter;
- The healthcare is minor and uncontroversial and necessary to promote the adult's health and wellbeing; and
- The practitioner is not aware that the adult objects to the healthcare.

Emergencies

You should assess whether urgent treatment is required.

Treatment (other than special healthcare or the withholding of life-sustaining treatment) may be provided without consent where the patient lacks capacity and the treatment is necessary to address an imminent risk to the patient's life or health.

Urgent treatment may also be provided without consent to prevent significant pain or distress, where it is not reasonably practicable to obtain consent from a decision-maker.

In either case, treatment should not proceed if you are aware that the patient has refused the treatment in an Advance Health Directive (AHD).

Advance Heath Directives

An AHD is a formal record of a person's decisions or preferences about future healthcare if they lose capacity.

If your patient does not have capacity, you should take reasonable steps to determine whether an AHD exists and whether it applies to the decision being considered.

An AHD must be in writing and must have been made when the person had capacity.

An AHD may include:

- specific directions about treatments a person would accept or refuse
- statements of preferences to guide decision-making
- directions about withholding or withdrawing life-sustaining measures in limited circumstances

A valid and applicable AHD must be followed.

Decision-maker

In Queensland, decisions may be made by:

- an **attorney** appointed under an Enduring Power of Attorney or AHD
- a **guardian** appointed by the Queensland Civil and Administrative Tribunal
- a **statutory health attorney**, where no formal appointment exists

A statutory health attorney is identified according to a hierarchy, which may include:

- a spouse or partner with a close and continuing relationship
- an unpaid carer
- a close friend or relative who is not a paid carer

All decision-makers must apply the general principles and healthcare principle under Queensland law.

In practice, this means they should:

- support the patient to make their own decisions where possible
- take into account the patient's views, wishes and preferences, or what they would likely have wanted
- act in a way that promotes the patient's best interests

If you have concerns that a decision-maker is not acting in accordance with these principles, you should seek advice.

Minor and uncontroversial treatment

Healthcare may be provided without consent from a decision-maker where:

- the patient lacks capacity to make the decision
- the treatment is minor, uncontroversial and necessary to promote the patient's health and wellbeing
- the practitioner is not aware that the patient objects to the treatment

Limits on decision-making

In Queensland, a decision-maker can consent to most healthcare decisions.

However, they cannot consent to certain 'special healthcare matters', which include:

- sterilisation
- termination of pregnancy
- donation of tissue
- electroconvulsive therapy (ECT)
- non-ablative neurosurgical procedures
- experimental healthcare

If a valid and applicable AHD contains a direction about a special healthcare matter, it must be followed. Otherwise, consent must be obtained from a court or the Queensland Civil and Administrative Tribunal.

Life-sustaining treatment

A decision-maker may consent to the withholding or withdrawal of life-sustaining treatment where the treating practitioner reasonably considers that starting or continuing the treatment would be inconsistent with good medical practice.

Consent must still be obtained from a decision-maker, even where treatment is considered futile. If consent cannot be obtained, an application may need to be made to the Office of the Public Guardian or QCAT, unless the situation is an emergency.

Additional resources

For more information on

- assessing capacity, please see the Avant factsheet: Capacity: the essentials
- advance care planning in Queensland, including forms and resources, see Queensland Government forms
- making healthcare decisions for others in Queensland see the Office of the Public Guardian
- advance care planning in all states and territories, see QUT End of Life Law for Clinicians or Advance Care Planning Australia

For more information or immediate medico-legal advice, call us on **1800 128 268**, 24/7 in emergencies.
avant.org.au/mlas

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