

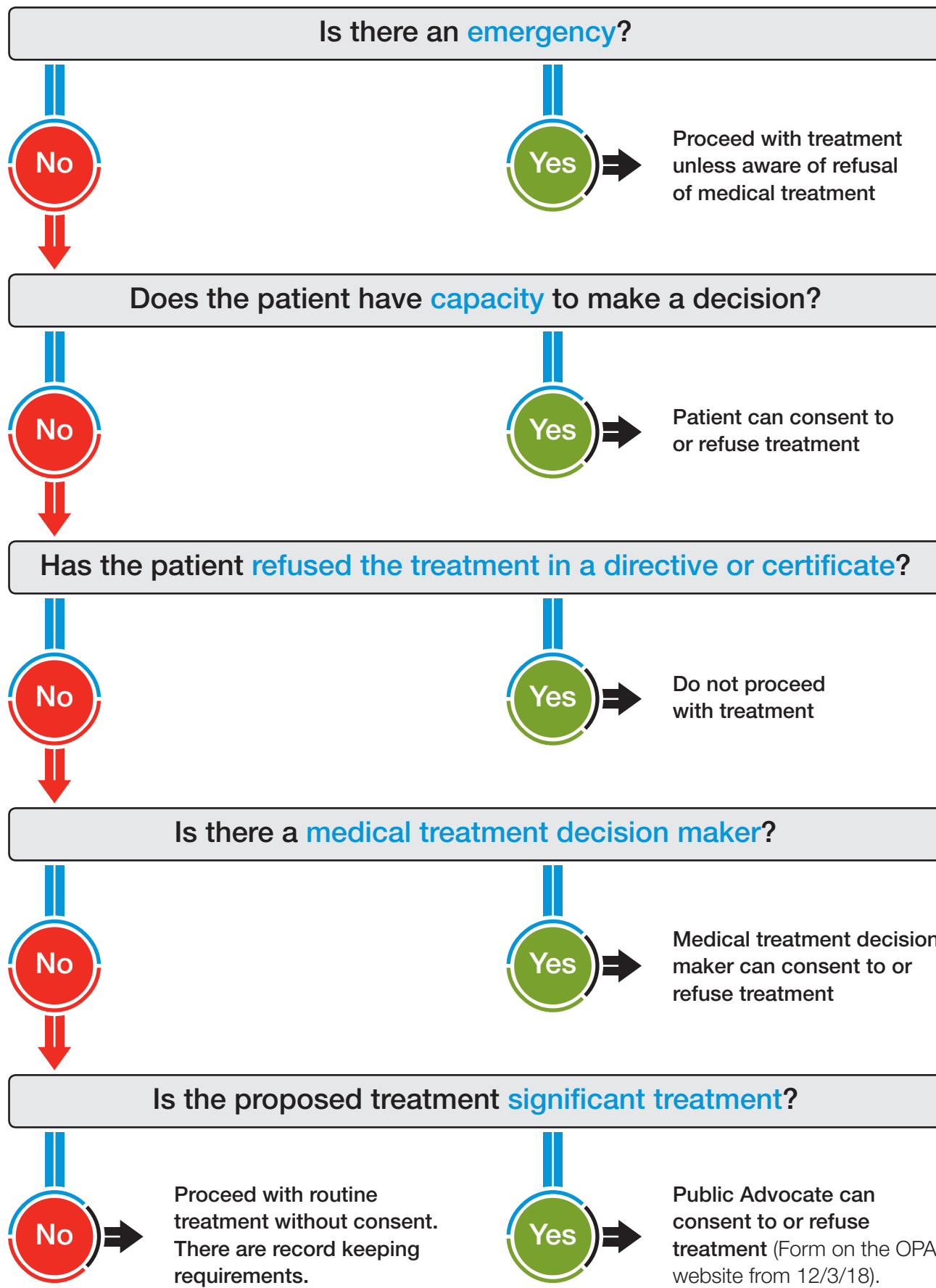


Can your adult patient consent?

Download the app. Available 12 Mar 18

Process from 12 March 2018

www.publicadvocate.vic.gov.au



Emergency treatment

Medical treatment that is necessary as a matter of urgency to save the person's life, prevent serious damage to the person's health, or prevent the person from suffering or continuing to suffer significant pain or distress. A health practitioner may administer emergency treatment to a patient without consent, unless they are aware that the patient has refused the treatment in a directive or certificate (see below).

Decision-making capacity

The patient is able to understand the information relevant to the decision, retain that information to the extent necessary to make the decision, use or weigh that information as part of the process of making the decision, and communicate their decision in some way. Sometimes a relevant specialist may be required to make a capacity assessment.

Directive or certificate refusing treatment

Treatment must not proceed if:

- there is a valid refusal of medical treatment certificate made prior to 12 March 2018 in accordance with the *Medical Treatment Act 1988*
- the patient has refused the particular medical treatment in an instructional directive (in an advance care directive) in accordance with the *Medical Treatment Planning and Decisions Act*.

A health practitioner must make reasonable efforts in the circumstances to ascertain if the person has an advance care directive. There are some circumstances where they can refuse to comply with a directive.

Significant treatment

Medical treatment that involves any of the following:

- a significant degree of bodily intrusion
- a significant risk to the person
- significant side effects
- significant distress to the person.

See the OPA website for clinical guidelines.

Medical treatment decision

A decision to consent to, or refuse the commencement or continuation of, treatment.

Appointed medical treatment decision makers

A patient may have appointed someone under the *Medical Treatment Planning and Decisions Act*. Legal appointments made prior to the commencement of the Act are recognised. This means they may also have appointed them in an:

- enduring power of attorney (medical treatment) made before 12 March 2018
- enduring power of attorney appointing an attorney for personal matters made between 1 September 2015 and 11 March 2018
- enduring power of guardianship appointing an enduring guardian with healthcare powers made before 1 September 2015.

Note: Valid appointments in other Australian states and territories are recognised in Victoria.

Medical treatment decision maker

Where a patient is unable to consent to treatment, consent can be obtained from the medical treatment decision maker in the following order.

1. A medical treatment decision maker appointed by the patient
2. A guardian appointed by VCAT to make decisions about medical treatment
3. The first of the following people who is in a close and continuing relationship with the patient. If more than one, the eldest.
 - a. the patient's spouse or domestic partner
 - b. the patient's primary carer (an adult who is in a care relationship with the person and has principal responsibility for the person's care)
 - c. an adult child of the patient
 - d. a parent of the patient
 - e. an adult sibling of the patient.

The person needs to be reasonably available, and willing and able, to make the decision.

Note: * If a person is a compulsory patient under the *Mental Health Act 2014*, that Act applies.

** There is a different consent process for medical research procedures.