# Index

# Acute care medicine challenges, generally

consent, role in decision-making, 7-9 end of life, 11-13 fiduciary duty of health care practitioners, 5-6 generally, 1-3, 14 health care spending, 2 human dignity and substitute decision-making, 9-11 personal values and religious beliefs, role of, 6-7 purpose of acute care medicine, 3-4 standard of care, 4-5, 6

# Acute resuscitation committee ("ARC"), role of, 436

# Advance care planning

distinguished from level of care forms, 374-375 end of life, and, 364-365 generally, 8, 155, 157, 159, 183, 186, 189, 192, 205-207, 210, 219, 449, 476 planning in other provinces, 187-188 precision in, 335 substitute decision-maker, and, 153, 156, 216-217

# Advanced cardiac life support ("ACLS"), 369, 435, 436, 448, 479

# **Canadian Medical Association Code of Ethics**

Alberta, 263 generally, 32, 234, 263, 264, 284 Manitoba, 349 Saskatchewan, 264

# Capacity

assessment in acutely deteriorating patients, 122-125 best practices for health care practitioners, 131-133 best practices for hospitals and health care facilities, 133 clinical tools — documentation of decision-making capacity, 134

```
Capacity — continued
  Consent and Capacity Board (CCB), 121-125, 132, 133, 139
  determination of capacity, 119-120
  documentation, 120-121
  generally, 115-118
  legal requirements, 118-119
  outside Ontario, 125-130
  practical questions and answers —
    emergency situations, 134-137
     non-emergency situations, 138-143
  provincial legislation concordance table, 144-149
  review of capacity decisions, 121-122
  where patient incapable, 121
Case studies
  emergency department —
    elder abuse, 387-391
    end of life, 373-384
     gunshot/stabbing wounds, 408-416
     sexual assault, 391-394
     suicide attempts, 400-402
     suspected crimes, 384-387
    toxicology, 398-399
    trauma bay, 402-408
     violence towards staff, 394-398
  general internal medicine wards —
     demands for Rx/do everything, 422-427
     resuscitation —
       offering / not offering, 416-422
       refusal, 436-438
     slow codes, 433-436
     substitute decision-making standards and complaints, 427-432
  intensive care units -
    cardiac arrest, withholding and withdrawing life support, 462-466
    critical incident resulting in admission to ICU, 466-471
     demands for treatment, to offer / not to offer, 454-462
     resource allocation, 471-474
  surgical wards -
     no CPR status and quality of care issues, 445-448
     surgery -
       complications / consent issues, 443-445
       not offering / demands for, 438-443
     treatment goals, 448-451
```

```
Case studies — continued surgical wards — continued triage / resource allocation issues, 451-454
```

# Charter of Rights and Freedoms

brain death, and, 350, 352-353 capacity and informed consent, and, 7-8 end-of-life care issues, and, 11 medical assistance in dying, and, 323, 356-357, 360, 361

#### Clinical tools

```
capacity —
documentation of decision-making capacity, 134
standard of care —
ITEST/ITREAT, 61
ITRREAAT, 60-61
substitute decision-making —
documenting conflict mediation meetings re substitute decisions, 199-200
documenting emergency treatment without consent, 197
documenting non-offer of CPR or other life-sustaining treatments, 198-199
documenting treatment decisions with SDMs, 197-198
```

# College of Physicians and Surgeons, Ontario ("CPSO") Policy Statements

"Consent to Treatment", 72, 76, 78, 81, 90, 121

"Medical Assistance in Dying", 359

"Planning For and Providing Quality End-of-Life Care", 52-53, 101, 164-165, 347-349, 376-377

# Concordance tables

capacity, 144-149 informed consent, 111-113 privacy and confidentiality, 287-307 substitute decision-making, 221-230

#### Confidentiality. See Privacy and confidentiality

# Consent, see also Informed consent, Consent and Capacity Board ("CCB")

Consent and Capacity Board ("CCB"), review of capacity determinations, 121-122 role in decision-making, 7-9

```
Consent — continued where patient is incapable, 121
```

# Consent and Capacity Board ("CCB")

```
applications — appointment or termination of representative, 181 determination of capacity, 182 override of expressed wishes, Form E, 179-180 review of applicability of wishes, Form D, 179 review of substitute decision-maker's decision, Form G, 180-181 consent to withdraw treatment not obtained, where, 57 generally, 86-87, 121-125, 132, 133, 139, 329-330, 333-334, 350, 353, 372
```

### Crimes, suspected, case study, 384-387

#### Critical incidents

```
best practices in Canadian hospitals, 279-281
defined —

Hospital Management regulation under Public Hospitals Act, 283-
284
Quality of Care Information Protection Act, 2016, 237-238
disclosure and reporting, 233, 283-285
documentation, 93, 285
generally, 238
quality of care information, 239
role of hospital administration, 286
```

# "Critical interests" of person, 65, 73, 116

#### Disclosure of patient information - special reporting situations

```
best practices when disclosing information to police, 261 disclosure authorized by warrant or law, 260 disclosure of patient information for use in research or case studies, 272-273 disclosure of patient information to lawyers, 268-269 disclosure of patient information to media, 269-272 disclosure of patient information to police, 259-260 disclosure related to risks of harm to others, 261 disclosure to health authorities, 260 other mandatory reporting — child abuse or neglect, 262 communicable or reportable diseases, 266-267 controlled drugs and substances, 268
```

# Disclosure of patient information - special reporting situations —

continued
other mandatory reporting — continued
deaths, 265-266
incapacity, incompetence and sexual abuse, 265
reactions to immunizations, 267-268
sexual abuse of patient, 262-264
social media, 273-274

Elder abuse, case study, 387-391

# Emergency department, case studies

elder abuse, 387-391 end of life, 373-384 gunshot/stabbing wounds, 408-416 sexual assault, 391-394 suicide attempts, 400-402 suspected crimes, 384-387 toxicology, 398-399 trauma bay, 402-408 violence towards staff, 394-398

#### End-of-life care

artificial nutrition and hydration, 330-335 best interests, 325-328 best practices for health care practitioners, 361-364 best practices for hospitals and health care facilities, 364-365 case study, 373-384 Framework on Palliative Care in Canada Act, 324 generally, 319-324, 372 informed consent, 324-325 medically assisted death, 355-361 pain and well-being considerations, 328-330 palliative care, defined, 320 "Planning For and Providing Quality End-of-Life Care", CPSO policy, 52-53, 347 practical questions and answers emergency situations, 366-368 non-emergency situations, 368-372 prior capable wishes, 325-326 religious or cultural beliefs, 7 withdrawal of life-sustaining treatments case law, 350-355

```
End-of-life care — continued
withdrawal of life-sustaining treatments — continued
generally, 335-340
policies, 347-350
Rasouli (Litigation Guardian of) v. Sunnybrook Health Sciences
Centre (S.C.C.), 341-346
```

Excellent Care for All Act, 2010, 238

Fiduciary duty of health care practitioners, 5-6

# General internal medicine wards, case studies

```
demands for Rx / do everything, 422-427
resuscitation —
offering / not offering, 416-422
refusal, 436-438
slow codes, 433-436
substitute decision-making standards and complaints, 427-432
```

Glossary of Abbreviations, 479-486

Gunshot/stabbing wounds, case study, 408-416

```
Health Care Consent Act, 1996
```

```
best interests, 176-177, 327
capacity determination, 118-120
Consent and Capacity Board applications, 179-182
consent not required in certain situations, 80-81
definitions —
community treatment plan, 78
course of treatment, 77
emergency, 80
plan of treatment, 77-78
treatment, 77
emergency treatment provisions, 70-71
health care decision-makers, 162-164, 165-166
incapacity, instructions about future care prevail after, 174, 326
informed consent provisions, 75-76, 80-81
substitute decision-makers, 166-167, 170-173
```

Hopp v. Lepp, 43, 74

Human dignity and substitute decision-making, 9-11

#### **Informed consent**

```
acute situations -
"assent" in end-of-life care, 94-98
best practices for health care practitioners —
  generally, 98-99
  Rasouli (Litigation Guardian of) v. Sunnybrook Health Sciences
     Centre (S.C.C.), 99-102
best practices for hospitals and health care facilities —
  generally, 102-103
  intra and inter-facility documentation of resuscitation (code) status,
     104
communication of consent, 79
documentation, 89-94
emergency situations, consent not possible, 80-81
explicit vs implicit, what is required, 77-79
generally, 8, 69-74
Hopp v. Lepp, 43, 74
legal definition, 74-76
modified objective test, 19, 106
outside Ontario, 81-86
practical questions and answers —
  documentation, 109-110
  emergency situations, 105-106
  non-emergency situations, 106-109
provincial legislation concordance table, 111-113
Reibl v. Hughes, 43, 44, 74, 75, 106
required level of detail, 86-88
revisiting consent, 79
right to refuse treatment vs right to mandate treatment, 72
use of information brochures and pamphlets, 88-89
```

#### Intensive care units, case studies

cardiac arrest, withholding and withdrawing life support, 462-466 critical incident resulting in admission to ICU, 466-471 demands for treatment, to offer/not to offer, 454-462 resource allocation, 471-474

#### Intrusion upon seclusion, tort of

application to health care sector, 253-254 generally, 252-253 privacy/confidentiality, failure to meet obligations, 274-279

ITEST/ITREAT, 60-61

ITRREAAT algorithm, 51, 60-61, 192, 321, 366, 378

# Krever Report, 235

#### Level of care forms

distinguished from advance directives/advance care planning, 374-375 generally, 158-159, 367, 375-378

#### Medical assistance in dying ("MAiD")

Charter of Rights and Freedoms, 323, 361
Criminal Code, 323, 359
defined, 358
eligibility, 358
Fourth Interim Report on Medical Assistance in Dying, 360-361
generally, 13, 323, 355-361, 401
grievous and irremediable condition, defined, 358
"Medical Assistance in Dying" CPSO policy statement, 359
Medical Assistance in Dying Act, 358-360
Regulations for the Monitoring of Medical Assistance in Dying, 360
safeguards, 359

**Most responsible physician ("MRP")**, 279, 385, 410, 420, 421, 429, 434, 435, 467, 468

Personal Health Information Protection Act, 2004 ("PHIPA"), 237, 244-245

Personal Information Protection and Electronic Documents Act ("PIPE-DA"), 237

# Privacy and confidentiality

best practices, critical incidents —
documentation: patient medical record vs critical incident report,
280-281
physicians and health care providers in hospitals, 279-280
failure to meet legal obligations —
intrusion upon seclusion, 274-279
violations of provincial privacy legislation, 274
generally, 231-234
history of patient privacy rights in Canada, 234-237
Canadian Medical Association Code of Ethics, 234
common law, 235
generally, 234

```
Privacy and confidentiality — continued
  history of patient privacy rights in Canada — continued
     Krever Report, 235
     McInerney v. MacDonald, 235-236
     Personal Information Protection and Electronic Documents Act
        ("PIPEDA"), 237
  legal framework - Ontario -
    consent to collection, use and disclosure of personal health
       information –
       capacity to consent, 249
       deceased patients, 252
       disclosure of patient information by SDM to physician, 251
       disclosure of patient information in health care facility, 251-252
       documentation and implementation of consent, 250-251
       need for patient or SDM consent, 245-249
     generally, 237
     intrusion upon seclusion —
       application to health care sector, 253-254
       generally, 252-253
     Personal Health Information Protection Act, 2004, 244-245
     Ouality of Care Information Protection Act. 2016, 237-244
  legal framework – outside Ontario, 254-259
  practical questions and answers, 281-286
  provincial Coroners Acts and Fatality Reporting Acts —
     Coroners Act (B.C.), 308-309
     Coroners Act (N.B.), 316
     Coroners Act (P.E.I.), 317
     Coroners Act (Que.), 313
     Fatality Inquiries Act (Alta.), 309-310
     Fatalities Investigations Act (Nfld. & Lab.), 314-316
     Fatality Investigations Act (N.S.), 313-314
     The Coroners Act (Sask.), 311
     The Fatality Inquiries Act (Man.), 312-313
  provincial legislation concordance table, 287-307
  special reporting situations —
     best practices when disclosing information to police, 261
     disclosure authorized by warrant or law, 260
     disclosure of patient information for use in research or case studies,
       272-273
     disclosure of patient information to lawyers, 268-269
     disclosure of patient information to media, 269-272
     disclosure of patient information to police, 259-260
     disclosure related to risks of harm to others, 261
```

# Privacy and confidentiality — continued special reporting situations — continued disclosure to health authorities, 260 other mandatory reporting — child abuse or neglect, 262 communicable or reportable diseases, 266-267 controlled drugs and substances, 268 deaths, 265-266 incapacity, incompetence and sexual abuse, 265 reactions to immunizations, 267-268 sexual abuse of patient, 262-264 social media, 273-274 suspicions of crime, 260-261

# Provincial Coroners Acts and Fatality Reporting Acts

Coroners Act (B.C.), 308-309
Coroners Act (N.B.), 316
Coroners Act (P.E.I.), 317
Coroners Act (Que.), 313
Coroners Act, The (Sask.), 311
Fatality Inquiries Act (Alta.), 309-310
Fatalities Investigations Act (Nfld. & Lab.), 314-316
Fatality Inquiries Act, The (Man.), 312-313

# Provincial legislation, concordance tables

capacity, 144-149 informed consent, 111-113 privacy and confidentiality, 287-307 substitute decision-making, 221-230

#### Quality improvement plans ("QIP"), 238

# Quality of Care Committees ("QOC")

disclosure of information, 238, 239, 241, 242 role of, 240 use of information in legal proceedings, 243-244

# Quality of Care Information Protection Act, 2016

generally, 237-239 nature of information privilege, 242-243 offences and liability for breaches, 244 Quality of Care Committee, role of, 240 use of quality of care information in legal proceedings, 243-244

**Quality of Care Information Protection Act, 2016** — continued what information is privileged, 240-241

# Rasouli (Litigation Guardian of) v. Sunnybrook Health Sciences Centre (S.C.C.)

consent, 99-102, 325, 342-343 Court of Appeal decision, 340 "critical interests", 65, 73, 116 medical benefit vs health-related purpose, 56, 341-342 steps for end-of-life conflict resolution, 371-372 treatment, defined, 78 withdrawal of life-saving treatment, 48, 55, 64-65, 73, 76, 116, 335

Reibl v. Hughes, 43, 44, 74, 75, 106

#### Religious beliefs

end-of-life care, 321, 337-338, 341, 352-355, 365, 372, 380, 382, 383, 424, 425 generally, 6-7, 84-85, 142, 206, 209, 458, 459-460

Research ethics boards ("REB"), 232, 272-273

# Resuscitation, case studies

offering/not offering, 416-422 refusal, 436-438

**Return of spontaneous circulation ("ROSC")**, 64, 408, 434, 462, 467, 485

**Right of self-determination**, 3, 4, 8, 9, 10, 11, 44, 72, 88, 115, 116, 122, 322, 324, 477

Right to refuse treatment vs right to mandate treatment, 72

SDM. See substitute decision-making

Sexual assault, case study, 391-394

Slow codes, case study, 433-436

# Standard of care

best practices for acute health care practitioners — cardiopulmonary resuscitation and life-support, 52-57 generally, 49-51 withholding treatments, 51

```
Standard of care — continued
  best practices for hospitals and health care facilities, 57-59
  clinical tools —
     ITEST / ITREAT. 61
     ITRREAAT, 60-61
  generally, 4-5, 6, 15-17
  Hopp v. Lepp, 43
  medical profession, and, 17-21
  practical questions and answers, 62-67
  Reibl v. Hughes, 43, 44
  relevant principles, 22-35
    cases decided on own facts, 22
    changes in techniques, knowledge and technology, 23-24
     cost considerations irrelevant, 27-28
     courts rarely second-guess established medical practice, 22-23
     divergences in medical opinion or practice, 24-25
     epidemics, pandemics and mass casualty situations, 31-35
     higher risk, higher standard, 25-26
     inexperienced health care practitioners, 28-31
     specialists, 28-31
  what is required —
     duty to attend, 36-37
     duty to co-ordinate with other health care practitioners and to
       supervise, 48-49
     duty to diagnose, 37-40
     duty to inform and disclose, 43-44
     duty to keep full records, 40-41
     duty to refer, 41-43
     duty to treat and provide adequate aftercare, 45-46
Substitute decision-making
  advance care plans, 157
  best practices for documentation, 196
  best practices for health care practitioners in emergency situations,
     188-191
  best practices for health care practitioners in non-emergency
     situations —
     availability of SDM, 193-194
    conflicts among SDMs, 193
    conflicts between physicians and SDMs, 194
     educating SDMs, 191
    initiating treatment, 192
     insistence on treatment, 192
```

```
Substitute decision-making — continued
  best practices for health care practitioners in non-emergency
     situations — continued
     verbal designation of SDM, 194
  best practices for hospitals and health care facilities —
     documentation of decision-making, policies for, 195-196
     educating SDMs, 195
  case study, standards and complaints, 427-432
  clinical tools -
     documenting conflict mediation meetings re substitute decisions,
        199-200
     documenting emergency treatment without consent, 197
     documenting non-offer of CPR or other life-sustaining treatments,
        198-199
     documenting treatment decisions with SDMs, 197-198
  conflict among SDMs, 156
  conflicts at end of life, 160-161
  Consent and Capacity Board applications
     appointment or termination of representative, 181
     determination of capacity, 182
     override of expressed wishes. Form E. 179-180
     review of applicability of wishes, Form D, 179
     review of substitute decision-maker's decision, Form G, 180-181
  generally, 9-11, 151-153
  guiding principles —
     best interests, 176-178
     generally, 173-174
     wishes, 174-175
  human dignity and, 9-11
  information sharing by SDMs, 159
  legal framework - Ontario -
     decision-makers -
       health care practitioner in certain emergencies, 162-165
       health care practitioner to determine if emergency exists, 165-166
       patient with capacity, 162
       substitute decision-makers, 166-173
     generally, 161-162
  legal framework – outside Ontario —
     advance care planning, 187-188
     substitute consent and urgent care, 185-187
     substitute consent legislation and principles, 182-185
  legal responsibilities, adherence to, 159-160
  level of care forms, 158-159
```

#### **Substitute decision-making** — *continued*

practical questions and answers — identifying and choosing SDM in emergency situation, 200-207 identifying and choosing SDM in non-emergency situation, 207-216 working with SDM, 216-220 provincial legislation concordance table, 221-230 standards and complaints, case study, 427-432 understanding the role, 153-154 willingness to act, 154-156

Substitute Decisions Act, 1992, 161, 167, 179

Suicide attempts, case study, 400-402

# Surgical wards, case studies

no CPR status and quality of care issues, 445-448 surgery —
complications/consent issues, 443-445
not offering/demands for, 438-443
treatment goals, 448-451
triage/resource allocation issues, 451-454

Suspected crimes, case study, 384-387

Toxicology, case study, 398-399

Trauma bay, case study, 402-408

Violence towards staff, case study, 394-398

# Withdrawal of life-sustaining treatments

case law, 350-355 generally, 335-340 policies, 347-350 Rasouli (Litigation Guardian of) v. Sunnybrook Health Sciences Centre (S.C.C.), 48, 55, 64-65, 73, 76, 116, 335, 341-346

# World Health Organization ("WHO")

elder abuse, defined, 388 palliative care, defined, 320