

Table of Contents

	PAGE
<i>Acknowledgements</i>	iii
<i>Foreword</i>	xi
<i>Table of Cases</i>	xiii
Chapter One Introduction	1
I. An Overview of the Challenges of Acute Care Medicine	1
1. Purposes of Acute Care Medicine, Standard of Care and Fiduciary Duty	3
2. Role of Personal Values, the Standard of Care and Decision-Making	6
3. Role of Consent in Decision-Making	7
4. Human Dignity and the Challenges of Substitute Decision-Making	9
5. The End of Life	11
6. Goals of this Book	14
Chapter Two The Standard of Care	15
I. Introductory Overview	15
1. The Concept of Standard of Care as Applied to the Medical Profession	17
II. Legal Framework	22
1. Principles Relevant to Determining the Standard of Care	22
2. What the Standard of Care Requires	36
III. Implications for Best Practices	50
1. Implications for Best Practices for Acute Health Care Practitioners	50
2. Implications for Best Practices for Hospitals and Health Care Facilities	58

IV. Clinical Tools	60
1. Clinical Tool 1: ITRREAAT Algorithm.	60
2. Clinical Tool 2: ITEST/ITREAT	61
V. Practical Questions and Answers	62
Chapter Three Informed Consent	69
I. Introductory Overview.	69
II. Legal Framework – Ontario.	74
1. Informed Consent: Legal Definition and Implications for Medical Practice	74
2. Explicit vs. Implicit: When and for What Do You Need Consent?	77
3. Communication of Consent	79
4. Revisiting Consent.	79
5. When Consent is Not Possible – Emergency Situations.	80
III. Legal Framework – Beyond Ontario	81
IV. Implications for Acute Situations	86
1. Required Level of Detail for Informed Consent.	86
2. Use of Information Brochures and Pamphlets in Consent Process.	88
3. Documentation: What is the Standard?	89
4. Use of “Assent” in Obtaining Consent during End-of-Life Care	94
V. Implications for Best Practices	98
1. Implications for Best Practices for Health Care Practitioners.	98
2. Implications for Best Practices for Hospitals and Health Care Facilities	102
VI. Practical Questions and Answers	105
1. Emergency Situations	105
2. Non-Emergency Situations	106
3. Documentation	109
Appendix A: Concordance Table for Provincial Legislation. . . .	111
Chapter Four Capacity	115
I. Introductory Overview.	116
II. Legal Framework – Ontario.	118
1. What are the Legal Requirements for Capacity?	118
2. Who Should Make the Determination of Capacity and How Should it be Documented?	119
3. How are Capacity Decisions Reviewed?	121

4. How Should Capacity be Assessed in Acutely Deteriorating Patients?	122
III. Legal Framework – Beyond Ontario	125
IV. Implications for Best Practices	131
1. Implications for Best Practices for Health Care Practitioners	131
2. Implications for Best Practices for Hospitals and Health Care Facilities	133
V. Clinical Tools	134
1. Clinical Tool 3: Documentation of Decision-Making Capacity.	134
VI. Practical Questions and Answers	134
1. Emergency Situations	134
2. Non-Emergency Situations	138
Appendix A: Concordance Table	144
Chapter Five Substitute Decision-Making	151
I. Introductory Overview.	151
1. Understanding the Role	153
2. Willingness to Act	154
3. Conflict among SDMs.	156
4. Advance Care Plans	157
5. Level of Care Forms	158
6. Information Sharing by SDMs	159
7. Questioning the SDM's Adherence to Legal Responsibilities	159
8. Conflicts at the End of Life	160
II. Legal Framework – Ontario.	161
1. The Category of Health Care Decision-Makers	162
2. Principles Guiding Substitute Decisions: Expressed Wishes and Best Interests	173
3. Consent and Capacity Board Applications.	179
III. Legal Framework – Beyond Ontario	182
1. Substitute Consent Legislation and Substitute Consent Principles in Other Provinces	182
2. Substitute Consent and Urgent Care in Other Provinces	185
3. Advance Care Planning in Other Provinces	187
IV. Implications for Best Practices	188
1. Implications for Best Practices for Health Care Practitioners in Emergency Situations.	188
2. Implications for Best Practices for Health Care Practitioners in Non-Emergency Situations	191

3. Implications for Best Practices for Hospitals and Health Care Facilities	194
4. Documentation	196
V. Clinical Tools	196
1. Clinical Tool 4: Documenting Emergency Treatment without Consent	197
2. Clinical Tool 5: Documenting Treatment Decisions with SDMs	197
3. Clinical Tool 6: Documenting Non-Offer of CPR or Other Life-Sustaining Treatments	198
4. Clinical Tool 7: Documenting Conflict Mediation Meetings with Respect to Substitute Decisions.	199
VI. Practical Questions and Answers	200
1. Identifying and Choosing an SDM in an Emergency Situation	200
2. Identifying and Choosing an SDM in a Non-Emergency Situation	207
3. Working with an SDM	216
Appendix A: Concordance Table	221
Chapter Six Privacy & Confidentiality	231
I. Introductory Overview.	231
1. History of Patient Privacy Rights in Canada	234
II. Legal Framework – Ontario.	237
1. Quality of Care Information Protection Act, 2016.	237
2. Personal Health Information Protection Act, 2004	244
3. Consent to the Collection, Use and Disclosure of Personal Health Information.	245
4. Beyond PHIPA: Tort of Intrusion Upon Seclusion	252
III. Legal Framework – Beyond Ontario	254
IV. Special Reporting Situations in Canada	259
1. Disclosure of Patient Information to the Police	259
2. Disclosure Authorized by a Warrant or Law	260
3. Disclosure to Health Authorities.	260
4. Suspicions of Crime.	260
5. Disclosure Related to Risks of Harms to Others	261
6. Best Practices when Disclosing any Information to the Police.	261
7. Other Mandatory Reporting.	262
8. Disclosure of Patient Information to Lawyers	268
9. Disclosure of Patient Information to the Media.	269
10. Disclosure of Patient Information for Use in Research or Case Studies	272

11. Social Media	273
V. Implications of the Failure to Meet Legal Obligations across Canada.	274
1. Violations of Provincial Privacy Legislation	274
2. Common Law Tort of Intrusion Upon Seclusion.	274
VI. Critical Incidents in Canadian Hospitals: Best Practices.	279
1. Implications for Physicians and Health Care Providers Dealing with a Critical Incident in Hospitals Across Canada	279
2. Documentation of Critical Incidents: Patient Medical Record vs. Critical Incident Report	280
VII. Practical Implications: Questions and Answers.	281
Appendix A: Concordance Table.	287
Appendix B: Relevant Sections of Provincial Coroners and Fatality Reporting Acts.	308
Chapter Seven Legal Aspects of End-of-Life Care	319
I. Introductory Overview.	320
II. Canadian Legal Framework.	324
1. Brief Review	324
2. Considerations of Pain and Well-being in Decision-Making at the End of life.	328
3. Artificial Nutrition and Hydration at the End of Life	330
4. Withdrawal of Life-Sustaining Treatments.	335
5. Medically Assisted Death	355
III. Implications for Best Practices	361
1. Implications for Health Practitioners	361
2. Implications for Hospitals and Health Care Facilities	364
IV. Practical Questions and Answers	366
1. Emergency Situations	366
2. Non-Emergency Situations	368
V. Conclusion	372
Chapter Eight Case Studies.	373
I. Emergency Department	373
1. End of Life	373
2. Suspected Crimes.	384
3. Elder Abuse.	387
4. Sexual Assault	391
5. Violence Towards Staff.	394
6. Toxicology.	398

7. Suicide Attempts	400
8. Trauma Bay	402
9. Gunshot/Stabbing Wounds	408
II. General Internal Medicine Wards	416
1. Offering or Not Offering Resuscitation	416
2. Demands for Rx / Do Everything	422
3. Substitute Decision-Making Standards and Complaints	427
4. Slow Codes	433
5. Refusal of Resuscitation	436
III. Surgical Wards	438
1. Not Offering Surgery / Demands for Surgery	438
2. Surgical Complications / Issues of Consent	443
3. No CPR Status and Quality of Care Issues	445
4. Treatment Goals	448
5. Triage / Resource Allocation Issues	451
IV. Intensive Care Units	454
1. To Offer or Not to Offer – Demands for Treatment	454
2. Cardiac Arrest – Withholding and Withdrawal of Life Support	462
3. Critical Incident Resulting in Admission to ICU	466
4. Resource Allocation	471
<i>Afterword</i>	475
<i>Glossary of Abbreviations</i>	479
<i>Index</i>	487