



## 9.0 General Patient Care

### 9.1 Standards of Patient Care

#### 9.1.2 Consent to Health Care and Advance Care Planning

##### 1. Purpose

To ensure that VIHA health care providers:

- understand and comply with their legal, ethical, and professional responsibilities to seek valid consent<sup>1</sup> to health care and
- understand and are able to respond to patients' advance care plans and documents.

##### 2. Policy

###### 2.1. *Valid Consent To Health Care*<sup>2</sup>

Health care providers must seek valid consent to health care before providing treatment.

*Valid consent to health care* requires health care providers to ensure that in seeking and obtaining consent or refusal of consent to health care, all the following criteria are met:

- the health care provider ensures that the patient or the person who is legally authorized to make such decisions on behalf of the patient has the information a reasonable person would need to understand and make the decision including:
  - the condition for which treatment is being proposed
  - the nature of the proposed treatment
  - the risks and benefits of the treatment
  - alternative courses of treatment
- the consent is related to the health care being proposed
- consent is given voluntarily
- the consent is not obtained through fraud or misrepresentation
- the patient or the person who is legally authorized to make such decisions on behalf of the patient is capable of giving or refusing consent
- the patient or the person who is legally authorized to make such decisions on behalf of the patient has the opportunity to ask questions and receive answers

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<sup>1</sup> The term *valid consent* means consistent with requirements of the *Health Care (Consent) and Care Facility (Admission) Act* (see 2.2 of this policy).

<sup>2</sup> This policy is based on the *Health Care (Consent) and Care Facility (Admission) Act* and the *Representation Agreement Act*.

While there is no legal requirement to document consent or refusal of consent, it may be documented and signed by the patient or patient's legally-appointed decision maker or noted on a chart by the health care provider.

## **2.2 Consent To Health Care For Capable Adults**

Health care providers must seek valid consent to health care from decisionally capable adults for each treatment provided or annually for a care plan.

## **2.3 Consent To Non-Emergency Health Care For Incapable Adults**

Health care providers must, for each treatment provided or annually for a care plan:

- seek valid consent to health care for decisionally incapable adults from the adult's Committee of Person or Representative
- or
- obtain consent or refusal of consent from an advance directive that is consistent with the requirements of the *Health Care (Consent) and Care Facility (Admission) Act* and relevant to the proposed health care
- or
- if there is no advance directive or Committee of Person or Representative, a health care provider must appoint a Temporary Substitute Decision Maker (TSDM) from the following list, in order:
    - (a) the adult's spouse
    - (b) the adult's child
    - (c) the adult's parent
    - (d) the adult's brother or sister
    - (e) the adult's grandparent
    - (f) the adult's grandchild
    - (g) anyone else related by birth or adoption to the adult
    - (h) close friend of the adult
    - (i) a person immediately related to the adult by marriage

### **Notes**

- A TSDM must be at least 19 years of age, have been in contact with the adult during the preceding 12 months, have no dispute with the adult, be capable of giving, refusing or revoking substitute consent, and willing to comply with the duties described in the *Health Care (Consent) and Care Facility (Admission) Act*. If there is dispute about who is to be chosen as TSDM, or if no one meets the criteria, the health care provider must ask the Public Guardian and Trustee to appoint a TSDM.
- TSDMs can refuse life-supporting care and treatment only if there is substantial agreement among the health care providers caring for the adult that the decision to refuse consent is medically appropriate, and is in accordance with the adult's wishes or values and beliefs.
- A Representative, appointed with a Section 7 Representation Agreement, does not have the power to help make, or to make on the adult's behalf, a decision to refuse health care necessary to preserve life.

- A health care provider is not required to use an advance directive as the source of consent if the health care provider believes:
    - the instructions in an adult's advance directive do not address the health care decision to be made,
    - the instructions in an adult's advance directive are so unclear that it cannot be determined whether the adult has given or refused consent to the health care,
    - since the advance directive was made and while the adult was capable, the adult's wishes, values or beliefs in relation to a health care decision significantly changed, and the change is not reflected in the advance directive, or
    - there have been significant changes in medical knowledge, practice or technology that might substantially benefit the adult in relation to health care for which the adult has given or refused consent in an advance directive and the advance directive does not expressly state that the instructions given in the advance directive apply regardless of any such change
- In such situations, a health care provider must seek consent from a Substitute Decision Maker.

## **2.4 Consent To Emergency Health Care For Incapable Adults**

In emergency situations where the patient is not capable of giving or refusing consent and a Committee, Representative, or TSDM is not available, health care providers may provide emergency treatment without consent unless:

- the adult has an advance directive that is consistent with the requirements of Section 2.1 of the *Health Care (Consent) and Care Facility (Admission) Act* and in which s/he gives or refuses consent to the proposed health care.
- the health care provider has reasonable grounds to believe that the person, while capable and after attaining 19 years of age, expressed an instruction or wish applicable to the circumstances to refuse consent to the health care, then the health care provider must not provide treatment.<sup>3</sup> Note: There is no requirement that instructions or wishes for future health care be documented or that they be documented in a particular manner.

Note that if an adult is abused, neglected or self-neglecting and appears incapable of seeking or consenting the Adult Guardianship Act part 3 sec. 59 allows for emergency measures to be taken to protect the adult in order to preserve the adult's life, or prevent serious harm. This includes providing the adult with emergency health care without consent.

In emergency situations, if the Representative or TSDM refuses health care on behalf of an incapable adult, health care providers can provide treatment if s/he believes that the Representative or TSDM has not complied with his/her duties -- for example, has made a decision that is not consistent with the adult's expressed wishes.<sup>4</sup>

### **Note**

- If there is no advance directive, paramedics require a signed physician's Do Not Resuscitate/No CPR Order to withhold resuscitation even when death is anticipated.

<sup>3</sup> *Health Care (Consent) and Care Facility (Admission) Act*, 12.1

<sup>4</sup> *Health Care (Consent) and Care Facility (Admission) Act*, 12.2

## 2.5 **Advance Care Planning**

Using their clinical decision-making expertise and when and if appropriate, staff will offer information about advance care planning and planning tools to decisionally capable adults with whom they come in contact.

## 2.6 **Documentation of Pre-Expressed Wishes Not Signed By A Capable Adult**

While there is no requirement for a capable adult's pre-expressed wishes for future health care to be documented or that they be documented in a particular manner, such documents must originate with the adult when capable. Therefore, VIHA staff must not use or keep on patients' record documents, including forms such as levels/degrees of intervention, that have been completed by family members and/or physicians but have not been signed or otherwise authorized by the adult when s/he was capable.

## 3. **Definitions**

**Adult:** A person who has reached 19 years of age.

**Advance Care Planning:** a process of learning, deciding, talking about, and documenting or otherwise expressing what health care an adult wants or does not want in the future if the adult becomes unable to make or communicate those decisions; planning may include the appointment of a decision maker (Representative) and the completion of various documents.

**Advance Directive:** a written instruction made by a capable adult that gives or refuses consent to health care for the adult in the event that the adult is not capable of giving the instruction at the time the health care is required, and complies with the following requirements of Part 2.1 of the *Health Care (Consent) and Care Facility (Admission) Act*:

- completed by capable adult
- does not contain instructions to do anything that is prohibited by law (i.e., euthanasia) or omit to do anything that is required by law
- indicates that the adult knows that
  - (i) a health care provider may not provide to the adult any health care for which the adult refuses consent in the advance directive, and
  - (ii) a person (TSDM) may not be chosen to make decisions on behalf of the adult in respect of any health care for which the adult has given or refused consent in the advance directive (i.e., that is, the adult knows that s/he is providing instructions directly to health care providers without a substitute decision maker required).
- must be in writing and signed and dated by (a) the adult in the presence of 2 witnesses, and (b) both witnesses in the presence of the adult. (only one witness is required if the witness is a lawyer or notary)
- if the adult wishes a health care provider to follow his/her instructions refusing health care in an advance directive in spite of changes in medical knowledge, practice or technology, expressly state that the instructions given in the advance directive apply regardless of any change in medical knowledge, practice or technology.

**Best Interests:** The term used to describe the basis for a decision made on behalf of another person in the absence of knowing that person's wishes or knowing that person's values. According to BC legislation (*Health Care [Consent] and Care Facility [Admission] Act*, 19.3), best interests are determined by considering:

- (a) whether the adult's condition or well-being is likely to be improved by the proposed health care
- (b) whether the adult's condition or well-being is likely to improve without the proposed health care
- (c) whether the benefit the adult is expected to obtain from the proposed health care is greater than the risk of harm, and
- (d) whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care.

**Care Plan:** A care plan is a plan for minor health care that is developed by one or more health care providers, deals with one or more of the health problems that an adult has and may, in addition, deal with one or more of the health problems that an adult is likely to have in the future given the adult's current health condition, and expires no later than 12 months from the date consent for the plan was given.

**Committee of Person:** Under the *Patients' Property Act*, a person appointed by the court to make health care decisions on behalf of an incapable adult.

**Decisional Capacity:** Decisional capacity in the context of health decisions is an adult's ability to give valid consent -- that is, to be able to understand information about a health condition and alternatives and options for treatment, the ability to deliberate on choices using his/her own values and preferences, and the ability to make and communicate a decision based on understanding and deliberation. Decisional capacity applies to individual consent decisions and must be re-evaluated for each decision.

**Health Care:** Anything that is done for a therapeutic, preventive, palliative, cosmetic or other purpose related to health, and includes (a) a course of health care, for example, a series of immunizations or dialysis treatments or a course of chemotherapy, and (b) participation in a medical research program approved by an ethics committee designated by regulation

**Health Care Provider:** a person who is licensed, certified or registered to provide health care in BC under the *Social Workers Act* or the *Health Professions Act*.<sup>5</sup>

**Legally-appointed decision maker:** Committee of Person, Representative, Temporary Substitute Decision Maker; a person who is legally-authorized to make a health and personal care decision on behalf of an adult who is not capable of doing so.

**Near Relative:** A Near Relative is a spouse, adult child, parent, adult brother or sister or other adult relation by birth or adoption.

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<sup>5</sup> The *Health Care (Consent) and Care Facility (Admission) Act* defines *health care providers* as those who work under the authority of the *Social Workers Act* or the *Health Professions Act*: the latter includes dental hygienists, dietitians, physicians, licensed practical nurses, midwives, nurses registered & nurse practitioners, occupational therapists, opticians, physical therapists, psychologists, registered psychiatric nurses, traditional Chinese medicine practitioners/acupuncturists, dental technicians, denturists, massage therapists, naturopathic physicians.

**Physician's No CPR Order (a.k.a. Do Not Resuscitate -- DNR):** A physician's order stating that a patient is not to be given cardiopulmonary resuscitation in the event of respiratory and/or cardiac arrest.

**Pre-Expressed Wishes:** A decisionally capable adult's direction to his/her legally-appointed decision maker(s) regarding desired health care if the adult becomes unable to make or communicate such decisions. BC law does not make specific requirements for the documentation of pre-expressed wishes; they may be in the form of a so-called living will, advance directive (predating BC statutory tool) or letter or other written or verbal communication.

**Representation Agreement:** A representation agreement is an agreement made under the *Representation Agreement Act* between a decisionally capable adult and one or more Representatives of their choosing. The agreement allows an adult to choose and appoint another person to make important decisions for him/her in the future when the adult is no longer able to make or communicate decisions. There are two types of Representative agreements: section 7 and section 9 agreements. A section 9 agreement requires the maker to have a higher level of decisional capacity at the time it is written and is only for health and personal care decisions, while a section 7 agreement is used to appoint someone to make health, personal care, or financial and legal decisions and is more limited in its powers than a Section 9 agreement.

**Representative:** A Representative is a person authorized by a Representation Agreement to make, or help in making, health, personal care, financial, or legal decisions on behalf of another. The adult may also appoint an alternate in their Representation Agreement to act if the Representative is not available.

**Spouse:** Spouse is a person who:

- a) is married to another person and is not living separate and apart, within the meaning of the Divorce Act (Canada), from the other person, or
- b) is living with another person in a marriage-like relationship (including a same sex relationship)

**Temporary Substitute Decision Maker (TSDM):** Under the authority of the *Health Care (Consent) and Care Facility (Admission) Act*, a TSDM is a person chosen (by the health care provider proposing the treatment), or a person authorized by the Public Guardian and Trustee of BC to give, refuse, or revoke consent to health care for a decisionally incapable adult when there is no committee of person or Representative. For criteria for appointment as TSDM see 1.4 above.

**Urgent/Emergency Health Care:** Urgent or emergency health care is health care that it is necessary to provide as soon as possible in order to preserve an adult's life, to prevent serious physical or mental harm, or to alleviate severe pain.

### IMPORTANT

- The completion of advance care planning documents such as advance directives, Representation Agreements, and pre-expressed wishes for future health care or other documents is voluntary and cannot be made a condition for admission to a health care facility or service.
- While legally-appointed decision makers (Committees of Person, Representatives, TSDMs, and, in emergency situations, health care providers) are required to act on the known wishes of incapable adults as expressed when they were capable, documentation of those wishes is not required for substitute consent to be given or refused.
- While VIHA encourages the use of a common format for advance care planning documentation, any and all forms of the expressed wishes of a capable adult (living will, informal written instructions, or verbal instructions) are equally valid must be followed by legally-appointed decision makers.
- A common format for an advance directive or Representation Agreement is not required; however, the content must be consistent with the definition of and requirements for an advance directive in the Section 2.1 of the *Health Care (Consent) and Care Facility (Admission) Act* and in for a Representation Agreement in the *Representation Agreement Act*.

## 4. Procedures

The following procedures are designed with respect to consent and advance care planning and the relevant documents in order to comply with the requirements of legislation and the foregoing policy.

### ***Providing Information About the Right To Consent and Plan***

- 4.1 Health care providers inform an adult of his/her right to give or withhold or revoke consent to health care.
- 4.2 When the adult makes decisions to receive or refuse treatment in the future, the health care provider documents these decisions in the health record. The documentation should indicate who participated in the plan and (with the adult's consent) if it was discussed with a family member or friend or legally-appointed Representative.
- 4.3 Health care providers inform adults of their right to plan for a time when they are not able to give or refuse consent. This planning could include:
- appointing a Representative by making a Representation Agreement
  - adult learning about his/her health treatment choices
  - documenting consent or refusal of consent to health care in an advance directive consistent with the requirements of Section 2.1 of the *Health Care (Consent) and Care Facility (Admission) Act*
  - discussing wishes for future health care with a family member or friend who may be appointed ~~TSDM~~ if required

- documenting their pre-expressed wishes to instruct a Committee, Representative or Temporary Substitute Decision Maker in the event of their incapability

4.4 Any member of the health care team may initiate discussion with the adult or respond to his/her request for further information about how to document their future health care wishes.

4.5 Health care providers inform adult of his/her right to change his/her advance directive or advance care plan.

***Seeking Consent To Non-Emergency Care When A Capable Adult Has No Advance Care Planning Documentation***

4.6 If a decisionally capable adult is admitted to a health facility/program without an advance directive, Representation Agreement or an documentation of pre-expressed wishes, health care providers should:

- seek valid consent from adult if health care is required
- inform the adult of his/her right to consent and right to plan (see above)
- if appropriate occasion, invite the adult to learn about Advance Care Planning options

***Seeking Consent To Non-Emergency Care When A Capable Adult Has Advance Care Planning documents such as: Representation Agreement and/or Advance Directive and/or No CPR order and/or Documented Pre-Expressed Wishes***

4.7 If a decisionally capable adult is admitted to a health facility/program with an Advance Directive, and/or Representation Agreement, and/or documented pre-expressed wishes, health care providers should:

- seek valid consent from adult if health care is required
- confirm with adult that ACP documents are signed and their contents are current
- ask the adult if s/he has informed family and friends of their content
- ask the adult if s/he has discussed his/her documented wishes with Representative or family member or friend; if not, or not recently, s/he should be encouraged to do so
- document the existence of ACP documents in health record in appropriate and designated locations
- place copies of the documents on the health record. The original signed document(s) are the property of the patient and remain in the patient's possession
- ensure a copy of the ACP documents travels with the adult if s/he is temporarily transferred to another facility.
- ensure a copy of the ACP documents remains on the health record, even in the event of discharge or death
- encourage adult to review ACP documents annually, or when there is any significant change in health status. (Note: There is no requirement to update advance care planning documents, only a recommendation.)



***Seeking Consent To Non-Emergency Care When An Incapable Adult Has Advance Care Planning Documents such as : A Representation Agreement and/or Advance Directive and/or No CPR order and/or Court Order for Committee of Person and/or Documented Pre-Expressed Wishes***

- 4.8 If a decisionally incapable adult is admitted to a health facility/program with an Advance Directive, Committee of Person, Representation Agreement and/or documentation of pre-expressed wishes, health care providers should:
- identify and locate a Committee, Representative, or closest family or friend who is qualified as TSDM
  - seek valid consent from Committee or Representative,
  - if neither have been appointed, the Health Care Provider uses the Advance Directive as a source of consent, where applicable.
  - document the existence of any ACP documents in health record in appropriate or designated locations
  - request to see the Court Order of Committee of Person, Representation Agreement and/or Advance Directive. The original signed documents are the property of the adult and/or his/her Representative, Committee. Place copies of the ACP documents on the health record.
  - if possible, confirm with family, friends, Representative that documents and their contents are current
  - determine if the adult has discussed documented pre-expressed wishes with his/her Committee, Representative or likely Temporary Substitute Decision Maker
  - ensure the copies of the ACP documents travel with the adult if s/he is temporarily transferred to another facility.
  - ensure the copies of ACP documents remain on the health record in the event of discharge or death.
  - If an advance care document is made when the adult is clearly incapable this may signal or constitute abuse, neglect or misuse of the powers of the legal substitute decision maker.
  - Report any suspected misuse or abuse of any advance care planning document by a substitute decision maker (e.g. Representative or court appointed Committee) to the program SW. After discussion with health care team, if required, report to Office of the Public Guardian and Trustee of BC.
    - Report the abuse, neglect or self-neglect of vulnerable adults to the designated responder in your program area (e.g. acute care social worker). Please see VIHA Abuse and Neglect Policy and Guidelines.
    - Contact the clinical leader for vulnerable or incapable adults, or risk management if you require further direction or assistance.
  - [Note that in the absence of Committee, Representative or applicable Advance Directive the HCP shall appoint a TSDM if health care consent is required]

***Seeking Consent To Non-Emergency Care When An Incapable Adult Has No Advance care planning Documentation***

- 4.9 If a decisionally incapable adult is admitted to a health facility/program with no ACP documents such as Advance Directive, Committee of Person, Representation Agreement and/or documented pre-expressed wishes, health care providers should:
- ask if there is a Committee or Representative,
  - if not, identify and locate closest family or friend who is qualified as TSDM
  - appoint the qualified family member or friend as TSDM from whom to seek consent if health care is required,
  - advise TSDM of duty to give or refuse consent:
    - consistent with adult's pre-expressed wishes or (if wishes not known)
    - consistent with adult's values, beliefs, and best interests (see definitions)
  - if treatment is life supporting, inform TSDM that s/he cannot refuse unless:
    - there is substantial agreement among the health care providers caring for the adult that the decision to refuse consent is medically appropriate, and
    - is in accordance with the adult's wishes or values and beliefs.
  - seek valid consent from TSDM

### ***Seeking Consent To Emergency Care For An Incapable Adult***

- 4.10 If a decisionally incapable adult requires emergency health care, health care providers should:
- seek valid consent from adult's Committee, Representative or family member/friend if available
  - use the Advance Directive as the source of consent or refusal if the adult has an Advance Directive in which consent is given or refused to treatment relevant to the circumstances
  - if a Committee, Representative or TSDM cannot be reached to provide consent, provide health care consistent with adult's expressed wishes (when capable) if known, or consistent with the adult's best interests (see definition) and with medical ethics and the requirements of Section 12 of the *Health Care (Consent) and Facility Admission Act* (regarding consulting with colleagues if practicable)

## **5. References**

### **VIHA Policies**

VIHA Policy 9.1.18P Abuse, Neglect or Self-neglect of Vulnerable Adults

### **Provincial Legislation and Policy**

*Health Care (Consent) and Care Facility (Admission) Act*

*Representation Agreement Act*

*Patients' Property Act*

Director of Licensing's Standard of Practice #01/08/2006VIHA

### **Other**

VIHA advance health care planning website:

[http://www.viha.ca/advance\\_directives/](http://www.viha.ca/advance_directives/)

VIHA abuse and neglect website:

[https://intranet.viha.ca/departments/hcc/hcc\\_index/Pages/abuse\\_neglect.aspx](https://intranet.viha.ca/departments/hcc/hcc_index/Pages/abuse_neglect.aspx)

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