



Administrative Policy Manual
Code: AL Legal/Ethical

AL0100 CONSENT – ADULTS

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1.0 PURPOSE

To ensure everyone follows a valid consent process congruent with provincial legislation and regulations and standards of professional practice and obtains informed consent before providing health care.

2.0 DEFINITIONS

TERM	DEFINITION
Advance Directive	Is a written legal document made by a capable Adult that: <ol style="list-style-type: none"> a. 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. b. complies with the requirements of Part 2.1 of the <i>Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA)</i>.
Adult	A person who is 19 years of age or older.
Close Friend	Means another Adult who has a long-term, close personal relationship involving frequent personal contact with the Adult, but does not include a person who receives compensation for providing personal care or health care to that Adult.
Committee of the Person	Pronounced Kom'-i-tee. A court appointed person under the <i>Patient's Property Act</i> to be the Personal Guardian of an Adult with the legal authority to make personal and health care decisions on behalf of the Adult.
Emergency Health Care	Treatment required to preserve life or prevent serious physical/mental harm or alleviate severe pain.
Implied Consent	Also known as "knowledgeable cooperation", this means informed consent that is indirectly communicated to the health care provider by the Adult through their conduct such as: nodding their head; presenting their arm for an injection; cooperating with an examination, etc.
Major Health Care	Major surgery or treatment involving a general anesthetic, major diagnostic or investigative procedures or any health care designated by regulation as major (radiation therapy, intravenous chemotherapy, kidney dialysis, electroconvulsive therapy, laser surgery).
Minor Health Care	All health care not considered to be major and includes routine tests to determine if health care is necessary including routine dental treatment that prevents a condition or injury caused by disease or trauma and preventative health care including immunizations.

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TERM	DEFINITION
Minor Health Care Plan	Is a plan for health care that: <ul style="list-style-type: none"> • is developed by one or more health care providers; • deals with one or more of an Adult’s health problems and likely problems in the future given the Adult’s current health condition; and • expires no later than 12 months from the date that the Adult grants consent for the plan.
Personal Guardian	Is the name used in the <i>HCCCCFA</i> to describe a Committee of the Person for an Adult who is declared, under the <i>Patients Property Act</i> to be: <ol style="list-style-type: none"> a. incapable of managing himself or herself; or b. incapable of managing himself or herself and his or her affairs.
Representative	A person appointed by an Adult in a Representation Agreement under Section 7 (to help the Adult make decisions) or 9 of the <i>Representation Agreement Act</i> (to make decisions on behalf of the Adult) and includes an alternate Representative.
Substitute Decision Maker	Includes a Personal Guardian (Committee of the Person), a Representative or a Temporary Substitute Decision Maker.
Temporary Substitute Decision Maker	A person chosen by a health care provider under the HCCFA and may include a person authorized by the Public Guardian and Trustee to make health care decisions on an Adult’s behalf when the Adult is incapable and does not have a Personal Guardian (Committee of the Person), or authorized Representative.
Valid Consent	Consent is valid if an Adult or their substitute decision maker voluntarily gives the consent after they are informed of: <ol style="list-style-type: none"> (a) the nature of the health care; (b) how it is related to their condition; (c) the risks and benefits of the health care and any alternative health care treatments reasonably available; and they are given an opportunity to ask questions and receive answers about the proposed healthcare.

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3.0 POLICY

3.1 Requirement for Valid Consent

A health care provider must not provide **any** health care to an Adult without a Valid Consent unless indicated as an exception in 3.2.

3.2 Exceptions from Obtaining Consent

A health care provider may proceed with providing health care without consent:

- if an Adult requires Emergency Health Care ([see Figure 5 for process](#)), and:
 - the Adult is incapable of making a consent decision; and
 - there is no known Advance Directive or expressed wish/instruction contrary to the proposed health care; and
 - doesn't have a Personal Guardian (Committee of the Person), or authorized Representative or the Personal Guardian or Representative is not reasonably available; and
 - a second health care provider confirms (if possible in the circumstances) the first provider's opinion about the need for health care and the incapability.

Note: If the Personal Guardian (Committee of the Person) or Representative refuses consent for Emergency Health Care for the Adult, the health care provider may provide the health care despite the refusal if it is necessary to provide the health care without delay in order to preserve the Adult's life, to prevent serious physical or mental harm or to alleviate severe pain or if the Personal Guardian or Representative is not complying with his/her duties under the HCCFA or any other Act.

- when a Designated Agency responder is authorized to offer emergency assistance as authorized by the Adult Guardianship Act (Section 59 (2)(c)).
- when involuntary **psychiatric** treatment for a certified patient is authorized by the Director appointed under the *Mental Health Act*; and
- when a Patient/Client requires treatment of a reportable communicable disease. (Under the authority of the *Public Health Act* (Health Act Communicable Disease Regulations) [repealed] and *Venereal Diseases Act*, treatment is compulsory if ordered by the Medical Health Officer).

3.3 Responsibility, Hierarchy and Scope of Authority

The health care provider prescribing/offering the health care for the Adult is responsible for obtaining consent for the proposed health care.

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Select from the highest ranking authority when determining who can provide consent (non emergent care - see 3.2 above) ([see Figure 3 for process](#)):

1. A capable Adult ([see figure 2 for process](#)).
2. Personal Guardian (Committee of the Person),
 - has the same authority as the capable Adult unless noted in the Order with the exception of not being able to consent to non-therapeutic sterilization.
3. Representative
 - Must follow any known Advance Directive.
 - Must act within the scope of authority set out in the Representation Agreement, and
 - Under a section 7 Agreement cannot consent to procedures/treatments as prescribed under the Act:
 - a. abortion unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the Adult for whom it is proposed;
 - b. electroconvulsive therapy unless recommended in writing by the treating physician and at least one other medical practitioner who has examined the Adult for whom it is proposed;
 - c. psychosurgery;
 - d. removal of tissue from a living human body for implantation in another human body or for medical education or research;
 - e. experimental health care involving a foreseeable risk to the Adult for whom the health care is proposed that is not outweighed by the expected therapeutic benefit;
 - f. participation in a health care or medical research program that has not been approved by a committee referred to in section 2;
 - g. any treatment, procedure or therapy that involves using aversive stimuli to induce a change in behaviour. and
 - i. to non therapeutic sterilization,
 - ii. for the use of physical restraints,
 - iii. for refusal of life supporting care or treatment.
 - h. cannot consent to admission to care facility
 - under a Section 9 Agreement may consent to:

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- a. the use of physical restraints,
 - b. refusal of life supporting care or treatment, and
 - c. those items as set out in (a) to (f) above provided they are expressly stated in the Agreement, but may not consent to non therapeutic sterilization
4. an Advance Directive (if known) made by the patient when capable (may not provide consent to those items as set out in (a) to (g) above as per the prescribed health care list
 5. Temporary Substitute Decision Maker (TSDM) ([see Guide for list and details](#))
 - may not consent to those items as set out in (a) to (g) above,
 - may refuse to consent to life supporting care or treatment provided there is substantial agreement by the health care providers providing care to the Adult that the decision to refuse life supporting care or treatment is medically appropriate.

NOTE: If no substitute decision maker is available or qualified, or there is a dispute about who to appoint that cannot be resolved, contact the Public Guardian & Trustee (PGT) to appoint or act as TSDM. ([see Referral to Public Guardian & Trustee for Appointment of TSDM](#)).

The process for obtaining consent for a substitute decision maker is [set out in Figure 4](#)

NOTE: If the Adult requires major health care and has no substitute decision maker or Advance Directive the healthcare provider must complete the [Notice of Incapability and Substitute Consent \(Major Health Care\)](#) and give a copy to the Adult or close relative/friend

3.4 Dispute of Health Care Decision made by Temporary Substitute Decision Maker

When a Temporary Substitute Decision Maker has refused or given consent to Major Health Care for an Adult, and the Adult, a member of the Adult's family or a health care provider disagrees with the consent/refusal, an attempt should be made to resolve the matter through informal discussions with the TSDM.

Note: If a healthcare provider believes the TSDM is not in compliance with his/her duties the matter must be reported to the Designated Agency Responder.

If the matter is still unresolved the Adult's family or health care provider can request a review by an IH Clinical Ethics Committee.

Note: The medical staff must not provide the Major Health Care to the Adult until the dispute has been resolved. This does not prevent the most responsible practitioner from providing Emergency Health Care emergency or urgent situations.

The IH Clinical Ethics Committee will provide guidance based on an ethical review of the situation.

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3.5 Duty to Communicate

When seeking consent or deciding whether an Adult is incapable of giving, refusing or revoking consent, a health care provider:

- must communicate with the Adult in a manner appropriate to their skills and abilities, noting that their way of communicating is not, by itself, grounds for deciding that they are incapable of understanding.
- must use an interpreter or other resources as appropriate to communicate to the Adult the information required in order for them to provide consent.
- may allow the assistance of the Adult's spouse, or any near relatives or Close Friends who accompany the Adult and offer their assistance, to help the Adult to understand or to demonstrate an understanding of the health care information

3.6 Presumption of Capability

Every Adult is presumed capable to provide a Valid Consent until the contrary is demonstrated.

NOTE: Where an Adult has been declared incapable by a Court or other legislative authority, the health care decision must be made by the Personal Guardian (Committee of the Person) or other authorized individual.

3.7 Incapability Must be Demonstrated

In deciding whether an Adult is incapable of making a particular health care decision, the decision must be based on whether they demonstrates that they have an understanding:

- of the information being given about the health care decision; and
- that the information applies to their situation.

NOTE: A health care provider who determines that an Adult is incapable of consenting to the proposed health care must give the Adult notice to this effect and in the event of Major Health Care, the notice must be in the prescribed form ([see Notice of Incapability](#)).

3.8 Form of Consent

- (a) Consent to health care may be expressed orally, in writing or by Implied Consent.
- (b) Telephone/facsimile consent from the Adult's Substitute Decision Maker is acceptable in circumstances where it is not possible/practicable to obtain consent in person.

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3.9 Scope of Consent

A consent given to health care applies only to the specific health care that has been consented to, including a series of procedures or treatments.

A health care provider may provide additional or alternative health care to an Adult if:

- the health care that was consented to is in progress; **and**
- the Adult is unconscious or semi-conscious; **and**
- it is medically necessary to provide the additional or alternative health care to deal with conditions not foreseen when consent was given.

If an Adult who consents to health care stipulates that the health care must be provided by a particular health care provider, no one else may provide the health care without first obtaining their consent unless the health care is in progress, and delay is likely to put their life or health at risk.

3.10 Duration of Consent

Consent provided for health care is valid until:

- the Adult or Substitute Decision Maker revokes consent;
- there is a substantive change in the Adult's health status
- there is a change in the health care provider's knowledge about the condition, which may affect the original information given to the Adult, or which might have an effect on subsequent procedures;
- for a period of 1 year for Minor Health Care Plan; or
- the Adult's Substitute Decision Maker changes and a new Substitute Decision Maker makes a new decision.

NOTE: A health care provider who determines that an Adult is incapable of consenting to the proposed health care must give the Adult notice to this effect and in the event of Major Health Care the notice must be in the prescribed form ([see Notice of Incapability](#)).

3.11 Revoking Consent

If an Adult or their Substitute Decision Maker revokes consent during a procedure, the health care provider must:

- stop the procedure unless stopping the procedure poses an immediate and serious threat to the Adult's health; **and**

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- inform the Adult or Substitute Decision Maker of the risks of refusal to continue on with the procedure; **and**
- document in the Adult's health record that the Adult or Substitute Decision Maker was capable and that the risk of refusal was explained to them at the time.

3.12 Documentation of Consent

- The health care provider must document the consent process on the Adult's health record.
- A completed consent record is an acknowledgement that the consent process has been completed.
- A [Patient Consent Record](http://insidenet.interiorhealth.ca/infoResources/forms/Documents/826034.pdf) (<http://insidenet.interiorhealth.ca/infoResources/forms/Documents/826034.pdf>) is required, which documents that a valid consent process has taken place for all surgical procedures, procedures requiring general anesthetic, medical/diagnostic procedures with an appreciable risk, use of blood and blood products, labour and delivery ([interventional obstetrics](#)), removal and donation of body tissues, some types of immunization, use of investigative drugs/procedures and for any other treatment that presents appreciable risk to the Adult.
- If the Adult or Substitute Decision Maker revokes consent before or while receiving care, the health care provider must document the decision to revoke care in the Adult's health record.

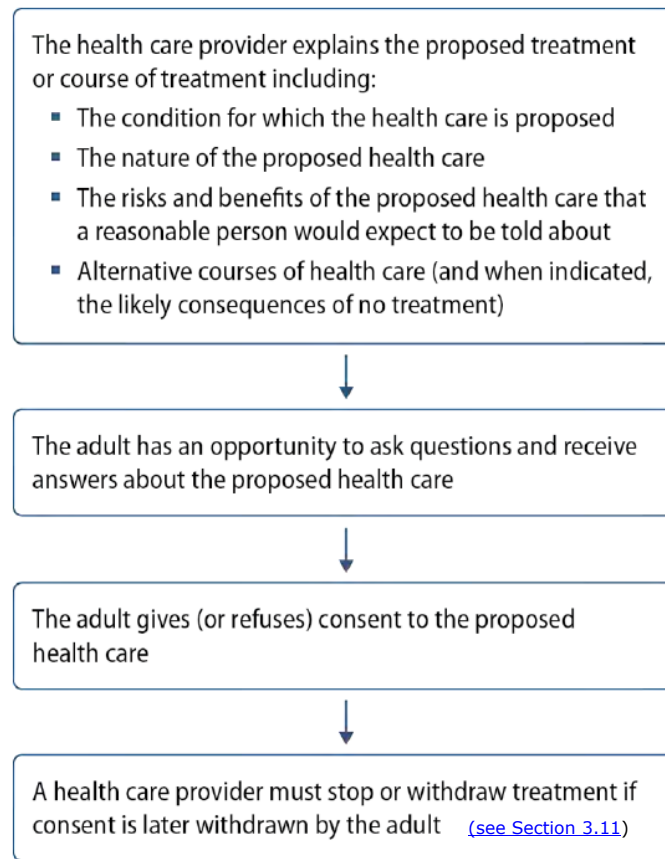
4.0 REFERENCES

1. Adult Guardianship Act of British Columbia.
2. Health Care (Consent) and Care Facility (Admission) Act of British Columbia.
3. Representation Agreement Act of British Columbia.
4. Public Health Nursing Policy, Standards and Guidelines – Section 111 – Informed Consent – June 29, 2001.
5. BC Health Providers Guide to Consent to Health Care July 2011

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Figure 2: **Obtaining Consent from a Capable Adult for a Treatment Proposal**



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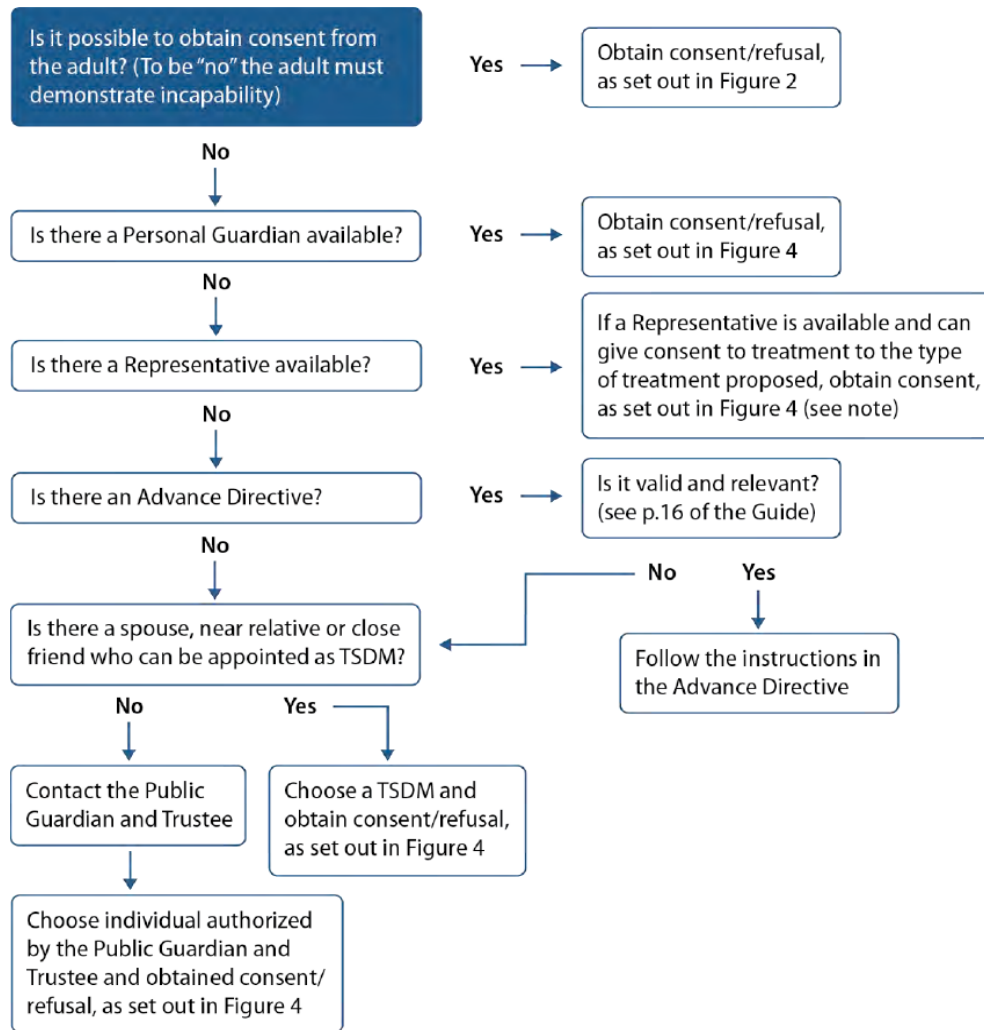
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Figure 3: Determining Who Can Provide Substitute Consent for an Incapable Adult 19 years of age or older for a Treatment Proposal



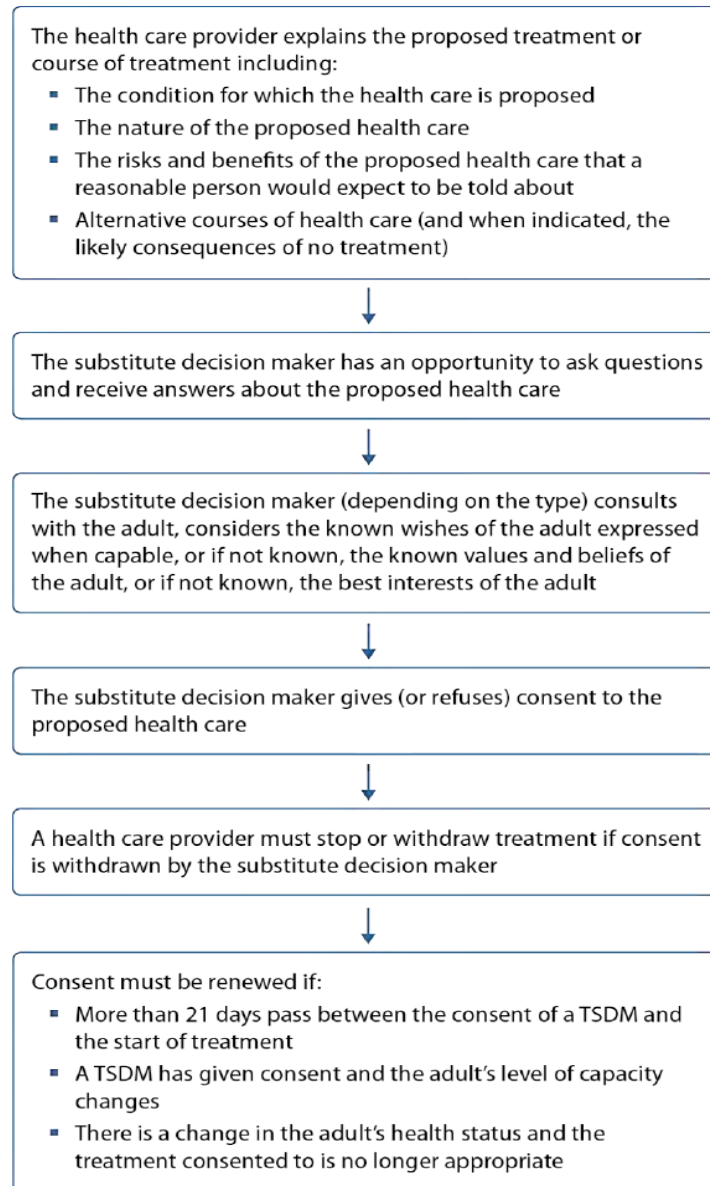
Note: Health care providers must stop or withdraw treatment if consent is subsequently withdrawn or refused.

Note: If the adult has an Advance Directive as well as a Representative, the Advance Directive may override the need for consent from the Representative if the Representation Agreement expressly states that the consent of the Representative is not required. In addition, if an adult has provided instructions in an Advance Directive with respect to any matter over which the Representative does not have decision-making authority, a health care provider should follow the instructions in the Advance Directive.

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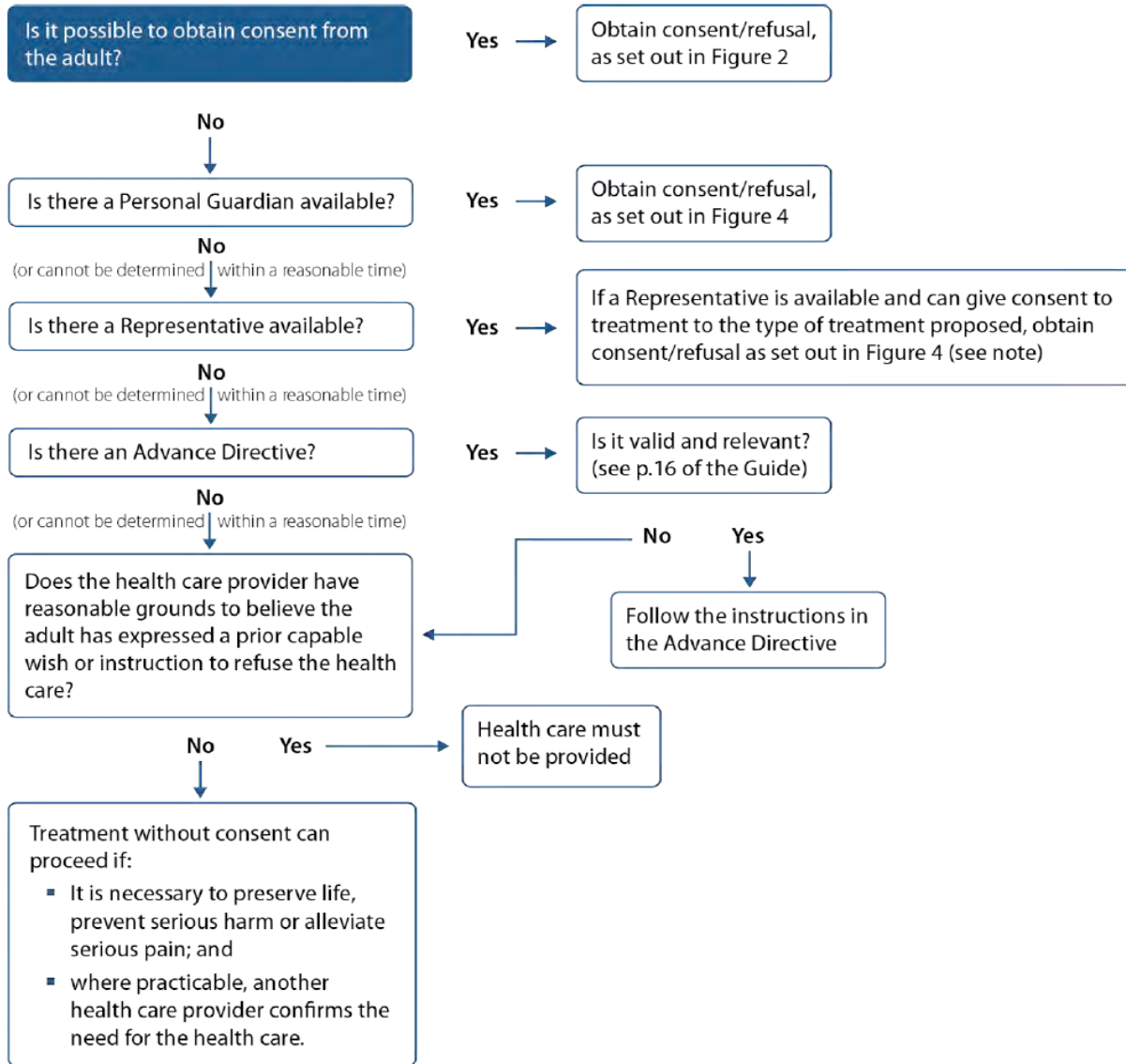
Figure 4: Obtaining Consent from the Substitute Decision Maker of an Incapable Adult for a Treatment Proposal



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Figure 5: Emergency Treatment Involving an Adult 19 years of age or older



Note: Health care providers must stop or withdraw treatment if consent is subsequently withdrawn or refused.

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REFERRAL TO PUBLIC GUARDIAN & TRUSTEE FOR APPOINTMENT OF TSDM (826037)

Name of Patient: _____ DOB: _____

From: _____
(Name of Health Care Provider)

Fax: _____ Telephone: _____

I have examined the patient identified above and have found him/her incapable and in need of the following health care:

- I have been unable to identify a Committee of Person or a Representative
- I am unable to appoint a **Temporary Substitute Decision Maker** (TSDM) because:
 - The patient has no relative to act as the TSDM
 - The patient has a relative, but he/she does not qualify to be the TSDM, because:
 - The relative is not 19 years of age
 - No contact with the Adult during the preceding 12 months
 - Has a dispute with the Adult
 - Is not willing to comply with the duties demanded by this role
 - Is not capable of giving, refusing or revoking substitute consent
 - There is a dispute among near relatives about who is to be chosen

I recommend the appointment, as TSDM for this health care decision of

Name: _____ Phone: _____

Address: _____

Relationship: _____

Reason for recommending appointment: _____

(OR)

I ask that the Office of Public Guardian and Trustee appoint a Temporary Substitute Decision Maker to make the health care decision on behalf of the above named patient.

Signature of Health Care Provider: _____

Date: _____

Fax to PGT Office (604) 775-0777 and await return call. If necessary to call PGT phone: 1-877-511-4111. OPGT Health Care Decisions Team hours of operation: Monday through Friday 0800 – 1800 and 0800 – 1200 hours Saturday, Sunday & Statutory Holidays

Place original in Chart

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NOTICE OF INCAPABILITY AND SUBSTITUTE CONSENT (MAJOR HEALTH CARE) (826036)

To: _____
[name of Adult for whom substitute consent has been given (please print)]

I, _____
[name of health care provider (please print)],

am your physician/other health care provider and I have proposed the following health care for you:

sample

I have determined, using the legal test of incapability stated in section 7 of the *Health Care (Consent) and Care Facility (Admission) Act*, that you are incapable of giving or refusing consent to the health care described above.

To the best of my knowledge, you do not have a committee, or representative, who is authorized to make a decision for you about the health care described above.

Therefore, I have chosen _____
[name and phone number of Temporary Substitute Decision Maker (please print)]

as temporary substitute decision maker for you and he/she has:

- given substitute consent to the health care described above, or
- refused substitute consent to the health care described above.

If you disagree with the decision of your temporary substitute decision maker, you may ask your attending physician or one of the nurses caring for you how to have the decision reviewed.

The decision to:

- give substitute consent to the health care described above, or
- refuse substitute consent to the health care described above

was made on _____ [dd/mm/yyyy] at _____ [time] am/pm.

Signature of health care provider: _____

Position/title: _____

_____ [dd/mm/yyyy] _____ [time] am/pm.

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