Shared health Soins communs Manitoba	H05 - PRINCIPLES OF CONSENT	
	Version date: 2024-01-18	REFERENCE

PREAMBLE

Every adult in Manitoba is presumed to have the right (legal capacity) to make decisions around their own health care. Consent is *required* for any medical intervention including treatment and transport to hospital by paramedics. The individual's right to agree to, or refuse, medical treatment can only be removed by the Court.

Minors between the ages of 16 and 18 years are presumed have the right to make *some* of their own health care decisions. With few exceptions, those under 16 years of age do not (section B).

Individuals can delegate responsibility for their own health care decisions to another adult (section C). Health care providers cannot give consent on behalf of a patient but may intervene without consent in medical emergencies (sections D).

An involuntary patient in a mental health facility retains the right to make health care decisions in the absence of evidence to the contrary (section F). Similarly, an individual in custody or incarceration retains the right to make their own health care decisions (section G).

SECTION A: PREREQUISITES FOR CONSENT

There are four prerequisites to a valid consent at law:

1. **CAPACITY:**
   Making personal health care decisions requires having both the legal and mental capacity to do so.

   In Manitoba every individual over 18 years of age is presumed to have the **legal capacity** to make their own decisions about their health care unless there has been a legal determination to the contrary. An emancipated minor is an individual under age 18 years who has been declared by the Court to have the same legal rights (and thus legal capacity) as an adult. Individuals between the ages of 16 and 18 are presumed to have the legal capacity to make some health care decisions, though one cannot presume that they have the requisite mental capacity on the basis of age alone.

   Under normal circumstances an adult in Manitoba is presumed to have the requisite **mental capacity** to make health care decisions in the absence of information to suggest otherwise. Mental capacity may be temporarily lacking such as with intoxication, delirium, or psychosis. Or it may be permanently absent such as with dementia or developmental delay. Determining an individual's mental capacity is complex and may not be possible in the typical 911 encounter.

2. **INFORMED:**
   For a health care decision to be properly informed, a discussion about the nature, risks, and benefits of an intervention, and any alternatives to the intervention must take place. The information must be presented in plain language and the health care provider must ensure that it is retained and understood.

3. **VOLUNTARY:**

Paramedics must always act in good faith and in the best interests of the patient, without regard for personal gain or convenience. Consent (or refusal) that is obtained by influence, deception, omission, concealment, or coercion is generally not upheld, regardless that the patient has signed a release.

4. **SPECIFIC:**
   Consent must be specific to both the current circumstances, the proposed treatment and the individual administering it. Calling 911 does not indicate tacit agreement for treatment or transport.

SECTION B CONSENT FROM MINORS

MATURE MINOR:
The principle of the mature minor allows that some individuals, generally between 16 and 18 years of age, are able to make *some* of their own health care decisions. In Manitoba it is not clearly defined by legislation, its understanding is vague, and its application inconsistent.

It is not simply based of chronological age. To satisfy the test of a mature minor, a careful evaluation of the individual's intellectual and emotional maturity, lifestyle, beliefs, and family relationships is required. This is rarely possible within the constraints of a 911 situation.

As well, it does not apply to all decisions, but is specific to the gravity of the situation. A 16-year-old can usually receive birth control without parental consent, but may not be able to refuse a life saving amputation for cancer without parental input. The same patient may not be able to refuse transport from a major motor vehicle collision. All efforts should be made to obtain parental / guardian consent or OLMS consultation.

EMANCIPATED MINOR:
Some individuals between 16 and 18 years of age may be deemed by the Courts to be *emancipated.* This means that they are legally free from the control of a parent or legal guardian, and the parent or legal guardian is free from responsibility for them. Emancipated minors can legally consent or refuse medical treatment. However, they cannot act as a substitute decision maker for another individual.

SECTION C: CONSENT WHEN THE PATIENT IS UNABLE TO COMMUNICATE

HEALTH CARE DIRECTIVE (example - page 5)**:**
A health care directive, sometimes also referred to as *living will*, allows an individual to document instructions about the treatments they would accept or refuse in the event that they become unable to speak for themselves. Dedicated forms are widely available, but a directive does not have to be a formal document. It can be any written document which is signed and dated by the patient. The directive may sometimes identify an individual to assist with health care decision making. <u>The directions expressed in a health care directive are legally binding</u>.

A paramedic who follows what they reasonably believe to be the patient's directions regarding care and acts in the best interests of the patient is usually protected from culpability. Paramedics are not obliged to seek out a health care directive nor expected to determine its validity, but should make *reasonable* efforts to determine if a patient has one. Individuals often include it in their emergency response information kit (ERIK).

ADVANCE CARE PLAN (example - page 6):
In most Manitoba hospitals and personal care homes an advanced care plan (ACP) is a document used to convey a patient's goals of care in a consistent and easily-recognizable fashion. It is usually filled out by a patient and health

care provider together at or shortly after admission. Though not legally binding, in the absence of a directive or substitute decision-maker, a paramedic may reasonably assume that it represents the patient's most recent wishes,

SUBSTITUTE DECISION-MAKER:
A competent patient may designate in writing that an individual act as their substitute decision-maker, also known as health care proxy. In the absence of a written one, a patient may make the designation verbally. A minor person cannot be a health care proxy. The proxy is required to act in accordance with a person's directions and make decisions based on their knowledge of the patient's previous expressions, personal beliefs, etc.

In the absence of any such designation (usually in critical situations) a competent adult may act as a proxy, according to the following legally established hierarchy:

a. Spouse or partner
b. Parent with primary care and control
c. Parent with legal access
d. Offspring
e. Sibling
f. Other first degree adult relative

If some situations, the Court may designate an individual to be a health care proxy. This is most commonly a family member. If the patient has no family, the Court may place them under the guardianship of a Public Trustee.

Power-of-attorney is the Court-granted authority to manage another individual's affairs when they are deemed not competent to do so. Although the terms are often used interchangeably, competency is a legal determination made by the Court, while capacity is a medical term. Contrary to common belief, power of attorney does not automatically extend to health care decisions. An individual who has relinquished power of attorney may still have the mental capacity to make their own health care decisions or may appoint another individual to act as their proxy for health care matters.

SECTION D: IMPLIED CONSENT IN EMERGENCIES

In the absence of a health care directive or substitute decision maker, the common law principle of *implied consent* presumes that the average reasonable person in a medical emergency would agree to an intervention advised by a duly qualified health care provider to preserve their life, limb, or a vital function. With a minor patient it is presumed that a reasonable parent or guardian under the same circumstances would also agree.

Health care providers acting reasonably and in the best interests of the patient would not be culpable, even if their actions were in contradiction to the patient's health care preferences unbeknownst at the time of intervention.

SECTION E: CONSENT FROM PATIENTS UNDER THE MENTAL HEALTH ACT

The Mental Health Act is legislation that enables the involuntary detention (custody), transport, assessment, and admission of a person who lacks the mental capacity to provide informed consent by reason of a mental disorder.

An *Order for Involuntary Medical Examination* (form 2) or an *Application by Physician for Involuntary Psychiatric Examination* (form 4) authorize a police officer, peace officer or qualified person (as defined by the MHA) to detain and transport an individual without their consent.

Under certain conditions a person can be admitted into a mental health facility without consent. An *Involuntary Admission Certificate* (form 6) or *Renewal Certificate* (form 7) completed by a qualified psychiatrist allows for detention of the patient.

Forms 2, 4, 6 and 7 allow for involuntary detention, but not treatment without consent. A *Certificate of Incompetence to Make Treatment Decisions* (form 9) completed by other than the patient's own psychiatrist is required to administer medical care against an individual's wishes.

In the absence of a valid form 9, consent is required for any medical intervention performed by a paramedic. In an emergency, the principle of implied consent must be employed.

SECTION F: CONSENT FROM PATIENTS IN CUSTODY OR UNDER INCARCERATION

Individuals being detained by local law enforcement (including those detained under the Intoxicated Person Detention Act (IPDA) and individuals in the custody of Correctional Services Canada (CSC) retain the right to consent to or refuse medical intervention. Neither police nor corrections officers can provide substitute consent.

Once again, In an emergency, the principle of implied consent must be employed.

Health Care Directive

Manitoba

Please type or print legibly

This is the Health Care Directive of:

Name ______________________________

Address ______________________ City ______________________

Province ____________ Postal Code ____________ Telephone (   ) ____________

Part 1 – Designation of a Health Care Proxy

You may name one or more persons who will have the power to make decisions about your medical treatment when you lack the ability to make those decisions yourself. If you do not wish to name a proxy, you may skip this part.

I hereby designate the following person(s) as my Health Care Proxy:

Proxy 1

Name ______________________________

Address ______________________________

____

City ______________________________

Province ____________ Postal Code ____________

Telephone (   ) ______________________

Proxy 2

Name ______________________________

Address ______________________________

____

City ______________________________

Province ____________ Postal ode ____________

Telephone (______________________

(Check ✔ one choice an f " sec vely" and "jointly" please er f).

If I have named more t o proxy I wish them to ac

❑ **consecutivel** OI ❑ **ntly**

My Health Care ay make medical decisions on my behalf when e capacity to do so for myself *(check ✔ one choic y):*

❑ With **no restrictions**

❑ With **restrictions as follows:**

____

____

____

____

____

Part 2 – Treatment I ctions

In this part, you may se instructions concerning medical treatment that you o not wish to receive and the circumstances in which yo or do not wish to receive that treatment. RE MBER – instructions can only be carried out if they are ut clearl d pr sely. If you do not wish to provid ny t nent inst u may skip this part.

____

____

____

____

____

3 – ure Date

u must d te this Health Care Directive. witness .

gnature ______________________________

te ______________________________

you are unable to sign yourself, a substitute may sign on your behalf. The substitute must sign in your presence and in the presence of a witness. The proxy or the proxy's spouse cannot be the substitute or witness.

Name of substitute: ______________________________

Address ______________________________

____

Signature ______________________________

Date ______________________________

Name of witness: ______________________________

Address ______________________________

____

Signature ______________________________

Date ______________________________

MG-3598 (Rev. 05/04)

Consecutively: The second proxy would be contacted if the first is not available or is unwilling to make the required decision at the required time.
Jointly: The first proxy and second proxy would act together on your behalf.

PRAIRIE MOUNTAIN HEALTH

ADVANCE CARE PLANNING GOALS OF CARE

PMH Advance Care Planning Policy

Client Health Record Number	
Client Surname	
Given Name	
Date of Birth	
Gender	
MHSC	
PHIN	
Address	

☐ Is there an existing Health Care Directive? ☐ No ☐ Yes

(If yes, it shall guide further discussions as an indication of the Client's wishes at the time of writing – Please attach a copy)

Advance Care Planning (ACP) is the overall process of dialogue, knowledge sharing and informed decision making that needs to occur at any time when treatment options and goals of care are being considered or revisited. This form is used to record agreed upon goals of care reached through full and complete ACP discussions with the client and/or alternate decision maker about the nature of the individual's current condition, prognosis, treatment/procedural/investigation options, and expected benefits or burdens of those options.

GOALS OF CARE (Check the box that best describes the Client Goals of Care)

☐ C = Comfort Care – Goals of care and interventions are directed at maximal comfort, symptom control and maintenance of quality of life *excluding* attempted resuscitation.

☐ M = Medical Care – Goals of care and interventions are for care and control of the client's condition. The consensus is that the client may benefit from, and is accepting of, any appropriate investigations/interventions that can be offered *excluding* attempted resuscitation.

☐ R = Resuscitation – Goals of care and interventions are for care and control of the client's condition. The consensus is that the client may benefit from, and is accepting of, any appropriate investigations/interventions that can be offered *including* attempted resuscitation.

If the required care is not available in the current location or setting, does the client want to be transferred to an alternate facility? ☐ No ☐ Yes

Indicate all individuals who participated in goals of care discussion(s) by checking appropriate box(es).

☐ Client Print Name: _____ Signature: _____

☐ Family Member Print Name: _____ Signature: _____

☐ Alternate Decision Maker Print Name: _____ Signature: _____

☐ Health Care Provider Print Name: _____ Signature: _____

Document other participants (i.e. family members and/or health care providers), details of the client specific instructions or wishes and/or details of discussion with the individuals indicated. (Refer to date/time of Progress Note entry if more space is required):

_____

_____

_____

Name & Designation of Health Care Provider | Signature of Health Care Provider (Physician's signature is required when patient is a client of the Public Trustee) | yyyy/mmm/dd

The goals of care were reviewed with the client and/or alternate decision maker and no change to the form is required.

Name & Designation of Health Care Provider | Signature of Health Care Provider (Physician's signature is required when patient is a client of the Public Trustee) | yyyy/mmm/dd

Name & Designation of Health Care Provider | Signature of Health Care Provider (Physician's signature is required when patient is a client of the Public Trustee) | yyyy/mmm/dd

Name & Designation of Health Care Provider | Signature of Health Care Provider (Physician's signature is required when patient is a client of the Public Trustee) | yyyy/mmm/dd

If review results in any changes to the Client Goals of Care, a new form must be completed.

PROVIDE A COPY OF COMPLETED FORM TO CLIENT OR ALTERNATE DECISION MAKER