



TITLE

CONSENT TO MENTAL HEALTH TREATMENT/PROCEDURE(S): FORMAL PATIENTS AND PERSONS SUBJECT TO COMMUNITY TREATMENT ORDERS UNDER THE MENTAL HEALTH ACT

SCOPE

Provincial

DOCUMENT #

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NOTE: The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

If you have any questions or comments regarding the information in this document, please contact the Policy & Forms Department at policy@ahs.ca. The Policy & Forms website is the official source of current approved policies, procedures, directives, standards, protocols and guidelines.

OBJECTIVES

- To set out the appropriate actions to be taken during the **informed consent process** for **patients** receiving mental health **treatment/procedure(s)** who are either **formal patients** or persons subject to **Community Treatment Order(s)** under the *Mental Health Act (MHA)*.
- To facilitate an informed consent process within Alberta Health Services (AHS) that reflects good practice, contributes to patient safety, and enhances the patient experience.
- To facilitate a fair, respectful process for **informed consent** that is achieved consistently across all care areas within AHS.
- To facilitate compliance with applicable law.

PRINCIPLES

The principle of respect for persons is foundational within this policy and demonstrated by patients being supported in determining what happens to their own bodies, in keeping with their own values and beliefs. Where patients cannot make their own decisions, respect for persons is upheld by recognizing the decision-making role of an appropriate **alternate decision-maker**.

Informed consent:

- requires **capacity**;
- shall be informed;

- shall be specific;
- shall be voluntary;
- requires understanding; and
- shall be documented.

On an exceptional basis, patient-informed consent decisions can be overridden in accordance with legislation such as the *MHA* and the *Public Health Act*.

The **most responsible health practitioner (MRHP)** providing mental health treatment/procedure(s) to a patient has a duty to obtain informed consent.

AHS is committed to providing continuing education for all personnel to implement this policy and the subsequent procedures.

APPLICABILITY

Compliance with this document is required by all Alberta Health Services employees, members of the medical and midwifery staffs, Students, Volunteers, and other persons acting on behalf of Alberta Health Services (including contracted service providers as necessary).

ELEMENTS

1. Informed Consent is Required

- 1.1 Before providing a specific mental health treatment/procedure(s) or plan of mental health treatment/procedure(s), the MRHP shall obtain **express informed consent** or **implied informed consent** from the patient, unless a valid exception to informed consent applies (see Section 6 below).
- 1.2 The MRHP is responsible for determining the most appropriate method of obtaining informed consent (express or implied).
- 1.3 All informed consent, whether express or implied, shall be informed.
- 1.4 Implied informed consent may be presumed in (but is not limited to) circumstances where the patient presents voluntarily for an examination, investigation, or minor or less invasive mental health treatment/procedure(s) which the MRHP determines does not require express informed consent.
 - a) The MRHP shall be satisfied that the circumstances or the actions of the patient imply permission for the examinations, investigations, and mental health treatment/procedure(s) proposed.
 - b) If there is any doubt that there is implied informed consent, the MRHP shall obtain express informed consent from the patient.

- c) Implied informed consent is encouraged to be documented by the MRHP in the patient's **health record**.
- 1.5 When the MRHP determines that express informed consent is required to evidence the patient's informed consent to the mental health treatment/procedure(s):
- a) verbal consent shall be documented by the MRHP in the patient's health record; or
- b) written (signed) consent shall be documented by the MRHP through obtaining the signature of the patient on the **consent form** (see Section 1.6 below), which shall then be attached to the patient's health record. Where a consent form is used, documentation in the patient's health record regarding the informed consent discussion is also recommended.
- 1.6 For patients under a Community Treatment Order, the AHS *Consent and Declaration for Treatment/Procedure (on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity)* Form shall be used for any mental health treatment/procedure(s) for which the **Physician** (or other MRHP) deems written (signed) consent to be appropriate.
- a) For mental health treatment/procedure(s) that are not under a Community Treatment Order, informed consent by the patient is required.
- 1.7 Informed consent may be obtained in the MRHP's community office rather than at the applicable **Alberta Health Services (AHS) setting** where the patient will be receiving the mental health treatment/procedure(s). The completed AHS *Consent and Declaration for Treatment/Procedure (on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity)* Form shall then be forwarded to the applicable AHS setting where the patient will be receiving the mental health treatment/procedure(s).
- 2. Accountability**
- 2.1 The accountability to obtain informed consent shall rest with the MRHP who is providing the specific mental health treatment/procedure(s).
- 2.2 The MRHP remains accountable for the informed consent process when one (1) or more than one (1) **health care provider** is involved in providing the mental health treatment/procedure(s).
- 2.3 The MRHP is responsible for confirming the validity of informed consent prior to the delivery of the mental health treatment/procedure(s).
- 2.4 For programs that offer multiple treatment/procedure(s), each MRHP is accountable for the informed consent process related to the treatment/procedure(s) they are providing.

3. Who May or May Not Give Informed Consent

- 3.1 An **adult** patient is presumed to have capacity (i.e., is mentally **competent**) and is able to make mental health treatment/procedure(s) decisions.
- a) Where there are concerns that an adult patient may lack capacity to make mental health treatment/procedure(s) decisions, the MRHP must determine:
 - (i) if there is a court order appointing a **guardian** for the adult; or
 - (ii) if the adult has an **agent** designated under an activated **personal directive**.
 - b) Where there are concerns that the adult patient may lack capacity and there is no guardian or activated personal directive, the MRHP should assess the patient's capacity or take steps to have their capacity assessed.
- 3.2 A **minor** patient is presumed to not have the capacity to make mental health treatment/procedure(s) decisions.
- a) This presumption can be rebutted and the minor patient may be able to provide informed consent to mental health treatment/procedure(s), if the minor patient is assessed and deemed a **mature minor**.
 - b) If the minor patient is not considered to be a mature minor, their **legal representative** may provide informed consent or refuse to provide informed consent to the mental health treatment/procedure(s) for the minor patient.
 - c) Capacity for a minor patient shall be determined in accordance with the *AHS Consent to Treatment/Procedure(s): Minors / Mature Minors Procedure*.
- 3.3 In accordance with the *MHA*, if a patient does not have the capacity to provide informed consent to mental health treatment/procedure(s), those mental health treatment/procedure(s) decisions can be made on their behalf by an adult who is apparently mentally competent, willing to make the decision(s), and is:
- a) the agent of that patient;
 - b) the guardian of that patient;
 - c) where there is no agent or guardian available, willing to act, or able to be contacted, the patient's **nearest relative** as defined in the *MHA*:

(i) in the following ranked order, the adult person first listed in the following paragraphs, relatives of the whole blood being preferred to relatives of the same description of the half-blood, and the elder or eldest of two (2) or more relatives being preferred, regardless of gender:

- spouse or adult interdependent partner;
- son or daughter;
- mother or father;
- brother or sister;
- grandfather or grandmother;
- grandson or granddaughter;
- uncle or aunt;
- nephew or niece;

or

(ii) any adult person the AHS Board designates in writing to act as the nearest relative if there is no nearest relative within any description as above, or if, in the opinion of the AHS Board, the nearest relative would not act or is not acting in the best interest of the patient; or

d) the public guardian where there is no agent, guardian, or nearest relative.

(i) In accordance with the *MHA* in a non-emergency health care situation involving a patient who is not competent, and if there is no agent, no guardian, and no nearest relative, then the Office of the Public Guardian should be contacted.

3.4 In accordance with the *MHA*, agents or nearest relatives shall not exercise decision-making authority with regards to mental health treatment/procedure(s) unless they:

- a) have been in personal contact with the patient over the preceding 12-month period;
- b) are willing to assume the responsibility of making mental health treatment/procedure(s) decisions; and

- c) make a statement in writing certifying their relationship to the patient and confirming their willingness to make mental health treatment/procedure(s) decisions (see the *AHS Consent and Declaration for Treatment/Procedure [on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity]* Form).
- 3.5 There are additional considerations if the agent, guardian, or nearest relative is making mental health treatment/procedure(s) decisions (including consenting to, refusing, or withdrawing previously given informed consent for mental health treatment/procedure[s]) that are not considered to be in the patient's best interest.
- a) Where the decision-maker is the adult patient's agent or guardian, consideration should be given to contacting the Office of the Public Guardian and seeking legal advice.
 - b) Where the decision-maker is the minor patient's guardian, consideration should be given to contacting the Director of Child and Family Services and seeking legal advice.
 - c) If the decision-maker for the adult or minor patient is a nearest relative under the *MHA*, consideration should be given to whether someone else should be appointed as the nearest relative in accordance with the *MHA* and whether legal advice should be sought.
- 3.6 **Specific decision-makers** and **co-decision-makers**, as defined in the *Adult Guardianship and Trusteeship Act*, have no decision-making authority to make mental health treatment/procedure(s) decisions for adult patients who lack capacity.

4. Elements of Informed Consent

- 4.1 Capacity:
- a) The MRHP is required, in every case, to satisfy themselves that the patient has the requisite capacity to make each mental health treatment/procedure(s) decision.
 - b) If a patient is considered to have capacity to make mental health treatment/procedure(s) decisions and consents to the proposed mental health treatment/procedure(s), they may be treated.
 - c) A patient's capacity can change depending on changes to their mental and physical health.
 - d) The determination of capacity shall relate to each specific mental health treatment/procedure(s) or plan of mental health treatment/procedure(s).

- e) Informed consent shall be obtained prior to the administration of any medication that may significantly affect the patient's capacity to make an informed decision (i.e., analgesic, narcotic, or anaesthetic).
- f) A patient may have capacity even if they are unable to communicate verbally. Communication with the patient shall be facilitated by any means that enables understanding (see Section 4.6 below).

4.2 Additional Informed Consent Process for Formal Patients Who Lack Capacity:

- a) In accordance with the *MHA*, a Physician who is of the opinion that a formal patient does not have the capacity to make decisions about their mental health treatment/procedure(s) shall complete and file with the AHS Board (or delegate), a Form 11 – *Certificate of Incompetence to Make Treatment Decisions*.
 - (i) There shall be clear written reasons for the opinion that the formal patient lacks capacity to make mental health treatment/procedure(s) decisions.
 - (ii) The formal patient and their agent or guardian, if any, and unless the formal patient objects, their nearest relative, shall be given a copy of the Form 11 and written notice that the formal patient is entitled to have the Physician's opinion reviewed by a review panel.
 - (iii) In accordance with the *MHA*, if the attending Physician is of the opinion that a formal patient lacks capacity to make mental health treatment/procedure(s) decisions and the formal patient objects to the mental health treatment/procedure(s), but the agent or nearest relative has consented to the treatment, treatment shall not be given unless a second Physician is also of the opinion that the formal patient does not have the capacity to make mental health treatment/procedure(s) decisions, and also completes and files a Form 11 – *Certificate of Incompetence to Make Treatment Decisions*.
- b) If there is an application to the review panel to review the Physician's opinion that the formal patient does not have the capacity to make mental health treatment/procedure(s) decisions (i.e., appeal Form 11) under the *MHA*, the proposed mental health treatment/procedure(s) to which the patient objects shall not be provided until the outcome of the application to the review panel.

4.3 Informed:

- a) The MRHP shall ensure all necessary information has been provided to the patient so that the patient can make an informed decision about the mental health treatment/procedure(s). Necessary information shall include but is not limited to:
- (i) the condition for which the mental health treatment/procedure(s) is proposed;
 - (ii) the mental health treatment/procedure(s) plans/interventions and/or list of agreed upon mental health treatment/procedure(s), that are clinically indicated and approved for the condition;
 - (iii) the potential risks and benefits of the proposed mental health treatment/procedure(s);
 - (iv) information applicable to the patient's particular circumstances or as specifically requested by the patient;
 - if the patient alerts the MRHP of particular circumstances that might affect the information the patient would want for their mental health treatment/procedure(s) decisions, the MRHP shall be responsible for addressing those particular circumstances with further information as requested by the patient;
 - (v) alternatives to the proposed mental health treatment/procedure(s);
 - (vi) the potential consequences of both providing consent or refusing to provide consent for the proposed mental health treatment/procedure(s); and
 - (vii) who will perform the mental health treatment/procedure(s) and who may provide assistance, including whether the mental health treatment/procedure(s) will include health care providers in training (i.e., residents, students).

4.4 Specific:

- a) The provision of informed consent shall relate to each specific mental health treatment/procedure(s) or plan of mental health treatment/procedure(s).
- b) Mental health treatment/procedure(s) that:
- (i) are in addition to the mental health treatment/procedure(s) already consented to;

- (ii) are different from the mental health treatment/procedure(s) consented to;
- (iii) were unanticipated at the time informed consent was obtained;
- (iv) may be convenient to do; or
- (v) may be beneficial to the patient,

shall not be performed without obtaining further informed consent, unless a valid exception to informed consent applies (see Section 6 below).

- c) New informed consent shall be obtained when one (1) or more of the following occurs:
 - (i) the patient's condition has materially changed;
 - (ii) the medical knowledge about the patient's condition or the mental health treatment/procedure(s) available has materially changed;
 - (iii) when the specific mental health treatment/procedure(s) for the patient changes;
 - (iv) the previously given consent and/or any portion of the previously given consent has been withdrawn (see Section 5 below); and
 - (v) the patient has refused the involvement of particular individuals in their mental health treatment/procedure(s) (i.e., medical students).
- d) If the previous informed consent was evidenced using a consent form, then the new or subsequent informed consent should also be evidenced using a consent form.

4.5 Voluntary:

- a) The patient shall have the opportunity, without undue influence, to accept or refuse a mental health treatment/procedure(s).
- b) As time permits in the clinical circumstance, informed consent discussions shall occur when the patient has a reasonable opportunity to reflect on the decision and ask questions.
- c) The patient shall be given an opportunity to take the time required to reflect on the information and to consult with whom they choose prior to making a decision.

- d) A patient's decision to accept or refuse a mental health treatment/procedure(s) shall not prejudice their access to ongoing or future health care.

4.6 Understanding:

- a) The MRHP accountable for the informed consent process shall:
 - (i) provide the patient with the opportunity to ask questions;
 - (ii) provide responses to the questions asked by the patient; and
 - (iii) ensure the patient has understood the information sufficiently to proceed with the informed consent discussion.
- b) The informed consent discussion is a shared process between the patient and the MRHP, resulting in the patient's decision to accept or refuse the proposed mental health treatment/procedure(s).
- c) The MRHP shall communicate with the patient in a manner that supports the patient's ability to understand and shall address all communication barriers including, but not limited to:
 - (i) hearing;
 - (ii) sight;
 - (iii) language;
 - (iv) culture;
 - (v) literacy;
 - (vi) level of education;
 - (vii) level of anxiety and stress; and
 - (viii) environmental factors, including location of discussion.
- d) If the patient is having difficulty understanding the discussion or reading and completing the consent form (if applicable), the discussion and contents of the consent form shall be read and explained to the patient in the presence of a witness and with the assistance of an interpreter, as necessary. Documentation of this process is recommended. The MRHP may allow, at the patient's request, their **family** to accompany the patient and offer their assistance to help the patient to understand or demonstrate an understanding of the information provided.

5. Refusal of Mental Health Treatment/Procedure(s) and Withdrawal of Informed Consent; Application for Order(s) Issued by a Review Panel Authorizing Treatment/Procedure(s)

5.1 Refusal of Mental Health Treatment/Procedure(s) and Withdrawal of Informed Consent of a Formal Patient:

- a) A formal patient, their agent, guardian, nearest relative, or the Office of the Public Guardian (when acting as decision-maker under Section 28 of the *MHA*), as appropriate, may:
 - (i) refuse to consent to all or a portion of a proposed mental health treatment/procedure(s); or
 - (ii) withdraw previously given informed consent to any or all of the mental health treatment/procedure(s) at any time prior to or during the mental health treatment/procedure(s).
- b) If there are concerns that the agent, guardian, or nearest relative is making a decision to refuse or withdraw previously given informed consent for a mental health treatment/procedure(s) that is not considered to be in the formal patient's best interest, refer to Section 3.5 above.
- c) It is important that the formal patient, their agent, guardian, nearest relative, or the Office of the Public Guardian, as appropriate, understands the consequences of withdrawing/refusing consent for the mental health treatment/procedure(s). Where a formal patient, their agent, guardian, nearest relative, or the Office of the Public Guardian, as appropriate, refuses a mental health treatment/procedure(s) or withdraws previously given informed consent, the MRHP shall explain the potential risks and consequences of the refusal or withdrawal of informed consent, without undue influence.
 - (i) This explanation can be witnessed by a second **health care professional** to confirm patient identity and confirm the discussion occurred.
 - (ii) The MRHP shall document on the patient's health record:
 - the refusal or withdrawal of informed consent;
 - the circumstances of the refusal, including the patient's reasons for withdrawing informed consent or refusing the mental health treatment/procedure(s);
 - a summary of the discussion with the formal patient, their agent, guardian, nearest relative, or the Office of the Public

Guardian, as applicable, about the patient's clinical condition, the planned intervention(s) or mental health treatment/procedure(s), the expected outcomes, material risks, and potential consequences of withdrawing informed consent or refusing the mental health treatment/procedure(s);

- the outcome of the discussion;
- the presence of witnesses, if any; and
- where written (signed) informed consent was previously given, withdrawal of consent shall be documented in the 'withdrawal' section of the consent form.

- d) The formal patient, their agent, guardian, nearest relative, or the Office of the Public Guardian, may provide informed consent again at any time following a subsequent informed consent discussion.
- e) In accordance with the *MHA*, if informed consent is refused or withdrawn by the formal patient, their agent, guardian, nearest relative, or the Office of the Public Guardian, the Physician may respect the consent withdrawal/refusal or may decide to complete a Form 12 – *Application for Review Panel Hearing* and request a treatment order from the review panel.
- (i) For additional considerations regarding treatment orders, refer to Sections 6.7 and 6.8 of the *AHS Guide to the Alberta MHA and Community Treatment Order Legislation*.
- f) Mental health treatments/procedure(s) to which informed consent has been refused or withdrawn shall not go ahead without a treatment order authorized by the review panel under these circumstances. The review panel will only order a mental health treatment/procedure(s) if it is satisfied that the Physician has examined the formal patient and that the mental health treatment/procedure(s) is in the formal patient's best interest.
- (i) **Psychosurgery** shall never be performed on a formal patient unless the patient provides informed consent.

5.2 Refusal of Mental Health Treatment/Procedure(s) and Withdrawal of Consent by a Person Subject to a Community Treatment Order:

- a) Under the *MHA*, a person subject to a Community Treatment Order (or a person on their behalf) may apply to a review panel for the cancellation of the Community Treatment Order by submitting a Form 12 – *Application for Review Panel Hearing*.

- (i) The review panel will hear evidence to determine whether the criteria under the *MHA* is met; however the person subject to the Community Treatment Order at the time of the hearing is excluded from the review panel's consideration.
 - b) If a person subject to a Community Treatment Order is not in compliance with the mental health treatment/procedure(s) or care set out in the Community Treatment Order, an apprehension order (Form 23 – *Community Treatment Order Apprehension Order*) may be issued by a Psychiatrist or **Designated Physician**. Prior to issuing an apprehension order, the *MHA* requires that the Psychiatrist or Designated Physician shall be satisfied that reasonable efforts have been taken to inform the person that there is non-compliance and there is a need for compliance. Reasonable assistance shall be provided to enable the person to comply with the treatment or care in the Community Treatment Order. The person subject to the Community Treatment Order shall be advised of the potential risks and consequences of non-compliance, which include apprehension, assessment, and the possibility of becoming a formal patient.
 - c) The Psychiatrist or Designated Physician shall document relevant discussions (including the information provided and the person subject to a Community Treatment Order's stated reasons for non-compliance, if any) in the health record.
- 5.3 Refusal of Mental Health Treatment/Procedure(s) and Withdrawal of Consent by a Mature Minor or a Minor's Legal Representative:
 - a) In accordance with obligations under the *Child, Youth and Family Enhancement Act*, if consent for essential medical, surgical, or other remedial treatment/procedure(s) necessary for the health or well-being of the minor patient is refused or withdrawn by the mature minor or the minor's legal representative, the MRHP shall report this to the Director of Child and Family Services.
 - b) Section 5.3 a) above is in addition to the considerations in Section 5.1 above, such as review panel orders authorizing treatment/procedure(s), as applicable.
- 5.4 Refusal of Mental Health Treatment/Procedure(s) and Withdrawal of Consent by a Formal Patient or Person Subject to a Community Treatment Order for Blood Testing:
 - a) Subject to Section 6.3 below, a patient may refuse to consent to blood testing for HIV, hepatitis B, and hepatitis C. In the event of the exposure of a health care provider to a needle-stick injury or a patient's bodily fluids where a blood-borne virus is suspected, and the patient refuses to

consent to blood testing, the health care provider shall immediately contact their respective Zone Workplace Health and Safety Occupational Health Nurse (WHS OHN) and advise of the exposure and if informed consent for testing was provided by the patient.

6. Exceptions to Informed Consent

- 6.1 If a patient requires emergency health care relating to their physical health that is different than **control** under the mental health legislation (refer to Section 6.2 below), the MRHP should refer to the *AHS Consent to Treatment/Procedure(s)* Policy for adult patients and the *AHS Consent to Treatment/Procedure(s): Minors / Mature Minors* Procedure for minor patients.
- 6.2 A patient can be controlled (restrained) without their consent to prevent serious bodily harm to that person or others, with respect to the minimal use of force, mechanical means, or medication as is reasonable, and having regard for the patient or person's physical and mental condition.
- a) Any use of patient restraint(s) shall be carried out in accordance with Section 30 of the *MHA* following the *AHS Restraint as a Last Resort* Policy Suite.
- 6.3 The requirement for informed consent may be overridden by a warrant, subpoena, court order, or applicable legislation (i.e., order issued by a review panel under the *MHA* authorizing mental health treatment/procedure(s), orders under the *Public Health Act*, orders under the *Mandatory Testing and Disclosure Act*, etc.).

7. Documentation

- 7.1 The MRHP is responsible for ensuring appropriate documentation of the informed consent process and outcomes in the patient's health record. Specifically, the following outcomes shall be documented:
- a) agreement with informed consent to the mental health treatment/procedure(s);
- b) refusal of the mental health treatment/procedure(s) (refer to Section 5 above); and
- c) withdrawal of consent previously given (refer to Section 5 above).
- 7.2 In accordance with the *MHA*, where a mental health treatment/procedure(s) decision is being made for a patient by an agent or nearest relative, the *AHS Consent and Declaration for Treatment/Procedure (on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity)* Form shall be signed.

- 7.3 Where written (signed) consent is deemed necessary, the MRHP shall ensure a consent form evidencing consent to the mental health treatment/procedure(s) is completed and signed. If a formal patient or person subject to a Community Treatment Order is considered to have capacity, the *AHS Consent to Treatment Plan/Intervention or Procedure* Form is to be used. If a formal patient or person subject to a Community Treatment Order is not considered to be competent, the *AHS Consent and Declaration for Treatment/Procedure (on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity)* Form is to be signed by the alternate decision-maker.
- 7.4 The MRHP shall ensure that the name and specifics of the proposed mental health treatment/procedure(s) are completed; abbreviations shall not be used on a consent form.
- 7.5 All relevant legal documents including, but not limited to, court orders, warrants, subpoenas, personal directives, capacity assessments, and evidence of the formal status of alternate decision-makers shall be documented on the patient's health record.
- 7.6 While the requirements for documentation outlined in Section 7.1 above are met by appropriately filling in the applicable consent form where written (signed) consent has been deemed necessary, documentation in the patient's health record regarding the consent discussion is recommended.
- 7.7 Completed consent forms required for mental health treatment/procedure(s) may be faxed or scanned (refer to the *AHS Transmission of Information by Facsimile or Electronic Mail* Policy). When possible, and at the earliest opportunity, the original consent form shall be obtained and placed on the patient's health record.
- 7.8 When an interpreter is used to assist in obtaining consent, the interpreter shall complete the relevant documentation on the consent form.
- a) The MRHP shall follow up to ensure the consent form has been completed as required.
- 7.9 A blind or disabled person's 'mark' is recognized as a valid signature on the consent form.
- 7.10 Witness documentation of informed consent:
- a) A written (signed) consent form should be witnessed.
- b) Any person, other than a relative of the patient, the MRHP, or the interpreter for the patient, may witness the signing of a consent form.
- (i) Before acting as a witness or signing the consent form as a witness, confirmation of the patient's identity by the witness shall be required.

- (ii) If the signee is not the patient, the witness shall request to see a form of the signee's identification and confirm that the person making a mark on behalf of the patient has been asked to do so by the patient.
- c) Witnessing a consent form indicates only that the witness observed the consent form being signed and is not evidence of the consent process.
- d) In the event that the patient expresses doubt about the consent process and/or requests further explanation, the witness shall not sign the consent form and the MRHP shall be notified.

DEFINITIONS

Adult means a person aged 18 years and older.

Agent means the person(s) named in a personal directive who can make decisions on personal matters according to the wishes expressed by the patient.

Alberta Health Services (AHS) setting means any environment where treatment/procedures and other health services are delivered by, on behalf of or in conjunction with, Alberta Health Services.

Alternate decision-maker means, for mental health patients, a person who is authorized to make decisions with or on behalf of the patient; these may include a minor's legal representative, a guardian, a nearest relative in accordance with the *Mental Health Act* (Alberta), or an agent in accordance with a personal directive.

Capacity means the ability for the patient to 1) understand the nature, risks, and benefits of the procedure and the consequences of consenting or refusing and 2) understand that this explanation applies to them.

Community Treatment Order means an order issued under Section 9.1 of the *Mental Health Act* (Alberta).

Competent/competency under the *Mental Health Act* (Alberta) means the person is able to understand the subject matter relating to the decisions and is able to appreciate the consequences of making the decisions.

Consent form means an Alberta Health Services approved form of documentation that can be used to provide evidence of the outcome of the consent process, that is, agreement to or refusal of a treatment/procedure.

Control means the authority under the *Mental Health Act* (Alberta) to control a person without the person's consent to the extent necessary to prevent serious bodily harm to the person or to

another person by the minimal use of such force, mechanical means, or medication as is reasonable, having regard to the physical and mental condition of the person.

Designated Physician means a Physician designated pursuant to Section 9.7 of the *Mental Health Act* (Alberta).

Express informed consent means direct, explicit agreement to undergo treatment/procedure(s), given either verbally or in writing (signed).

Family means one or more individuals identified by the patient as an important support, and who the patient wishes to be included in any encounters with the health care system, including, but not limited to, family members, legal guardians, friends, and informal caregivers.

Formal patient means a patient detained in a designated mental health facility under two admission certificates or two renewal certificates, in accordance with the *Mental Health Act* (Alberta). This term includes alternate decision-makers as applicable.

Guardian means, where applicable:

For a minor:

- a) A guardian as defined by the *Family Law Act* (Alberta), a divorced parent with custody of the minor, or a person appointed pursuant to a will, personal directive, court order, agreement or by authorization of legislation (e.g., *Child, Youth and Family Enhancement Act* [Alberta]).

For an adult:

- a) An individual appointed by the Court in accordance with the *Adult Guardianship and Trusteeship Act* (Alberta) to make decisions on behalf of the adult patient when the adult patient lacks capacity.

Health care professional means an individual who is a member of a regulated health discipline, as defined by the *Health Disciplines Act* (Alberta) or the *Health Professions Act* (Alberta), and who practises within scope and role.

Health care provider means any person who provides goods or services to a patient, inclusive of health care professionals, staff, students, volunteers and other persons acting on behalf of or in conjunction with Alberta Health Services.

Health record means the collection of all records documenting individually identifying health information in relation to a single person.

Implied informed consent means consent inferred from the patient's or alternate decision-maker's (if applicable) actions and surrounding circumstances.

Informed consent means the patient's agreement (or alternate decision-maker) to undergo a treatment/procedure after being provided, in a manner the patient can understand, with the relevant information about the nature of the treatment/procedure(s), its benefits, potential risks and alternatives, and the potential consequences of refusal.

Informed consent process means a discussion or series of discussions and interactions that may occur over a period of time between the most responsible health practitioner and patient or their alternate decision-maker (if applicable) including: i) the determination of capacity, as necessary, ii) the provision of relevant information, iii) the verification of understanding, iv) the decision-making and v) documentation of the consent process and outcome.

Legal representative means the following in relation to a minor, as applicable:

- a) guardian; or
- b) nearest relative as defined in the *Mental Health Act* (Alberta), who has the authority to consent to treatment for a minor formal patient or minor who is subject to a Community Treatment Order.

Mature minor means a person aged less than 18 years, who has been assessed and determined as having the intelligence and maturity to appreciate the nature, risks, benefits, consequences, and alternatives of the proposed treatment/procedure(s), including the ethical, emotional, and physical aspects.

Minor means a person aged less than 18 years.

Most responsible health practitioner (MRHP) means the health practitioner who has responsibility and accountability for the specific treatment/procedure(s) provided to a patient and who is authorized by Alberta Health Services to perform the duties required to fulfill the delivery of such a treatment/procedure(s) within the scope of their practice.

Nearest relative means in the *Mental Health Act* (Alberta) and in this document, with respect to a formal patient, or a person who is subject to a Community Treatment Order:

- a) the adult person first listed in the following list, relatives of the whole blood being preferred to relatives of the same description of the half-blood, and the elder or eldest of two or more relatives being preferred, regardless of gender:
 - spouse or adult interdependent partner;
 - son or daughter;
 - father or mother;
 - brother or sister;
 - grandfather or grandmother;
 - grandson or granddaughter;
 - uncle or aunt;
 - nephew or niece;

OR

- b) any adult person the Alberta Health Services Board designates in writing to act as nearest relative if there is no nearest relative within any description as above, or if, in the opinion of the Alberta Health Services Board, the nearest relative would not act or is not

acting in the best interest of the formal patient or the person subject to a Community Treatment Order.

Patient means all persons, inclusive of residents and clients, who receive or have requested health care or services from Alberta Health Services and its health care providers. Patient also means, where applicable:

- a) a co-decision-maker with the person; or
- b) an alternate decision-maker on behalf of the person.

Patient includes both formal patients and persons subject to a Community Treatment Order.

Personal directive means a written document in accordance with the requirements of the *Personal Directives Act* (Alberta), in which an adult names an agent(s) or provides instruction regarding their personal decisions, including the provision, refusal, and/or withdrawal of consent to treatments/procedures. A personal directive (or part of) has effect with respect to a personal matter only when the maker lacks capacity with respect to that matter.

Physician means a person licensed in independent practice and in good standing with the College of Physicians and Surgeons of Alberta pursuant to the *Health Professions Act* (Alberta).

Psychosurgery means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or that inserts indwelling electrodes for pulsed electric stimulation for the purpose of altering behavior or treating psychiatric illness. Psychosurgery does not include neurological procedures used to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable.

Treatment/procedure(s) means a specific assessment, treatment, investigative procedure(s), or series of treatments/procedures planned to manage a clinical condition; these can be presented as a treatment plan/intervention.

REFERENCES

- Alberta Health Services Governance Documents:
 - *Consent to Treatment/Procedure(s)* Policy (#PRR-01)
 - *Consent to Treatment/Procedure(s): Adults with Impaired Capacity and Adults who Lack Capacity* Procedure (#PRR-01-02)
 - *Consent to Treatment/Procedure(s): Deceased Donation of Human Organs and Tissues* Policy (#PRR-01-05)
 - *Consent to Treatment/Procedure(s): Minors / Mature Minors* Procedure (#PRR-01-03)
 - *Restraint as a Last Resort* Policy Suite (#HCS-176)
 - *Transmission of Information by Facsimile or Electronic Mail* Policy (#1113)
- Alberta Health Services Forms:
 - *Consent and Declaration for Treatment/Procedure (on Behalf of a Formal Patient or Person Subject to a Community Treatment Order who lacks capacity)* Form (#09565)
 - *Consent to Treatment Plan/Intervention or Procedure* Form (#09741)
- Alberta Health Services Resources:

TITLE

EFFECTIVE DATE

DOCUMENT #

CONSENT TO MENTAL HEALTH TREATMENT/PROCEDURE(S): FORMAL
PATIENTS AND PERSONS SUBJECT TO COMMUNITY TREATMENT ORDERS
UNDER THE MENTAL HEALTH ACT

January 16, 2020

PRR-01-04

- *Guide to the Alberta Mental Health Act and Community Treatment Order Legislation*
- Non-Alberta Health Services Documents:
 - *Adult Guardianship and Trusteeship Act (Alberta)*
 - *Child, Youth and Family Enhancement Act (Alberta)*
 - *College of Physicians and Surgeons of Alberta: Standards of Practice (Alberta)*
 - *Family Law Act (Alberta)*
 - *Form 11 – Certificate of Incompetence to Make Treatment Decisions (Alberta)*
 - *Form 12 – Application for Review Panel Hearing (Alberta)*
 - *Form 19 – Issuance of Community Treatment Order (Alberta)*
 - *Form 20 – Renewal of Community Treatment Order (Alberta)*
 - *Form 23 – Community Treatment Order Apprehension Order (Alberta)*
 - *Health Professions Act (Alberta)*
 - *Mandatory Testing and Disclosure Act (Alberta)*
 - *Mental Health Act (Alberta)*
 - *Personal Directives Act (Alberta)*
 - *Public Health Act (Alberta)*

VERSION HISTORY

Date	Action Taken
August 1, 2011	Revised
February 27, 2012	Non-substantive change
January 16, 2020	Revised, includes change in Title from <i>Consent to Treatment/Procedure(s) Formal Patients and Persons Subject to Community Treatment Order Under the Mental Health Act</i> and change in document type from Procedure