

Capability and Consent Tool B.C. Edition

Introduction

The Capability and Consent Tool, BC Edition, was developed to assist health care providers to navigate through the complicated system of guardianship and substitute decision making legislation in BC. It provides a schematic for various areas of decision making and the corresponding legal framework to guide decision making in those areas. This document does not replace legal consultation and should not be considered legal advice.

This tool is meant to be used following the principles and presumptions embedded in BC's Adult Guardianship Legislation, specifically:

- Adults are presumed capable to make their own choices about financial, personal, and health care matters
- Adults are entitled to live in the manner they wish and to accept/refuse supports as long as they do not harm others and are capable
- Intervention/protection is least intrusive and most effective when adults are unable to care for themselves
- Previously expressed values, wishes and beliefs of capable adults are to be followed whenever possible
- Intrusive measures such as Court Orders and Certificates of Incapability are a last resort

When deciding whether it is in the adult's best interests to give, refuse or revoke substitute consent, the substitute should consider:

- the adult's current known wishes, values, beliefs &/or instructions
- whether the adult's condition or well-being is likely to be improved by the proposed health care,
- whether the adult's condition or well-being is likely to improve without the proposed health care,
- whether the benefit the adult is expected to obtain from the proposed health care is greater than the risk of harm, and
- whether a less restrictive or less intrusive form of health care would be as beneficial as the proposed health care.

How to use the Capability and Consent Tool

First determine the decision or need that is the focus of intervention and locate it on the first column (left side) of the chart.

Health Care	pg. 1	Facility Placement	pg. 10
Personal Care	pg. 4	Psychiatric Treatment	pg. 12
Financial	pg. 6	Involuntary Admission (Psychiatric)	pg. 12

The second column contains the hierarchy of decision makers for that particular decision and it always begins with the capable adult. Once the decision maker for a particular decision has been identified, follow the row to the right for specifics about the corresponding legislation, incapability criteria, indication of who is authorized or required to conduct assessments or to act as witnesses, and then to the last column for any limits or conditions to the authority.

An Advance Care Plan is the term used for any written or verbal expression of wishes made by a capable adult that guides decision makers and substitute decision makers in the event that the adult is incapable at the time the health care is required. It may or may not include a Representation Agreement, an Advance Directive or an Enduring Power of Attorney. See Health Care Providers' Guide to Consent to Health Care, Ministry of Health, BC for further information about advance care planning.

Generally, it is considered best practice to obtain a copy of any document that confirms the authority of a substitute decision maker. All documents must be kept in a secure and confidential manner.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
<p>HEALTH CARE Anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health and includes:</p> <ul style="list-style-type: none"> • a series or sequence of similar treatments or care administered to an adult over a period of time for a particular health problem. • a plan for minor health care that is <p>I. developed by one or more health care providers</p> <p>II. deals with current and expected health problems</p> <p>III. expires in no longer than 12 months.</p> <p>Major Health Care</p> <ol style="list-style-type: none"> a) major surgery b) any treatment involving general anesthetic c) major diagnostic/ investigative procedures or d) any health care designated by regulation as major health including radiation therapy, IV chemotherapy, kidney dialysis, ECT, laser surgery. <p>Minor Health Care Health care that is not major healthcare and includes</p> <ol style="list-style-type: none"> a) routine tests to determine if health care is necessary, and b) routine dental that prevents or treats a condition/injury cause (including cavity fillings and extractions). <p>Emergency Health Care 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.</p>	<p>Capable Adult</p>	<p>Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA)</p>	<p>The adult demonstrates an understanding of the proposed treatment, the risks and benefits, the condition for which it is proposed and alternatives and that it applies to their own situation.</p> <p>Adults are presumed to be capable.</p>	<p>Prescribed Health Care Provider (PHCP) includes Health Professions Act, Hearing Aid Act, Podiatrists Act and Social Workers Act.</p>	<p>Consent must be voluntary, not be obtained by fraud or misrepresentation, and be related specifically to the proposed health care. Only if the HCP determines that the adult is incapable of consenting to the proposed health care treatment does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.</p>
	<p>Committee of Person Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	<p>Patients Property Act (PPA)</p>	<p>An adult who is declared by a judge to be incapable of managing himself or herself.</p>	<p>Involves an application to Court with two assessments of incapability by Physicians. Physicians are encouraged to follow Best Practice and consider if the adult is incapable of understanding the following:</p> <ol style="list-style-type: none"> a) personal care that is needed b) proposal made to provide the needed care c) reasons for that proposal, the risks and benefits of not receiving the care d) that this applies to their own situation <p>or, be incapable of implementing his/her personal care decisions.</p>	<p>A Committee of Person may consent or refuse to consent to health care necessary to preserve life. The Court may set limits on the Committee.</p> <p>Where there is a Committee of Person, the HCP must obtain consent from the Committee.</p> <p>A Committee of Person cannot override Mental Health Act Involuntary treatment.</p> <p>N.B. No one can consent to non-therapeutic sterilization of a person who cannot make that decision themselves.</p>

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
HEALTH CARE CONTINUED	Representative, Non Standard (Section 9) Person authorized by a Section 9 Representation Agreement to make health care decisions on behalf of another.	Representation Agreement Act Standard (Section 9)	Adult may make a non standard Representation Agreement if the adult understands the nature and consequences of the proposed Agreement.	Agreements must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT. The following persons must not act as a witness: <ul style="list-style-type: none"> • a person named as a Representative • a spouse, child or parent of a person named as a Representative • an employee or agent of a Representative • a person who is not an adult; • a person who does not understand the type of communication used by the adult, unless the person receives interpretive assistance to understand that type of communication. 	A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or by a physician's opinion. Representative's must: comply with the expressed wishes of adult while capable, and any known AD; Consult with the adult. A paid personal or health care provider of the adult may not be named as a Representative.
	Representative, Standard (Section 7) Person authorized by a Section 7 Representation Agreement to make health care decisions on behalf of another.	Representation Agreement Act Standard (Section 7)	Adult may make a standard Representation Agreement even though incapable of making a contract, or managing financial, personal, health affairs. Factors considered include desire to have a Representative, ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.	Agreement must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there re: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.	Standard Representative's cannot make a decision to refuse life-supporting care or treatment. A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement. Representative's must: <ul style="list-style-type: none"> • comply with the expressed wishes of adult while capable and any known AD. • consult with the adult. A paid personal or health care provider of the adult may not be named as a Representative.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
HEALTH CARE CONTINUED	<p>Advance Directive (AD)</p> <p>A written instruction made by a capable adult that:</p> <p>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.</p>	Health Care (Consent) and Care Facility (Admission) Act, Part 2.1	An adult is incapable to make an Advance Directive if the adult is incapable of understanding the nature and consequences of the proposed Advance Directive, the scope and effect of the health care instructions set out in the Advance Directive, and that a SDM will not be consulted on the instruction.	<p>Must be signed by the adult, and witnessed by 2 other adults. The following persons must not act as a witness to the signing of an Advance Directive:</p> <p>a) a person who provides personal care, health care or financial services to the adult for compensation, or their spouse, child, parent, or employee</p> <p>b) a person who does not understand the type of communication used by the adult.</p>	<p>An AD does not apply when:</p> <p>a) the instructions in an adult's Advance Directive do not address the health care decision to be made, in relation to a health care decision, 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,</p> <p>b) 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</p> <p>c) since the Advance Directive was made, 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.</p>
	<p>Temporary Substitute Decision Maker</p> <p>Adult's Spouse; Adult's Child; Adult's Parent; Adult's brother or sister; Adult's Grandparent; Adult's Grandchild; Anyone else related by birth or adoption; Close friend of the adult; Person immediately related by marriage; PGT, if no other decision maker is available.</p>	Health Care (Consent) and Care Facility (Admission) Act	Prior to seeking substitute consent, the HCP must assess whether the adult demonstrates an understanding of the proposed treatment and alternatives, the risks and benefits, the condition for which it is proposed, and that it applies to their own situation. HCP must also make reasonable effort to find out if there is any Committee of Person or Representative.	Prescribed Health Care Provider (PHCP) includes those guided by the Health Professions Act, Hearing Aid Act, Podiatrists Act, & Social Workers Act. The PCHP who is providing the care or treatment would be responsible for assessing consent capability. For example the surgeon would assess the patient's ability to consent to surgery.	TSDM must: be at least 19 years old; had contact with the adult in the preceding 12 months; have no dispute with the adult; be capable of giving consent; consult with the adult; if there is dispute about who is to be chosen as TSDM, the HCP must choose a person authorized by the PGT.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
HEALTH CARE CONTINUED	Health Care Provider for Urgent or Emergency Health Care	Health Care (Consent) and Care Facility (Admission) Act, Section 12(a) 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.	A health care provider may provide health care to an adult without the adult's consent if: The adult is apparently impaired by drugs or alcohol or is unconscious or semi-conscious for any reason or is, in the health care provider's opinion, otherwise incapable of giving or refusing consent.	Prescribed Health Care Provider (PHCP) includes Health Professions Act, Hearing Aid Act, Podiatrists Act and Social Workers Act.	If a Committee of Person, Representative, or a TSDM becomes available after treatment has been initiated, they may refuse consent for continued health care, and the health care must be withdrawn. Should an Advance Directive become known after a treatment has been initiated that refuses consent to that particular treatment, the healthcare provider is required to terminate the treatment.
	Designated Agency 5 Regional Health Authorities, Providence Health Care, Community Living BC.	Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions) <ul style="list-style-type: none"> • support and Assistance Plan (Section 54); • Emergency Provisions (Section 59) 	An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and requires treatment.	Designated Responder from Designated Agency.	The authority of the designated agency does not override the rights of capable adults who can still chose to live at risk and in abusive situations. If health care is proposed in the support and assistance plan, the designated agency must ensure that the Health Care (Consent) and Care Facility (Admission) Act is complied with.
PERSONAL CARE Includes matters respecting: <ol style="list-style-type: none"> a) shelter, employment, diet, dress b) participation in social, educational, vocational and other activities c) contact or association with other persons d) licenses, permits, approvals. 	Capable Adult	Representation Agreement Act	Assumed capable. The adult demonstrates an understanding of personal care that is needed, the proposal to provide the needed care, the risks and benefits of not receiving the care and that it applies to their own situation.	Health Care Provider **No legislation currently covers personal care.	Consent must be voluntary, not be obtained by fraud or misrepresentation and be related specifically to the proposed personal care. Only if the HCP determines that the adult is incapable of consenting to the proposed personal care does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
PERSONAL CARE CONTINUED	<p>Committee of Person Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	Patients Property Act	An adult who is declared by a judge to be incapable of managing himself or herself.	Involves an application to court with two assessments of incapability by physicians. Physicians are encouraged to follow Best Practice Criteria as follows: The adult is incapable of understanding of the following: a) personal care that is needed b) proposal made to provide the needed care c) reasons for that proposal, the risks and benefits of not receiving the care d) that this applies to their own situation Or, be incapable of implementing his/her personal care decisions.	Committee of Person may authorize restraints and consent to care facility admission and restrict the adult's access to others. If a Committee of Person has been appointed by the Court, the HCP must obtain consent from the Committee.
	<p>Representative Non Standard (Section 9) Person authorized by a Section 9 Representation Agreement to make personal care decisions on behalf of another.</p>	Representation Agreement Act (Section 9)	Adult may make a non standard Representation Agreement if the adult understands the nature of the authority and the effect of giving it to the Representative.	Representation Agreements must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. If the lawyer who signed the consultation certificate is the witness, only 1 witness is required. Witnesses should object to the making of a Representation Agreement when there are: Concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.	A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or a physician's opinion. Representatives must: <ul style="list-style-type: none"> • comply with the expressed wishes of adult while capable • consult with the adult • not make a will.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
PERSONAL CARE CONTINUED	Representative Standard (Section 7) Person authorized by a Section 7 Representation Agreement to make personal care decisions on behalf of another.	Representation Agreement Act (Section 7)	Adult may make a Representation Agreement even though incapable of: making a contract, managing financial, personal, health affairs. Factors considered: desire to have a Representative, ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.	Agreement must be in writing and signed by the adult, each Representative or alternate and 2 witnesses. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.	A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or a physician's opinion. Representative's must: <ul style="list-style-type: none"> • comply with the expressed wishes of adult while capable • consult with the adult • not make a will.
	Designated Agency 5 Regional Health Authorities Providence Health Care Community Living BC.	Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions) <ul style="list-style-type: none"> • Support and Assistance Plan (Section 54) • Emergency Provisions (Section 59) 	An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and it is necessary to provide personal care.	Designated Responder from Designated Agency.	The authority of the designated agency does not override the rights of capable adult who can still chose to live at risk and in abusive situations.
FINANCIAL Includes an adult's business and property and the conduct of the adult's legal affairs.			Adult assumed to be capable of making decisions about their financial affairs and understanding the nature and consequences of those decisions.		Only if there are concerns that an adult is incapable of making the proposed financial decision, does one seek alternatives in accordance to the hierarchy of decision makers below.
	Committee of Estate by Court Application Person appointed by the court to make decisions regarding an adult's financial affairs.	Patients Property Act	An adult who is declared by a judge to be incapable of managing his or her affairs.	Requires assessment of incapability by 2 physicians. Physicians are encourages to utilize the following best practice criteria. Assess whether the adult demonstrates an understanding of the following: the nature of the adult's financial affairs, including the value of adult's business and property, the obligations owed to the adult's legal dependants, the decisions or actions respecting the adult's financial affairs which must be taken, that this refers to the adult, or that the adult is incapable of implementing his/her financial decisions.	Committee of Estate cannot make a will on behalf of the adult but can facilitate the making of a will if the adult has testamentary capacity. Committee of Estate cannot delegate guardianship authority.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
FINANCIAL CONTINUED	<p>Committee of Estate by Certificate of Incapability (CoI)</p> <p>Public Guardian and Trustee of British Columbia becomes Committee of Estate through certificate process and is able to make decisions about an adult's financial affairs.</p>	Patients Property Act	An adult who, because of mental infirmity arising from disease age or otherwise, is incapable of managing his or her affairs Assessment should include whether the adult demonstrates an understanding of the following: the nature of the adult's financial affairs, including the value of adult's business and property, the obligations owed to the adult's legal dependants, the decisions or actions respecting the adult's financial affairs which must be taken, that this refers to the adult, or that the adult is incapable of implementing his/her financial decisions.	<p>Board Appointed Directors of HA's issue Certificates of Incapability.</p> <p>Best Practice requires an assessment of incapability by a medical practitioner and a functional/decision making assessment by a second assessor.</p> <p>See PGTBC Guidelines for Issuing a Certificate of Incapability Under the Patients Property Act.</p>	Committee of Estate cannot make a will on behalf of the adult but can facilitate the making of a will if the adult has testamentary capacity. All previously made OA/ Representation Agreements are suspended with the signing of the CI.
	<p>Enduring Power of Attorney</p> <p>Attorney has the authority to make financial decisions. The authority continues to have effect or comes into effect when the adult is incapable.</p>	Power of Attorney Act (Part 2)	<p>If an adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following:</p> <ul style="list-style-type: none"> a) the property the adult has and its approximate value; b) the obligations the adult owes to his or her dependants; c) that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney; d) that, unless the attorney manages the adult's business and property prudently, their value may decline; e) that the attorney might misuse the attorney's authority; f) that the adult may, if capable, revoke the enduring power of attorney. 	Signed by the donor and by a witness to the signature of the donor other than the attorney or the spouse of the attorney.	Authority of an EPOA ends if is terminated by the capable adult or if there is a Committee of Estate named either by Court order or Certificate. The POA may have conditions or restrictions written into the Agreement.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
FINANCIAL CONTINUED	<p>General Power of Attorney</p> <p>Attorney has the authority to make financial decisions. There is no enduring clause, the authority ends when an adult is no longer capable of directing their affairs.</p>	<p>Power of Attorney Act (Part 1)</p>	<p>The Act is silent on capability criteria. The adult must understand the nature and consequences of making, changing or revoking a POA.</p>	<p>Signed by the donor and a witness to the signature other than the attorney or the spouse of the attorney.</p>	<p>Authority of a POA ends if it is terminated by the capable adult or if there is a Committee of Estate named either by Court Order or Certificate Process. The POA may have conditions or restrictions written into the Agreement, for example, may be a general POA, banking POA, Land Title POA, etcetera.</p>
	<p>Representative, Standard, (Section 7)</p> <p>Person authorized by a Section 7 Representation Agreement to make routine financial decisions on behalf of another.</p>	<p>Representation Agreement Act (Section 7)</p>	<p>Adult may make a Representation Agreement even though incapable of: making a contract, managing financial, personal, health affairs. Factors considered: desire to have a Representative, ability to demonstrate choices, preference and feelings of approval/disapproval, awareness of impact of making the Agreement, relationship characterized by trust.</p>	<p>Agreement must be in writing and signed by the adult and each Representative or alternate. Adult's signature must be witnessed by 2 capable adult witnesses. Witness cannot be anyone named in the Agreement, or the spouse, child or parent of anyone named in the Agreement. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse/neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not witness the Agreement and report concerns to the PGT.</p>	<p>Representation Agreements which include the authorization to manage routine finances must name a monitor unless: the Representative is the spouse of the adult; or two or more Representative's have been named to act together; or a lawyer, who signed the consultation certificate, witnesses the Agreement; or the Representative is the PGT, a trust company or a credit union. A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or a physician's opinion. Representative's must: comply with the expressed wishes of adult while capable; consult with the adult; not make a will. Routine financial management includes paying bills, managing pension income, purchasing food/ services, making investments. It does not include selling assets or businesses.</p>

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
FINANCIAL CONTINUED	Pension Trusteeship	Federal Income Security Programs (ISP)	Need to demonstrate/describe how the adult is unable to manage ISP funds and may be incapable.	One physician signs ISP incapability form and person who wants to act as trustee sends application to ISP. Any capable adult, family, friend or community support can apply to act as Pension Trustee.	Trustee can manage OAS/GIS/CPP only. Does not give authority to manage other income or assets. For example, it does not give access to bank accounts/savings.
	Designated Agency 5 Regional Health Authorities, Providence Health Care, Community Living BC.	Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions) Support and Assistance Plan (Section 54) Emergency Provisions (Section 59)	An Adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap, or a condition that affects their ability to make decisions about abuse and neglect; and, it is necessary to act to protect the adult's income or assets.	Designated Responder from Designated Agency.	The authority of the designated agency does not override the rights of capable adults who can still chose to live at risk and in abusive situations. The Court may order a support and assistance plan including a provision for a specified period of up to 6 months of available services to ensure that the adult's financial affairs, business or assets are properly managed and protected, including any services that may be offered by the PGT. In an emergency situation, the person from the designated agency may act to protect the adult's assets from significant damage or loss.

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
FACILITY PLACEMENT	<p>Capable Adult</p>	<p>Health Care (Consent) and Care Facility (Admission) Act NB. Care Facility (Admission) part not yet in force.</p>	<p>Adult assumed capable of giving or refusing consent to admission to or continued residence in a care facility. Best practice suggests that the adult must have the information that a reasonable person would require to understand that they will be admitted to a care facility including information about the care they will receive, the services available and the circumstances under which they may leave the facility.</p>		<p>Consent must be voluntary, not be obtained by fraud or misrepresentation, and be related specifically to facility placement. Only if the HCP determines that the adult is incapable of consenting and is objecting to facility placement, does the HCP seek substitute consent in accordance to the hierarchy of decision makers below.</p>
	<p>Committee of Person Person appointed by the court to make decisions regarding an adult's personal care and health care.</p>	<p>Patients Property Act</p>	<p>An adult who is declared by a judge to be incapable of managing himself or herself.</p>	<p>Involves an application to court with two assessments of incapability by medical practitioners.</p>	<p>If the Court has appointed a Committee of Person, the HCP must obtain consent for facility care from that Committee.</p>
	<p>Representation Agreement, Non-Standard (Section 9) Person authorized by a Section 9 Representation Agreement to make decisions on behalf of another including restraining, moving or managing the adult despite their objections.</p>	<p>Representation Agreement Act</p>	<p>Adult may make a non standard Representation Agreement if the adult understands the nature of the authority and the effect of giving it to the Representative.</p>	<p>Representation Agreements must be in writing and signed by the Adult, each Representative or alternate and 2 witnesses. If the lawyer, who signed the consultation certificate, is the witness, only 1 witness is required. Witnesses should object to the making of a Representation Agreement when there are: concerns around the adult's capability, coercion, abuse and neglect by the Representative, inconsistency in content of Agreement with current wishes, or errors in the Agreement. In these situations the witness should not sign as witness to the Agreement and should report concerns to the PGT.</p>	<p>A Representation Agreement may have a triggering condition, such as incapability, that must have happened in a way set out in the Agreement or a physician's opinion. Representative's must: comply with the expressed wishes of adult while capable; consult with the adult.</p>

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
FACILITY PLACEMENT CONTINUED	<p>Standard or Limited Representative</p> <p>Person authorized by a (Section 7) Standard or Limited Representation Agreements (Section 7) cannot make decisions about facility placement.</p>	Representation Agreement Act (Section 7)	Not Applicable	Not Applicable	Although a Standard Representation Agreement does not provide the authority to consent to care facility admission the Representative may still have authority to authorize payment of bills and in consenting to health and personal care.
	<p>Designated Agency</p> <p>5 Regional Health Authorities, Providence Health Care, Community Living BC</p>	<p>Adult Guardianship Act (Part 3)</p> <p>Emergency Provisions (Section 59)</p> <p>Support and Assistance Order (Section 54)</p>	An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap or a condition that affects their ability to make decisions about abuse and neglect and it is necessary to move the adult to a safe place.	Designated Responder from Designated Agency.	<p>The authority of the designated agency does not override the rights of capable adults who can still chose to live at risk and in abusive situations.</p> <p>In an emergency situation, the person from the designated agency may act to protect the adult.</p> <p>Admission to a care facility without substitute consent can occur if the adult is considered incapable of giving or refusing consent and immediate admission of the adult is necessary to preserve the adult's life, prevent serious physical or mental harm to the adult or serious physical harm to any person. A Support and Assistance Plan could include facility care and could be ordered to protect the adult.</p>
	<p>Director of Designated Psychiatric Facility</p>	<p>Mental Health Act (Section 37)</p> <p>Extended Leave (Type of leave for an involuntary patient from a designated psychiatric facility)</p>	Criteria for involuntary admission: Adult has a mental disorder that seriously impairs the adult's ability to react appropriately to his or her environment or to associate with others; Adult requires psychiatric treatment in or through a designated facility; Adult requires care, supervision and control through a designated facility to prevent the adult's substantial mental or physical deterioration OR for the protection of the adult or the protection of others. Adult cannot be suitably admitted as a voluntary patient.	Director of a designated facility is the person responsible for the operation of a facility designated as a provincial mental health facility, psychiatric unit, or observation unit.	<p>Admission to a care facility can occur despite the objections of the adult and without substitute consent if the adult has been admitted as an involuntary patient to a designated psychiatric facility under medical certificate and is transferred to a care facility under Extended Leave of the MHA.</p> <p>Involuntary status needs to be renewed in 1 month, then 3 months and finally for 6 months at a time, if the adult continues to meet the criteria for involuntary admission under medical certificate.</p>

DECISION/NEED	HIERARCHY OF DECISION MAKERS	RELEVANT STATUTE	INCAPABILITY CRITERIA	INCAPABILITY ASSESSOR WITNESS	LIMITS/CONDITIONS
PSYCHIATRIC ADMISSION VOLUNTARY	Capable Adult	Mental Health Act	The person is 16 years or older, has a mental disorder, and agrees to admission.	If the director is satisfied that the person has been examined by a physician who is of the opinion that the person has a mental disorder.	
PSYCHIATRIC TREATMENT INVOLUNTARY ADMISSION	Director of Designated Mental Health Facility The person responsible for the operation of a facility designated as a provincial mental health facility, psychiatric unit, or observation unit.	Mental Health Act	Criteria for involuntary admission: Adult has a mental disorder that seriously impairs the adult's ability to react appropriately to his or her environment or to associate with others; adult requires psychiatric treatment in or through a designated facility; adult requires care, supervision and control through a designated facility to prevent the adult's substantial mental or physical deterioration OR for the protection of the adult or the protection of others. Adult cannot be suitably admitted as a voluntary patient.	Physician must exam the adult to determine whether an involuntary admission is necessary and sign the medical certificate (Form 4) which provides for legal authority for an involuntary admission for a 48 hour period. A second medical certificate must be completed for the adult within 48 hours otherwise the patient must be discharged or admitted as a voluntary patient.	Allows for psychiatric treatment only. If other decisions are required (health care, personal care, financial) the processes outlined above must be followed.
	Police/Provincial Court	Mental Health Act (Section 28)	In an emergency situation, under Section 28 of the MHA, the police can apprehend an adult, based on information that the adult is "apparently" suffering from a mental disorder and is acting in a manner likely to endanger their own safety or that of others. A court may issue a warrant for apprehension if satisfied that there are reasonable grounds to believe that is a physician were to examine the person they would likely certify him/her as an involuntary patient but that such an examination cannot be done without reasonable delay.	The police apprehend the adult and bring him/her to a designated facility where the adult is examined by a physician and the medical certificate for involuntary admission is signed which provides for legal authority for an involuntary admission for a 48 hour period. A second medical certificate must be completed for the adult within 48 hours otherwise the patient must be discharged or admitted as a voluntary patient.	Allows for psychiatric treatment only. If other decisions are required (health care, personal care, financial) the processes outlined above must be followed.
	Designated Agency 5 Regional Health Authorities, Providence Health Care, Community Living BC	Adult Guardianship Act (Part 3) (Abuse and Neglect Provisions) Support and Assistance Plan (Section 54) Emergency Provisions (Section 59)	An adult is abused or neglected and unable to seek support or assistance because of physical restraint, physical handicap, or a condition that affects their ability to make decisions about abuse and neglect. It is necessary to provide health care.	Designated Responder from designated Agency.	The authority of the designated agency does not override the rights of capable adults who can still choose to live at risk and in abusive situations. Allows for the provision of both medical and psychiatric care.



**Created by ReAct Adult Protection Program for
VCH/PHC Respecting Client Wishes Working Group**

For more copies, go online at <http://vch.eduhealth.ca> or
email pem@vch.ca and quote Catalogue No. **IB.100.C33**

© Vancouver Coastal Health, July 2013