

Consent to health care and the role of the Public Guardian and Trustee

What do adults, families and health care providers need to know about the law?

This brochure explains key provisions of the **Health Care (Consent) and Care Facility (Admission) Act (Consent to Health Care)**.

If you are an adult needing health care or a health care provider, the BC Health Care (Consent) and Care Facility (Admission) Act will affect you. The Act sets out the requirement for a health care provider to obtain informed consent to treatment from an adult before health care is provided. The law also formally recognizes the role of family and friends who are able and willing to make health care decisions for an adult when the adult is no longer able to make the decisions.

The general rule: Adults can only be given health care with their consent.

If an adult is unconscious, mentally incapable or otherwise unable to give consent the law sets out procedures to follow.

When is an adult's consent NOT required?

The main exceptions to the general rule are:

- when urgent or emergency health care is required, the adult is incapable of consenting and a committee or representative with authority to consent or a temporary substitute decision maker (TSDM) is not available;

- when involuntary psychiatric treatment is needed under the Mental Health Act; or
- for preliminary examinations such as triage or assessment.

Health care providers covered by the Act include physicians, dentists, nurse practitioners, nurses, physiotherapists, psychologists, occupational therapists, optometrists, chiropractors and others. For a full list see the **Health Care Consent Regulation**.

What if an adult is unable to give or refuse consent?

With appropriate communication and the necessary information and support, most adults can make their own decisions and give informed consent. An adult must be approached first for a decision. If the health care provider believes an adult is capable, then the adult has the right to give, refuse or revoke consent.

In deciding whether an adult is incapable of making a health care decision, the health care provider must determine whether the adult demonstrates an understanding of the information provided about the health care and that this information applies to the adult's situation.

Who can make health care decisions for an adult who is unable to make independent decisions?

The Act sets out a list of decision makers and documents. They are, in order:

- **A court appointed committee of person:** Under the Patients Property Act, the court may have appointed a committee for an adult who is incapable of making health care decisions
- **A representative:** An adult may, when able to do so, have planned for their future by making a representation agreement naming a representative to make the adult's health care decisions if the adult is unable to make their own decisions. If there is no committee of person, a representative may be able to make the health care decision if the representation agreement covers the decision
- **An advance directive:** A capable adult may make a binding advance directive to give or refuse health care described in the advance directive. The rules for making an advance directive are very specific. If it covers the health care decision, and there is no committee or representative appointed, then the health care provider can follow the instructions in the document. An advance directive can also be followed if the adult has a representation agreement and it says that the advance directive instruction may be acted on without the consent of the representative. For more information on advance directives, see the Ministry of Health website at www2.gov.bc.ca/gov/content/family-social-supports/seniors/health-safety/advance-care-planning
- **A temporary substitute decision maker (TSDM):** If there is no representative or committee of person and no valid advance directive, a health care provider must choose a TSDM from the following list, in order:
 - the adult's spouse;
 - child;
 - parent;
 - sibling;
 - grandparent;
 - grandchild;
 - anyone related to the adult by birth or adoption;
 - a close friend;

- a person immediately related to the adult by marriage.

The person chosen must meet certain criteria. This includes that the person must:

- be at least 19 years of age;
- have been in contact with the adult in the preceding 12 months;
- have no dispute with the adult;
- be capable of making the decision; and be willing to comply with the duties of a TSDM.

What if there is no one to make the decision or there is a dispute among equally ranked decision makers?

When no one from the ranked list of substitute decision makers is available or qualified or there is a dispute between two equally ranked substitutes about who is to be chosen and it cannot be resolved by the health care provider, the health care provider must contact the Public Guardian and Trustee (PGT).

What is the role of the PGT?

If there is no higher ranked, qualified and available decision maker, the PGT has 2 possible roles:

- To authorize an eligible and willing person to make the health care decision as a TSDM; or
- To act as a TSDM and make the health care decision.

For information on how the PGT authorizes a TSDM, and the responsibilities of a TSDM, see the **Guide to being a temporary substitute decision maker** publication on our website.

If the PGT acts as the TSDM, how will the PGT's decision be communicated?

When the PGT makes a health care decision on behalf of an adult, PGT staff will verbally advise the health care provider and then confirm the decision in writing. The adult is also advised of the decision.

How long will it take to obtain a decision?

The service standard for PGT health care decisions is that minor health care decisions will be made within one day of receiving all the information required to make the decision. Major health care decisions will be made within three days of receiving all information from the health care provider, taking into consideration the complexity and urgency of the adult's health care.

What if someone disagrees with the substitute's decision?

If there is a dispute that cannot be resolved, you may wish to obtain legal advice.

Under the Health Care (Consent) and Care Facility (Admission) Act, certain people have legal authority to make other decisions for the adult and are also now able to apply to court to have a decision of a temporary substitute decision maker reversed or varied. Those people are:

- the adult;
- health care providers;
- a committee of person;
- a representative;
- a TSDM.

If you have concerns that a committee of person, or representative (or TSDM that was authorized by the PGT), is not complying with their duties, a report can be made to the PGT. The PGT, however, cannot override the decisions of another substitute.

Are there any restrictions on treatments?

The Health Care (Consent) and Care Facility (Admission) Act does not apply to certain decisions such as those related to psychiatric treatment of involuntary patients under the Mental Health Act, non therapeutic sterilization, and certain communicable diseases set out in the law.

In addition, a committee of person, representative or TSDM may be limited in the decisions that they can make depending on the scope of their authority under the relevant legislation, court order or authorizing document.

Contact the Public Guardian and Trustee

Personal Decision Services

700-808 West Hastings Street
Vancouver, B.C. V6C 3L3

Local phone	604-660-4507
Toll free phone	1-877-511-4111
Local fax	604-660-9479
Toll free fax	1-855-660-9479
Email	AIS-PDS@trustee.bc.ca
Website	www.trustee.bc.ca

PGT hours of operation

Monday to Friday 8:30am to 4:30pm
Weekends and holidays 8:00am to 12:00pm (on-call only for
health care decisions or care facility admission decisions)

Important note: The PGT is providing this information to describe the process for securing consent to health care for adults. It may refer to legal requirements but it is not legal advice. It is general information and is not a substitute for professional legal advice. If you need legal advice related to health consent, contact a lawyer or notary or your community law office.