

## FAQs – Changes to Health Care Consent that every physician should know.

### ADVANCE DIRECTIVES

**What is an Advance Directive (AD)?** This is a written instruction made by a capable adult that gives or more specifically refuses consent to health care directly to the health care provider. Advance Directives must be written, signed by the adult while capable, and be witnessed by two witnesses or one witness who is a lawyer or notary public in good standing. A witness cannot be a person who provides personal care, health care or financial services to the adult for compensation, nor the spouse, child, parent, employee or agent of such a person.

**What makes the AD a legal document?** As of September 1, 2011 changes to the *Health Care (Consent) and Care Facility (Admission) Act*, as well as other *Acts*, deem this a legal document making it so that all health organizations, physicians, nurses, and all other regulated health care professionals are legally bound by the content of the AD. The only exception is if there is a Representative Agreement in place that specifically states the person's representative can make decisions that are not in line with the AD.

**When can an Advance Directive be challenged or revoked?** Anyone can bring an application to the courts to void an Advance Directive on the basis that fraud, undue pressure or some other form of abuse or neglect was used to induce an adult to make the advance directive, or to change or revoke a previous advance directive.

**Can physicians help develop a patient's Advance Directive?** Physicians can work with their patients to help develop an Advance Care Plan, along with the patient's family and other Representatives. Part of the ACP discussion can include talking about an Advance Directive, what it is and the role it plays, but physicians are not allowed to witness an AD.

**When should an Advance Directive not be followed?** It should not be followed if it does not deal with the health care decision at issue; if it is unclear; or if it is in conflict with the patient's known wishes, values, and beliefs. As well, if it involves health care on the prescribed Health Care List such as abortion, electroconvulsive therapy, psychosurgery, removal of tissue, etc. then additional instructions are required.

**What health care is excluded from the HCCCFAA?**

- Health care provided to children up to the age of 19 falls under the *Infants Act*.
- The admission and/or provision of psychiatric care or treatment in a designated facility under Sections 22, 28, 29, 30, or 42 of the Mental Health Act.
- Health care that falls outside of the AD.

**Is there an Advance Directive form?** The BC Ministry of Health will be developing an Advance Directive form that individuals can use when undertaking advance care. We will let you know when it is available.

## ADVANCE CARE PLAN

**What is an Advance Care Plan (ACP)?** This is the written summary of a capable adult's advance care planning conversation with their health care provider and/or family regarding their beliefs, values, and wishes about the health care they wish to consent to or refuse, in advance of a situation in which they are incapable of making health care decisions. This is used as a guide by the adult's substitute decision maker or representative in the event the adult becomes incapable of making decisions.

## REPRESENTATIVES, PERSONAL GUARDIANS, OTHER DECISION MAKERS

**What is a Representative and what powers do they have?** This is a person named by a capable adult in an Advance Care Plan to make health care decisions on behalf of the adult should they become incapable. If an Advance Directive exists, the Representative decides on health care for the adult based on the Advance Directive. If an Advance Directive does not exist, the Representative makes health care decisions for the adult based on their knowledge of the adult's beliefs, values and wishes.

**Do the changes affect Representatives?** Yes. An adult can no longer name as a representative a person who provides personal care or health care services to the adult for compensation –this includes the adult's own physician.

**What is a Temporary Substitute Decision-Maker and what powers do they have?** The TSDM is named by the health care provider who must choose from the list in the *Health Care (Consent) and Care Facility (Admission) Act* in the order given. A TSDM, is a family member or friend who is legally qualified and available to make health care decisions on behalf of an incapable adult. If an Advance Care Plan and/or an Advance Directive exist, they must make decisions that are consistent with the ACP or AD.

**What is a Personal Guardian and what powers do they have?** Referred to as the "Committee of the Person," the personal guardian is court appointed and has the ability to give, refuse, or withdraw consent to any health care to which the adult could give or refuse consent while capable, with few exceptions. A Personal Guardian may withdraw consent given by an adult when capable or by way of an Advance Directive, or by a Representative or Temporary Substitute Decision Maker. The Advance Directive document is not binding on the decisions of a Personal Guardian.

## CONSENT RULES

### Does informed consent need to be obtained an emergency or urgent health care situation?

Consent rules do not apply if:

- it is necessary to provide health care without delay in order to preserve life, prevent serious physical or mental harm, or to alleviate severe pain;
- the adult is apparently impaired by drugs or alcohol, is unconscious or semi-unconscious, or in the health care provider's opinion is otherwise capable of giving/refusing consent;
- the adult does not have a personal guardian (committee of the person) or representative who is authorized, capable, and available to consent to health care on the adult's behalf;
- a second health care provider confirms the first health care provider's opinion on incapability of the adult and the need for the provision of health care.