POLICY TITLE

Consent for Health Care

AUTHORIZATION	DATE APPROVED	DATE REVISED
President & Chief Executive Officer	June 2011	

1. PURPOSE

- To protect the rights of individuals and promote their full participation in making informed decisions with respect to their health care and treatment options.
- To ensure compliance with provincial legislation including the *Health Care (Consent) and Care Facility (Admission) Act* and Regulations, and standards of professional practice.

2. APPLICABILITY

This policy rescinds and replaces all previous consent for health care policies at Fraser Health. This policy applies to all Fraser Health programs and staff, including medical staff.

3. DEFINITIONS

Committee of Person means a person or agency named in a Court Order pursuant to the *Patients Property Act*, to be the Personal Guardian of an adult. The Committee has the legal authority to make personal and health care decisions on behalf of the patient.

Legal Guardian means a person who has legal authority to make decisions on behalf of a patient under 19 years of age (Minor).

Major Health Care means all surgical procedures, procedures requiring the use of a general anesthetic, major diagnostic or investigative procedures (including radiation therapy, intravenous chemotherapy, kidney dialysis, electroconvulsive therapy, laser surgery), administration of blood components/products[1] and any other treatment or procedure that presents appreciable risk to the patient as determined by the health care provider.

Minor Health Care means any health care that is not Major Health Care including preliminary examinations and routine tests to determine the need for health care, routine dental treatment, immunizations, blood tests and routine clinical procedures such as suturing of a wound.

Patient means patient, client or resident.

Representative means a person appointed by a capable adult in a Representation

[1] Refusal to consent to blood components/products must be documented on both the *Consent for Health Care* form and the *Refusal of Blood Components/Products Administration* form. The following definitions apply:
Blood component: a therapeutic component of blood intended for transfusion, e.g., red cells, granulocytes, platelets, plasma.
Blood product: any therapeutic product derived from human blood or plasma, and produced by a manufacturing process that pools multiple units (usually more than 12), e.g., human serum albumin, immunoglobulin preparations, and coagulation products (concentrates of factors VIII, IX, fibrinogen, anti-thrombin III, etc).

Agreement under Section 7 or 9 of the *Representation Agreement Act* who has legal authority to make health care decisions on their behalf if they become incapable (note: a Representative named under Section 7 is not authorized to refuse life-supporting care or treatment).

Valid Consent means consent that has been voluntarily given by a patient (or authorized decision maker) who is legally capable of giving consent; who has been fully informed about the nature of the proposed care (including how it relates to the patient's condition), the risks, benefits and any available alternatives of the proposed care (including the option of no care); and who has been given an opportunity ask questions and receive answers about the proposed care.

4. POLICY STATEMENT

Every capable person has the right to give, refuse or withdraw consent on any grounds even if refusal will result in death. A valid consent must be obtained prior to the provision of any health care. There are five steps to the consent process:

- Determine patient's capacity to make the decision
- Provide relevant information to inform the decision
- Verify patient's understanding
- Decision by the patient
- Document the consent process and outcome

Responsibility for obtaining a valid consent rests with the most responsible health care provider performing or proposing the care (usually a physician). This is both a professional obligation and a legislated duty imposed on the health care provider and cannot be delegated. For clarity of communication among members of the health care team, the health care provider must ensure accurate and timely documentation of the consent decision in accordance with this policy.

5. PROCEDURE

5.1. Presumption of Capability (Including Persons Under 19 Years of Age)

Every person is presumed capable of making decisions about their health care until the contrary is demonstrated. This includes Minors under 19 years of age. If the patient's capability is in question, the health care provider must assess for incapability to determine whether or not the patient demonstrates an understanding of the information provided about the nature, consequences and alternatives of the proposed health care; and that the information applies to the patient's own situation. A simple test is to have the patient repeat the information in his or her own words or manner. The provider must document the observations that form the basis for the assessment in the Health Record.

There is no legal age for consent in BC; however, the *Infants Act* states Minors may only consent to health care that is in their best interest, or that will improve or prevent deterioration of physical or psychological health. The general rule of thumb is the younger the Minor, the greater the effort should be to ensure capability of the Minor and encourage involvement of the parent/legal guardian, especially if the proposed health care carries significant risk. If the Minor is deemed capable of consenting, the Minor's wishes and autonomy must be respected. If a capable Minor or parent/legal guardian refuses to consent to essential health care, contact the Social Worker.

5.2. Substitute Consent for Incapable Patients

There are two types of substitute decision makers – formal and temporary. These are described below. Once the substitute decision maker is identified, the *Confirmation of Substitute Decision Maker* form should be completed and filed on the patient's Health Record in the Greensleeve. This is an important communication tool. A copy is provided to the patient and the substitute decision maker.

(a) Formal Substitute Decision Makers: If the patient has a duly appointed Committee of Person (personal guardian) or Representative, substitute consent must be provided by the Committee or Representative. Note: In the case of incapable Minors, consent is provided by the parent or legal guardian.

(b) Temporary Substitute Decision Makers (TSDM): If the patient does not have a Committee of Person or Representative (or the Committee of Person or Representative is not reasonably available to be consulted), a temporary substitute decision maker (TSDM) is chosen by the health care provider from the list below in the priority order given. The TSDM must be at least 19 years old, have been in contact with the patient in the past year, have no known disputes with the patient and be capable and willing to comply with the duties of a TSDM as outlined in the consent legislation:

a. spouse*
b. child
c. parent
d. brother or sister
e. grandparent
f. grandchild
g. anyone else related to the patient by birth or adoption
h. close friend of the patient
i. person immediately related to the patient by marriage

*Note: Spouse includes same sex partner living in a marriage-like relationship. In the case of a married patient who is separated, and in a common law relationship, the common law spouse should be chosen.

If no substitute decision maker is available or qualified, or there is a dispute about who to appoint that cannot be resolved, contact the Public Guardian & Trustee (PGT) to

appoint or act as TSDM.

Restrictions and Limitations of TSDM Authority:

- The TSDM should be formally appointed at the time a consent decision is required.
- The consent decision of the TSDM is valid for 21 days from the date of appointment.
- The TSDM may not consent to such procedures as abortion, electroconvulsive therapy, psychosurgery, human tissue transplants and removal, experimental health care, unapproved research and aversive therapy.
- The TSDM may refuse to consent to health care necessary to preserve life, but only if there is substantial agreement among the health care providers caring for the patient that the decision is medically appropriate, and is consistent with the patient's known wishes, beliefs and values.

5.3. Documenting Consent

Major health care: the *Consent for Health Care* form must be completed by the most responsible health care provider, signed by the patient/legal guardian or authorized decision maker and filed on the patient's Health Record. The provider should also document the consent discussion and decision in the Health Record.

For elective surgical patients, the consent form should be completed in the physician's office or pre-operative clinic and sent to the OR booking office prior to admission. Otherwise, the consent should be completed and signed as soon as possible after admission. Unit staff must ensure a signed consent is on the patient's Health Record before the patient is transferred to the OR. **The OR will not accept any patients without a signed consent (unless an emergency situation per section 5.8)**.

Minor health care: the consent discussion and decision is documented on the patient's Health Record. The *Consent for Health Care* form may be used, but is not required.

5.4. Communicating Consent (including via Telephone, Fax, Interpreter)

Consent may be communicated verbally, in writing or be inferred from conduct (implied consent). Telephone or Fax consent from a substitute decision maker is acceptable where it is not possible to obtain consent in person. An interpreter may be used in situations where a capable person is unable to provide written or verbal consent due to language barriers or physical limitations. Family members or friends can help the health care provider by confirming whether the person is communicating consent or refusal to consent.

5.5. Scope of Consent

Consent is specific to the procedure or treatment being proposed (including a series of procedures or treatments). Additional or alternative health care may be provided to a patient in situations where the health care that was consented to is in progress **and** the

patient is unconscious or semi-conscious **and** the health care is medically necessary to address conditions that were unforeseen when consent was given.

If the patient stipulates a particular health care provider perform the health care, no one else may perform the health care without the patient's consent unless the procedure or treatment is already underway when the patient's wishes become known, or a delay is likely to put the patient at risk of harm.

5.6. Portability of Consent

Occasionally patients undergo a procedure or treatment at a facility different from the one to which they are admitted. If a patient is transferred to another Fraser Health facility for the health care consented to, a new consent form is not required so long as there has been no change in the health care being proposed, and a photocopy of the signed consent accompanies the patient.

The consent form may be completed at the originating facility provided the health care provider at the receiving facility is satisfied a valid informed consent has been obtained (otherwise, the health care provider at the receiving facility will obtain and document consent). The original consent form is placed on the patient's Health Record at the facility the patient will be admitted to post procedure. If the patient is transferred back to the originating facility post procedure, the copy of the signed consent is placed on the Health Record where the procedure was performed.

5.7. Duration of Consent

Consent is valid until revoked **or** there is substantive change in the patient's health status **or** the health care provider has new knowledge about the patient's condition or treatment which may impact the patient's decision regarding future treatment **or** there is a change in the patient's substitute decision maker. Consent should be confirmed on a yearly basis for care plans that are long term in nature.

5.8. Emergency and Other Situations NOT Requiring Consent

In an emergency situation[2] when the patient or substitute decision maker is unable to consent, the known wishes of the patient must be respected. So long as there is no known previously expressed wish that the patient does not want the proposed treatment (such as an Advance Directive), health care may be provided without consent in order to save the patient's life, to prevent serious physical or mental harm or to alleviate severe pain. The health care provider must first make a reasonable effort in the circumstances to locate any available substitute decision maker. A formal assessment must be done

[2] For a clinical situation to be declared an emergency situation for which consent is not required, there must be demonstrable severe suffering or an imminent threat to the life or health of the patient. It cannot be a question of preference or convenience for the health care provider; there must be undoubted necessity to proceed at the time.

and documented on the *Consent for Health Care* form to confirm the patient's incapability and the immediacy of the proposed health care. Where practicable, a second provider should confirm the assessment.

Other situations not requiring consent are involuntary psychiatric treatment for certified patients under the *Mental Health Act*, and treatment of a reportable communicable disease per the *Public Health Act Communicable Disease Regulations* and *Venereal Disease Act*.

5.9. Special Considerations - Implantation of Human Tissue

Where there is an anticipated need for the transplantation of human tissue, it is expected that the provider will inform the patient.

6. APPENDICES

Sample Regional Consent Forms (available via Forms on Demand, Stores or Printshop):

- Consent for Health Care #CWXX104852A / Stores# 417470
- Refusal of Blood Component/Product Administration #CWXX100106B / Stores# 307719
- Confirmation of Substitute Decision Maker #ADDI102738B / PS# 256783

7. REFERENCES

- Health Care Providers' Guide to Consent to Health Care (2011), BC Ministry of Health
- Consent: A guide for Canadian physicians, Canadian Medical Protective Association
- Fraser Health Blood and Body Fluid (BBF) Exposure Policy
- *Health Care (Consent) and Care Facility (Admission) Act* and *Regulations*
- *Infants Act*
- *Mental Health Act*
- *Representation Agreement Act*
- *Patients Property Act*
- *Adult Guardianship Act*
- CSA Standard - Blood and Blood Components, Z902

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Regional CONSENT FOR HEALTH CARE

SAMPLE ONLY

PATIENT SURNAME	FIRST NAME	Other names	DOB(d/m/yyyy)	CARE CARD #

Section 1: Provider* Statement

Details of proposed health care treatment, procedure or treatment plan ***(print legibly and in full without abbreviations):***

_____

_____

_____

I have discussed the proposed health care and related risks with the patient or substitute decision-maker who, in my opinion, understood the information provided.

Provider Name (print): _____ Signature: _____ Date (d/m/yyyy): _____

Note: Provider refers to the most responsible health care provider proposing and/or performing the health care.

Section 2: Patient or Substitute Decision Maker Consent

Please note: ***You have the right to ask questions and receive answers about your health care.***

I, _____ (print name) consent to the health care described above. The nature and anticipated effect of the proposed care, including the significant risks and available alternatives have been explained to me. I am satisfied with and understand the explanations. I also understand that:

a. My provider may make use of other health care providers (including trainees) who may attend and/or assist in my care under the direction of my provider.

b. If tissues, body fluids or implants are removed during my care, they may be used for diagnostic examination, education or quality improvement purposes.

c. If a health care worker is exposed to my blood or body fluids during my care, my blood will be tested for risk assessment purposes for Hepatitis B, Hepatitis C and HIV. The test results will be confidential and will only be used to treat the health care worker. If positive, the test results will be reported to public health authorities as required by law (*Provincial Health Act*) and I will be offered treatment.

d. If my care includes inserting a medical device, my personal information will be shared with the supplier of the device for my safety, and will come under the privacy laws of the country where the supplier is located.

Signature: _____ Date (d/m/yyyy): _____

☐ Patient ☐ Parent/Legal Guardian ☐ Substitute Decision Maker*

Note: If signed by Substitute Decision-Maker, complete the Confirmation of Substitute Decision Maker form.

Section 3: Administration of Blood Components/Products (if applicable) ☐ Not applicable

My provider told me it may be necessary for me to receive blood components or blood products during my treatment.

☐ Yes, I consent to receive blood components/products ☐ No, I refuse blood components/products*

Signature: _____ Date (d/m/yyyy): _____

☐ Patient ☐ Parent/Legal Guardian ☐ Substitute Decision Maker*

Note:** ***If consent is refused, the Refusal of Blood Components/Products Administration form must be completed.

Stores # 417470

Section 4: Interpreter Declaration

I have accurately translated this document and acted as interpreter for the patient or substitute decision maker who told me that he/she understands the explanation and consents as described on page 1 of this form.

Interpreter Name (print): _____ Signature: _____ Date (d/m/yyyy): _____

Section 5: Telephone Consent

I have discussed the nature and expected effects of the proposed health care, including significant risks and available alternatives with (print name) _____ who is the patient's (state relationship) _____, and who has given verbal consent as substitute decision maker.

Provider Name (print): _____ Signature: _____ Date (d/m/yyyy): _____

Note: Where possible, at the earliest opportunity, the person who granted consent over the phone should sign Section 2 of this form.

Section 6: Certificate of Need for Urgent/Emergency Health Care

I certify it is necessary to provide the proposed health care without delay in order to save the patient's life, to prevent serious physical or mental harm, or to alleviate severe pain. The patient is, in my opinion, incapable of giving or refusing consent, and has not previously indicated a refusal to consent to this health care. I have been unable to consult with any available substitute decision-maker within a reasonable time in the circumstance and am not aware of an Advance Directive that the patient does not want the proposed health care.

Provider Name (print): _____ Signature: _____ Date (d/m/yyyy): _____

If practicable, it is recommended a second provider confirm the need for the proposed health care and the patient's incapability.

Provider #2 Name (print): _____ Signature: _____ Date (d/m/yyyy): _____

Instructions to Providers:

1. To be completed and signed in ink.
2. Nursing staff may obtain the signature of the substitute decision maker following telephone consent as confirmation of the consent decision. Any explanation about the proposed health care is the provider's responsibility.
3. Section 3 to be completed only if applicable.
4. Changes to this form must be initialed and dated by the provider and the patient or substitute decision maker.
5. The original of this form must be placed on the patient's health record.

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REFUSAL OF BLOOD COMPONENT/PRODUCT ADMINISTRATION

SAMPLE ONLY

PATIENT SURNAME	FIRST NAME	Other names	DOB(d/m/yyyy)	CARE CARD #

Note: This refusal to consent to administration of blood components/products will remain valid only for the duration of the procedure/treatment course below.

Section 1: Patient Refusal

I, _____, refuse the administration of blood components/products during my health care procedure or treatment described below. I understand the risks of not receiving blood components/products.

In making my decision to refuse administration of blood components/products, I confirm the following:

1. Dr. _____ and I have discussed the risks, including death, of not receiving blood components/products during the following procedure or treatment (print in full without abbreviations):

   _____

   _____

   _____

2. I have been given oral and/or written information and was given the opportunity to ask questions about the benefits and risks of receiving blood components/products. I am satisfied that my questions have been adequately answered. I understand what I have read (or has been read to me), and what has been discussed.
3. My doctor and I have discussed the possibility of using treatments other than administration of blood components/products which are appropriate for me. I understand the benefits and risks of these alternative treatments.
4. I understand I have the right to change my mind at any time regarding this refusal. However, I also understand there may be circumstances where it might be impossible to communicate my decision to cancel this refusal (for example, if I am unconscious during surgery).
5. I have indicated the following special instructions:

   _____

   _____

   _____

Signature: _____ Date (d/m/yyyy): _____

☐ Patient ☐ Parent/Legal Guardian ☐ Substitute Decision Maker*

Note: If signed by Substitute Decision Maker, the Confirmation of Substitute Decision Maker form must be completed.

Section 2: Physician Statement

I have explained the benefits and risks of consent and refusal to administration of blood components/products with the above named patient or substitute decision maker.

Signature of Physician: _____ Date (d/m/yyyy): _____

Note: Original to be filed on patient's health record. Copy to be sent immediately to Transfusion Medicine Laboratory

Stores # 307719

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CONFIRMATION OF SUBSTITUTE DECISION MAKER

SAMPLE ONLY

PATIENT SURNAME	FIRST NAME	Other names	DOB(d/m/yyyy)	CARE CARD #

The adult patient named above is assessed as being incapable of giving or refusing consent to health care. Under the *Health Care (Consent) and Care Facility (Admission) Act,* the health care provider must obtain consent from a legally authorized substitute decision maker. You are being asked to confirm your authority to be this patient's decision maker as outlined below.

Section 1: Decision Maker Statement

(a) Substitute Decision Maker:

I am authorized to make health care consent decisions for this patient in my capacity as:

☐ Personal Guardian (Committee of Person) - Provide *copy of Court Order*

☐ Representative with authority to consent - Provide *copy of Representation Agreement*

OR

(b) Temporary Substitute Decision Maker (TSDM):

I qualify to be chosen as Temporary Substitute Decision Maker because I am this patient's:

☐ spouse* ☐ child ☐ parent ☐ brother or sister ☐ grandparent

☐ grandchild ☐ related by birth or adoption ☐ close friend ☐ related by marriage

☐ I have been authorized by the Public Guardian & Trustee

**Includes common-law or same-sex partner in marriage-like relationship*

I confirm that I am at least 19 years of age, I have been in contact with the patient during the past 12 months and that I have no dispute with the patient. I am willing and able to act as the decision maker for the patient in accordance with the *Health Care (Consent) and Care Facility (Admission) Act.*

Name (print):_____ **Signature:**_____ **Date (d/m/yyyy):** _____

Address:_____

Phone (home):_____ **(work):**_____ **(cell):**_____

Section 2: Provider Statement

I confirm the selection of the above substitute decision maker/TSDM for the above named patient.

Name (print):_____ **Signature:**_____ **Date (d/m/yyyy):**_____

Note: Original to be filed in the Greensleeve of the patient's Health Record, along with copy of applicable Court Order or Representation Agreement. Copy given to Patient and Substitute Decision Maker/TSDM

Printshop # 256783

Obtaining Consent from the Substitute Decision Maker of an Incapable Adult

The health care provider explains the proposed treatment or course of treatment including:

- The condition for which the health care is proposed
- The nature of the proposed health care
- The risks and benefits of the proposed health care that a reasonable person would expect to be told about
- Alternative courses of health care (and when indicated, the likely consequences of no treatment)

↓

The substitute decision maker has an opportunity to ask questions and receive answers about the proposed health care

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The substitute decision maker (depending on the type) consults with the adult, considers the known wishes of the adult expressed when capable, or if not known, the known values and beliefs of the adult, or if not known, the best interests of the adult.

↓

The substitute decision maker gives (or refuses) consent to the proposed health care

↓

Consent must be renewed if:

- More than 21 days pass between the consent of a TSDM and the start of treatment
- A TSDM has given consent and the adult's level of capacity changes
- There is a change in the adult's health status and the treatment consented to is no longer appropriate

Note: Health care providers must stop or withdraw treatment if consent is subsequently withdrawn or refused.

Note: If an adult has an **Advance Directive** as well as a Representative, the Advance Directive may override the need for consent from the Representative if the Representative Agreement expressly states that the consent of the Representative is not required. In addition, if an adult has provided instructions in an Advance Directive with respect to any matter over which the representative does not have decision-making authority, a health care provider should follow the instructions in the Advance Directive.