MARKHAM STOUFFVILLE HOSPITAL CORPORATION	**270.914.914.030 Health Care Consent**
Location: Administrative (ADM)\Quality and Risk Management (ADM-QUAL)	Version: 3.50
Document Owner: Manager Risk Management	Original Approval Date: 06/23/2004
Electronic Approval: Van Patter, Jeanny (Deputy Chief Financial Officer)	Approval Date: 09/07/2018
Review Frequency: 3 years	Next Review Date: 05/01/2021

PURPOSE AND SCOPE:

The patient is supported to make his/her own decisions about treatment and there is confirmation that the patient has been provided with the information necessary to make an informed decision about treatment.

POLICY STATEMENT(S):

The Health Practitioner (HP) proposing a treatment or plan of treatment, must obtain informed consent from the capable patient or from the patient's Substitute Decision-Maker (SDM) if the HP proposing the treatment is of the opinion that the patient is incapable with respect to the proposed treatment, prior to the initiation of treatment as outlined in the Health Care Consent Act, 1996 (HCCA).

PROCEDURE:

Obtaining Consent from a Capable Patient	
Healthcare Practitioner (HP)	1. Informed consent must be obtained from the patient by the HP proposing the treatment or plan/course of treatment on behalf of all Health Practitioners involved in the plan of treatment. 2. Documentation of informed consent must be completed and included in the patient's health record prior to initiation of treatment. 3. If a written consent is required it must be completed and placed on the patient's health record prior to initiation of treatment.
Obtaining Consent when a Patient is Incapable with Respect to Treatment	
Healthcare Practitioner (HP)	If a HP determines that a patient is incapable of consenting to a treatment this finding of incapacity will be clearly documented in the patient's health record and consent or refusal of treatment will be obtained from the highest ranking SDM set out by the HCCA. 1. Hierarchy of Substitute Decision Makers (SDM) A. Guardian of the person if the guardian has authority to give or refuse consent to treatment. B. The Power Of Attorney (POA) for personal care if the POA confers authority to give or refuse consent to the treatment. C. Someone appointed as a representative by the Consent and Capacity Board (CCB). D. Spouse, partner or relative in the following order:

	a. Spouse or partner b. Child if 16 or older; custodial parent (who can be younger than 16 years old if the decision is being made for the substitute's child); or, Children's Aid Society. (of equal ranking unless official POA is identified) c. Parent who has only a right of access d. Brother or sister e. Any other relative by blood, adoption or marriage E. Public Guardian and Trustee is the SDM of last resort: in the absence of any more highly ranked substitute; in the event two more equally ranked substitutes cannot agree; or, if the requirements are not met by anyone. The Public Guardian and Trustee can be contacted through the Treatment Decisions Unit of the Public Guardian and Trustee. 2. The SDM will: • be available • be willing to accept the responsibility of giving or refusing consent • be capable of making treatment decisions • be at least 16 years of age 3. Requirements which may be asserted by the SDM and relied upon by the HP unless it is not reasonable to do so are that: • the SDM is at least 16 years of age; • the SDM is not prohibited by a court order or separation agreement from having access or giving or refusing consent; • the SDM believes the incapable person has no guardian or Attorney for Personal Care with authority to consent or refuse treatment, and no CCB appointed representative; • the SDM believes that no SDM of the same or a higher rank would object to him or her making a decision; or • the SDM is either the guardian, Attorney for Personal Care or Board appointed representative and believes no higher SDM exists. 4. The SDM's authority to consent includes: • consent to treatment • patient's registration to the hospital for the purpose of treatment consented to • another treatment that is necessary and ancillary to the treatment, even if the patient is capable with respect to the necessary and ancillary treatment. 5. See **Appendix A** for Procedures that may not be consented to by a SDM)
Application to the Consent and Capacity Board (CCB)	
Healthcare Practitioner (HP)	1. A patient may apply for review of a finding of incapacity. HP's should assist patients if they wish to exercise this option.

	2. A patient, who has been found incapable of consenting to treatment, may wish to have a representative appointed by the CCB. HP's should assist patients if they wish to exercise this option. 3. If an application is made to the CCB, treatment may not proceed unless the situation is an emergency until: • 48 hours after the HP is first informed of the intended application to the Board and no application has been made or the application is withdrawn; **or** • the CCB renders a decision and the HP is not informed of any intent to appeal; **or** • if a party to the application before the CCB has informed the HP that he/she intends to appeal the CCB's decision until the period for commencing the appeal has elapsed without an appeal being commenced; **or** • the appeal is disposed of.
Treatment in the Event of an Emergency	
	The Health Care Consent Act (HCCA) provides some exceptions for treatment in the event of an emergency. Please refer to Sections 25, 26 and 27 of the HCCA for direction.
Non-Residents of Canada	
	All patients who are non-residents of Canada MUST sign the consent form Governing Law and Jurisdiction Agreement at each time of registration and at each visit to Markham Stouffville Hospital (MSH) in addition, and prior, to any other consent.
Refusal of Treatment	
	A consent that has been given by or on behalf of the person for whom the treatment was proposed may be withdrawn at any time: • by the person, if the person is capable with respect to the treatment at the time of the withdrawal; or • by the person's SDM if the person is incapable with respect to the treatment at the time of the withdrawal. The HP must advise the patient or SDM of the possible consequences of any refusal or withdrawal of all or part of the treatment and this must be documented in the patient's health record. This policy does not pertain to: release of information; authorization for photography or videotaping; consent for research involving human subjects or organ donation; and, any other consent not pertaining to treatment.

DEFINITION(S):

Advance Directive or Wishes: A person may, while capable, express wishes with respect to treatment, admission to a care facility or a personal assistance service. Wishes may be

expressed in a power of attorney for personal care or in any other written form, orally or in any other manner. Later wishes expressed while capable prevail over earlier wishes.

Capable: A person is capable with respect to treatment if the person is able to understand the information that is relevant to making a decision concerning the treatment AND able to appreciate any anticipated consequences of a decision or lack of a decision. Capacity is not static- it can change over time and be different depending on the nature and complexity of the specific treatment decision. Capable and capacity may be used interchangeably.

Consent and Capacity Board (CCB): The CCB is an independent quasi-judicial tribunal created by the provincial government. It conducts hearings under the HCCA, the Mental Health Act, and the Substitute Decisions Act. The CCB considers applications for review of findings of incapacity; applications relating to the appointment of a representative; and, applications for direction regarding the best interests and wishes of an incapable person.

Emergency: An emergency exists if the person for whom the treatment is proposed is apparently experiencing severe suffering, or is at risk of sustaining serious bodily harm if the treatment is not administered promptly.

Expressed Wish: A statement, either verbal or written, regarding a person's choice of treatment.

Evaluator: An evaluator determines patient capacity to make a decision about treatment, admission to a care facility or a personal assistance service. Members of Regulated Health Professions may be evaluators.

Guardian: A person appointed, under the Substitute Decisions Act, as a guardian of another person.

Health Care Consent Act (HCCA): The HCCA identifies the requirements for consent and provides rules to address the issues that arise related to consent, and which apply consistently in all settings.

Health Practitioner (HP): A HP is a member of a College under the Regulated Health Professions Act, 1991 or a member of a category of persons prescribed by the regulations as a health practitioner. It includes all health care providers that participate in the planning or administering of the patient treatment or procedure.

Material Risks and Side Effects: Material risks and side effects would be those which are probable as well as those which are possible if they carry serious consequences.

Partner: Two persons are partners if they have lived together for at least one year and have a close personal relationship that is of primary importance in both persons' lives.

Personal Assistance Service (Personal Care): Personal assistance service means assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of daily living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person.

Plan or Course of Treatment: A series or sequence of treatments, developed by one or more health practitioners, to be administered to the patient over a period of time. The plan deals with one or more of the health problems that the patient has, or is likely to have in the future given the person's current health condition. It also provides for the administration of various treatments or courses of treatment, and may, in addition, provide for the withholding of treatment in light of the person's health condition.

Power of Attorney (POA) for Personal Care: The Power of Attorney for Personal Care is a legal document in which one person gives another person the authority to make personal care decisions. This includes the giving or refusing of consent to any matter to which the Health Care Consent Act applies and to any instructions, conditions or restrictions included in the Power of Attorney for Personal Care.

Spouse: Two persons who are married to each other or who are living in a conjugal relationship and have cohabited for at least a year, or who are the parents of a child, or who have a cohabitation agreement under the Family Law Act. Two persons are not spouses if they are living separate and apart as a result of a breakdown of their relationship.

Substitute Decision Maker (SDM): A SDM is a person who is authorized under the HCCA to give or refuse consent to a treatment on behalf of a person who is found to be incapable with respect to the treatment. The HCCA provides a hierarchy to determine who is eligible to be a substitute decision maker.

Treatment: Anything done for a therapeutic, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of treatment or plan of treatment. The legislation does not include the following activities in the definition of treatment:

- assessing the person's capacity to make decisions about treatment, admission to a care facility or personal assistance services
- assessing the person's capacity to manage property
- taking a person's health history
- assessing or examining a person to determine the general nature of the person's condition*
- communicating an assessment or a diagnosis
- admitting a person to a hospital or other facility
- providing a personal assistance service
- providing a treatment that in the circumstances poses little or no risk of harm*

*Unless the Health Practitioner opts to proceed as if these are "treatment" for the purposes of the Act.

REFERENCE(S):

Service Ontario E-Laws. Health Care Consent Act, 1996, retrieved April1, 2013 from, http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm.

Consent to Medical Treatment, 2006, retrieved April 26, 2013 from http://www.cpso.on.ca/Policies/consent.htm.

Practice Guideline Consent, 2009, retrieved April 19, 2013 from http://cno.org/Global/docs/policy/41020_consent.pdf.

Public Guardian and Trustee website: http://www.attorneygeneral.jus.gov.on.ca/English/family/pgt/

RELATED DOCUMENTS:

100.914.914.015 Interpreter Services
530.914.917.045 Governing Law and Jurisdiction
Consent to Treatment CONT (11/10) (41010 7002 4/01)
Refusal/Withdrawal of Treatment REFWT (11/10) (41010 7002-2 7001 10/98)
Consent for Transfusion of Blood and/or Blood Products CONRTB (7/12) (7010)
Refusal for Transfusion of Blood and/or Blood Products CONRTB (11/10) (41010 7010-2 4/01)
Obstetrical Consent to Treatment, CONTMC (11/10) (41010 5309 4/01)

RESPONSIBILITY:

Required Endorsements	Sponsor	Approval Authority
Risk Management Clinical Operations Committee – All Services Interprofessional Advisory Committee Ethics Committee	Manager, Integrated Risk Management	Corporate Quality Committee Medical Advisory Committee

DOCUMENT HISTORY:

Type	Individual/Committee	Date	Outcome
Draft		01/07/1998	New Document
Revision		16/04/2014	Retired: Consent to Open a Shared Record 2.4.4 YRPSLP and Procedures Requiring Signed Consent 060.700.020 (Diagnostic Imaging)
Revision	Manager, Integrated Risk Management	22/08/2018	Major Revision; Approved

APPENDICES:
APPENDIX A: GUIDELINE(S)

Capacity
A Health Practitioner (HP) who proposes treatment to a patient, other than emergency treatment, must take reasonable steps to ensure that it is not administered unless he/she is of the opinion that the patient is capable with respect to the treatment and the patient has given informed consent, or, if the patient is incapable, the SDM has given consent.

If the HP is of the opinion that the person is able to understand the information that is relevant to making a decision concerning the plan or course of treatment, the HP shall consider the following criteria in order to determine whether in his/her opinion the person is able to appreciate the reasonably foreseeable consequences of a decision:

- the person must be able to acknowledge the fact that the condition for which the treatment is recommended may affect him/her;
- the person must be able to assess how the proposed treatment and alternative to the treatment presented by the HP, including the alternative of not having the treatment, could affect the person's life or quality of life;
- the person's choice of treatment must not be substantially based on a delusional belief.

A person is presumed to be capable with respect to treatment unless reasonable grounds to suspect incapacity exist.

Don't presume that the person is incapable based solely on:

- presence of a psychiatric or neurological disorder
- presence of disability including a speech or hearing impairment
- the refusal of a proposed treatment
- the request for an alternative treatment
- the person's age

Observations that **MAY** lead you to believe that a person is incapable with respect to a proposed plan of treatment:

- evidence of confused or delusional thinking
- inability to make a settled choice about the treatment
- experiencing severe pain, acute fear or anxiety
- severe depression
- drug or alcohol impairment
- other related observations of communication or behaviour that cause concern

Incapable patients have the right to be informed of the plan of treatment. The HP proposing treatment has an obligation to advise the patient in the most appropriate manner and to the extent permitted by the patient's capacity.

If the patient disagrees with the finding of incapacity, or disagrees with the involvement of the SDM, the HP must advise the patient of his/her options. These include the finding of another SDM of the same or more senior rank, and/or applying to the Consent and Capacity Board for a review of the finding of incapacity.

Under the Mental Health Act, a psychiatric patient, who is found to be incapable to give consent, must receive independent rights advice from a Rights Advisor.

Consent
Consent can be implied or explicit, verbal or written.

Consent to treatment, and assessing the capacity to consent to treatment must relate to a specific treatment or plan of treatment.

The HP proposing the treatment or plan of treatment is responsible for assessing a person's capacity to make a treatment decision. One HP can propose a treatment or plan of treatment and obtain consent to the plan on behalf of all the HP's involved in the plan of care.

The HCCA does not identify an age at which minors may exercise independent consent for health care because the capacity to exercise independent judgment for health care decisions varies according to the individual and the complexity of the decision at hand. HPs must make a determination of a child's capacity to consent to the proposed treatment just as they would for an adult.

The use of abbreviations on any consent form is prohibited.

The following elements are required for Health Care Consent:
- the consent must relate to the treatment
- the consent must be informed
- the consent must be given voluntarily
- the consent must not have been obtained through misrepresentation or fraud.

Consent is informed if, before giving it:
- The person received the information about the treatment that a reasonable person in the same circumstances would require to make a decision.
- The person received responses to his/her requests for additional information about the treatment.

The information MUST include the:
- nature of the treatment
- expected benefits of the treatment
- material risks of the treatment
- material side effects of the treatment
- alternative courses of action

- likely consequences of not having the treatment.

Informed consent may or may not include signing of a consent form. A signed consent form does not replace the necessary consent to treatment discussion.

Written consent forms

- Must be completed by the HP proposing the treatment and be obtained prior to initiation of treatment
- Are required for:
    - all surgical procedures (done in the OR and/or Endoscopy Suite)
    - high risk invasive procedures and/or procedures requiring anaesthesia, at the discretion of the Health Practitioner proposing the treatment
    - any procedure for which the HP and/or clinical area feels that a written verification of informed consent is required
    - blood and blood product administration

Otherwise, the decision as to whether a written consent form is completed should be consistent with the standard of care for that provider in their work environment (eg. Emergency Department, Operating Room, Diagnostic Imaging)
A signed consent form requires the signature of the Health Practitioner proposing the treatment and the patient, or if the patient is incapable with respect to treatment, the SDM.

The patient's signature on the consent form will be obtained by the Health Practitioner proposing treatment at the time of the discussion of informed consent or anytime thereafter but prior to the performance of the procedure(s), test(s) and/or treatment (s).

Any modifications of the consent must be documented in the patient's health record. All informed consent processes will be documented in the patient health record, and in circumstances in which a Consent Form has been signed it will be placed in the patient health record prior to initiation of treatment.

There is no time limit on the validity of a written consent provided:

- there are no changes to the treatment or procedure that has been consented to
- there are no indications that the patient wishes to withdraw consent, or did not understand, or was not mentally capable at the time that informed consent was given
- any updates in information pertaining to the treatment or procedure have been provided
- there have been no changes in the patient's risk factors.

If any of these elements change, the HP must obtain a new informed consent either from the patient or the SDM.

Unless it is not reasonable to do so in the circumstances, a health practitioner is entitled to presume that consent to a treatment includes:

a. consent to variations or adjustments in the treatment, if the nature, expected benefits, material risks and material side effects of the changed treatment are not significantly

different from the nature, expected benefits, material risks and material side effects of the original treatment; **and**

b. consent to the continuation of the same treatment in a different setting, if there is not a significant change in the expected benefits, material risks or material side effects of the treatment as a result of the change in the setting in which it is administered..

The following procedures **may not** be performed on the consent of a SDM. They **can only be performed with the informed consent of a capable patient and/or** on a court order:

- a procedure whose primary purpose is research
- sterilization that is not medically necessary for the protection of the person's health
- the removal of regenerative or non-regenerative tissue for implantation in another person's body.

c. consent to treatment provided by MSH learners who are under the supervision of a regulated health practitioner.