

Advance Care Planning Frequently Asked Questions

GENERAL QUESTIONS	1
QUESTIONS FOR REGULATED HEALTH CARE PROVIDERS	15
QUESTIONS FOR EMERGENCY MEDICAL ASSISTANTS	21

GENERAL QUESTIONS

1. What is advance care planning and why is it important?

Advance care planning is the process a capable adult follows to ensure that their beliefs, values and wishes for future health care are known in the event that the adult is incapable of making health care decisions when the health care is required. When a capable adult does advance care planning, their close family or trusted friends and health care providers know the adult's wishes for health care treatment and can respect them in the event the adult is incapable of deciding for themselves when the care is needed.

2. How do I start my advance care planning?

You can use the [My Voice: Expressing My Wishes for Future Health Care Treatment](#) advance care planning guide to help you start thinking about and planning for your future health care. The guide offers information about what advance care planning is, how to do it, and includes optional pages and forms to make your own advance care plan. The guide can be downloaded in whole or part at: www.seniorsbc.ca/legal/healthdecisions/. You may also wish to watch the Ministry of Health's video on advance care planning found at the same link. It explains how to use the guide. The video is available in English and with Chinese and Punjabi subtitles.

3. Who determines if I am incapable of making health care treatment decisions?

B.C. law provides that a health care provider must presume that an adult is capable of making their own health care treatment decisions until the contrary is demonstrated. An adult in B.C. may be determined to be incapable by a health care provider after an assessment by that health care provider.

4. What is an advance care plan?

An advance care plan is a written summary of a capable adult's beliefs, values and wishes for future health care, in the event the adult is incapable when the health care is required, and may include an advance directive, or a representation agreement in which the adult names another person to make health care decisions on behalf of the adult. This other person is called a representative.

5. What is an advance directive?

An advance directive is a capable adult's written instructions expressed directly to their health care provider, or to their representative if they have named one in a representation agreement, for the health care the adult consents to, or refuses in the event they are incapable when the care is needed. Advance directives are legally binding documents provided for in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#). An advance directive may not include anything that is prohibited by law or an instruction to omit to do anything that is required by law. [See question # 23](#) about what makes an advance directive legal.

6. What is the difference between an advance care plan and an advance directive?

An advance directive is a legally binding document that provides the adult's written instructions, made while capable, directly to their health care provider, for the health care they wish to consent to or refuse when incapable. An advance care plan may include a representation agreement and/or an advance directive, both of which are optional. An advance care plan that does not include a representation agreement or an advance directive informs the person chosen by a health care provider to make health care decisions for the adult of the adult's instructions or wishes expressed while capable. That person is called a temporary substitute decision maker.

7. What is the difference between a living will and an advance directive?

The term 'living will' is a term from the United States that has been adopted into everyday language, and typically refers to any kind of advance care planning document. The term 'living will' is not in B.C.'s health care consent legislation, although it is generally accepted to mean a person's wishes for future health care. [See question # 5 on 'advance directive'](#) and [question # 1 on 'advance care planning.'](#)

8. Where can I find a form to write an advance directive?

The Ministry of Health developed an optional form you can use if you wish to make an advance directive. The form is included in the [My Voice: Expressing My Wishes for Future Health Care Treatment](#) advance care planning guide. The advance directive form, when completed properly, meets the requirements for an advance directive as set out in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#).

9. Who does the term 'health care provider' include?

In the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#), a health care provider means a professional licensed, certified, or registered to provide health care in British Columbia under either the [Health Professions Act](#) or the [Social Workers Act](#) (e.g. physician, nurse practitioner, registered nurse, registered social worker, etc.). A list of the regulated health professionals covered by those acts can be found in Appendix 2 of the [Health Care Providers' Guide to Consent to Health Care \(2011\)](#).

10. What is a temporary substitute decision maker (TSDM)? How is a TSDM chosen?

A TSDM is a capable adult over age 19 who is chosen by a health care provider to give or refuse consent on an adult's behalf when an adult is incapable of making a decision about health care when the health care decision is needed. A TSDM may decide about any type of health care treatment except for those on the prescribed list in the [Health Care Consent Regulation](#). A TSDM is usually a close family member and is chosen from the set list below in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#), which a health care provider must follow.

- 1) The adult's spouse (may be married or cohabiting; may be same sex);
- 2) The adult's child (any, equally ranked);
- 3) The adult's parent (equally ranked and includes adoptive);
- 4) The adult's brother or sister (any, equally ranked);
- 5) The adult's grandparent (any, equally ranked);
- 6) The adult's grandchild (any, equally ranked);
- 7) Anyone else related by birth or adoption to the adult;
- 8) A close friend of the adult;
- 9) A person immediately related to the adult by marriage.

To qualify as TSDM, a person must:

- 1) Be at least 19 years of age;
- 2) Have been in contact with the adult during the preceding 12 months;
- 3) Have no dispute with the adult;
- 4) Be capable of giving, refusing or revoking substitute consent; and
- 5) Be willing to comply with the duties of a TSDM.

If a qualified and available TSDM cannot be identified to make a decision on the adult's behalf, the [Public Guardian and Trustee](#) (PGT) may authorize someone, including a person from the office of the PGT, to be chosen as a TSDM. If an adult has a court-appointed personal guardian (committee of the person) or has named a representative in a representation agreement, a TSDM is not chosen unless the committee of the person or representative is incapable or unavailable.

11. Can I choose my TSDM?

No. Your health care provider chooses a TSDM (using the list above) when you are incapable and a health care decision is needed. If you want to specify an adult as your substitute decision maker instead of your health care provider choosing a TSDM, you must name a representative in a representation agreement while you are capable of doing so.

12. I have three children. Does birth order count toward the choice of TSDM?

No. Birth order does not count in the choice of a TSDM. Adult children rank equally. If there is a dispute about who is to be chosen, the health care provider must request the Public Guardian and Trustee to authorize a person to be chosen. If you wish to specify one of your adult children to be your decision maker, you must name them as your representative using a representation agreement while you are capable of doing so.

13. My partner and I have been living together for a few months. Is there a set time period we have to be together before we are considered spouses (in relation to being a TSDM)?

Individuals who are living together in a marriage or marriage-like relationship, including common-law and same sex couples, have no required time period before they are considered spouses. If you do not want your partner to be chosen as your TSDM, you should name someone else as your representative in a representation agreement while you are capable of doing so.

14. I've been chosen as the TSDM for my sibling who went into hospital recently. How do I use their advance care plan to make decisions on their behalf?

As a TSDM, you must respect your family member's instructions or wishes that they shared with you in conversation and in their advance care plan. You should consult with your family member as much as possible, and comply with any instructions or wishes expressed by them while capable, including instructions or wishes in their advance care plan.

15. What is a representative? What is a representation agreement?

A representative is a person named by a capable adult in a legally binding document called a representation agreement. The adult may authorize the representative to make or help make health care treatment and personal care decisions on behalf of the adult at a time when the adult is incapable of making those decisions.

The [Representation Agreement Act](#) outlines the various types of authority that may be given to a representative. You are not required to visit a lawyer or notary public to make a representation agreement, although you may wish to do so.

16. There are two types of representation agreements, called Section 7 and Section 9 agreements. What are the differences?

Section 7 representation agreements, or "standard" agreements have a more restricted scope of decision making authority than Section 9 or "enhanced" agreements. Section 7 representation agreements may be used to authorize a representative to make decisions about health care treatment and personal care, the routine management of the adult's financial affairs and obtaining legal services for the adult and instructing legal counsel. Section 7 agreements do not authorize a representative to make decisions to refuse health care treatment necessary to preserve life or to physically restrain, move or manage the adult if the adult objects, or to authorize another person to do these things.

Section 9 representation agreements may be used to authorize a representative to make decisions about health care treatment and personal care. Financial and legal matters are not within the scope of a Section 9 representation agreement. Section 9 representation agreements have wider health care scope than Section 7 agreements. For example, a representative under a Section 9 agreement may make health care treatment decisions that include giving or refusing consent to health care treatment necessary to preserve life.

17. Where can I find a form to make a representation agreement?

The Ministry of Justice prepared optional [representation agreement forms](#). They meet the requirements set out in the updated *Representation Agreement Act* as of September 1, 2011. The forms are also included in the [My Voice: Expressing My Wishes for Future Health Care Treatment](#) advance care planning guide. The most recent version of the forms may be found on the [Ministry of Justice webpage](#).

18. What makes a representation agreement legal?

The legal requirements for a representation agreement are that it be in writing (i.e., not verbal), be made and signed by the adult at a time when the adult is capable, be witnessed by two people (or one person if the witness is a lawyer or a notary public), and be signed by:

- a) each representative if the representation agreement appoints more than one representative and the representatives must act jointly; or
- b) the representative if the representation agreement appoints one representative; or
- c) at least one representative if the representation agreement appoints more than one representative but each may act independently.

The signatures of the representative(s) or alternate representative do not have to be witnessed. Representative(s) and alternate representative do not have to be present together when they sign the representation agreement and any one or more of them may sign it in counterpart. Before a person may act as representative, the person must sign the representation agreement.

Additionally, In order for a Section 7 Representation Agreement to be effective, the following certificates found in the [Representation Agreement Regulation](#) must be completed, as applicable:

- Form 1 (Certificate of Representative or Alternate Representative);
- Form 2 (Certificate of Monitor), if the representation agreement names a monitor;
- Form 3 (Certificate of Person Signing for the Adult), if a person is signing the representation agreement on behalf of the adult;
- Form 4 (Certificate of Witnesses).

There is no prescribed (required) form in B.C. to make a representation agreement. The Ministry of Justice published [optional forms](#) to make a representation agreement. The standard forms provide an option of how a representation agreement may be made.

19. Who may witness my representation agreement?

Your representation agreement should be witnessed by two adults (or one person if the witness is a [lawyer](#) or a notary public who is a member in good standing of the [Society of Notaries Public of BC](#)). Your witness(es) for your representation agreement must be over the age of 19 years and able to understand the type of communication or language you use, unless an interpreter is present. A witness may not be your representative or alternate representative; or the spouse, child, or parent of your representative or alternate representative; or an employee or agent of your representative or alternate representative, unless the person named as a representative or alternate representative is:

- (i) a lawyer,
- (ii) a member in good standing of the Society of Notaries Public of British Columbia,
- (iii) the Public Guardian and Trustee, or
- (iv) a financial institution authorized to carry on trust business under the [Financial Institutions Act](#).

Note that a witness signing a Section 7 representation agreement must complete a [certificate in prescribed form](#) (Form 4 in the Schedule to the *Representation Agreement Act*).

If you have a person sign your representation agreement on your behalf because you are unable to sign it yourself, that same person may not also be your witness, representative, or alternate representative. If the person is signing a Section 7 representation agreement on your behalf, they must complete a [certificate in prescribed form](#) (Form 3 in the Schedule to the *Representation Agreement Act*).

20. I've been named as a representative for my close friend. What do I do with their representation agreement and advance directive forms?

As a representative, it is your legal duty under the [Representation Agreement Act](#) and the [Health Care \(Consent\) and \(Care Facility \(Admission\) Act](#) to respect your close friend's wishes, beliefs, and values. When acting under a representation agreement you must consult with your friend to the extent reasonable to determine his or her current wishes, and comply with them if reasonable to do so. The exception to this is where a person has a Section 9 representation agreement and provides that the representative need only comply with any instructions or wishes the adult expressed while capable.

If your friend's current wishes cannot be determined, or it is not reasonable to comply with them, you must comply with any instructions or wishes your friend expressed while capable, including any written in the representation agreement or advance directive. Also note that a representative should make themselves known to the adult's health care providers.

If your friend's representation agreement states that a healthcare provider may act in accordance with an instruction in their advance directive without the consent of the representative, then as the representative, you will not be asked to make a decision on behalf of your friend if the advance directive is relevant to the decision required. If the advance directive is not relevant to the decision required, then you would be asked to make a decision on behalf of your friend, respecting their instructions or wishes, expressed while capable.

You may find more information about personal planning in the Public Guardian and Trustee's [*It's Your Choice – Personal Planning Tools* guide](#).

21. Where should I keep my advance care plan, advance directive, and/or representation agreement?

You should keep these documents in a safe and accessible place in your home (not a safety deposit box locked away in a bank vault). Some people place them on their fridge, or in a coloured folder on the fridge (e.g., in a plastic sleeve). You should take the time to discuss your advance care planning wishes and any documents you make with your trusted family or friends to ensure they have a copy, or know where they are kept. It's also a good idea to fill out the wallet card at the back of the [*My Voice: Expressing My Wishes for Future Health Care Treatment*](#) advance care planning guide and place it in your wallet, so that health care providers have information about you and where your advance care plan is kept.

You are encouraged to provide copies of your advance care plan and/or advance directive to your family physician and other health care providers. Your representative should have your representation agreement with original signatures. If you prefer, you can leave your original representation agreement with a lawyer or notary with instructions on when the document may be released. If you do so, you should tell your representative where it is.

22. What is a personal guardian/committee of the person?

A personal guardian, whose formal name is committee of the person, refers to a substitute decision maker who is appointed under the [*Patients Property Act*](#) by a judge of the Supreme Court of British Columbia. A personal guardian may be necessary if an incapable adult did not make a representation agreement or advance directive while capable, and health care and personal care decisions now need to be made.

A personal guardian (committee of the person) is the highest ranking substitute decision maker an adult may have and, unless restricted by the court, can give or refuse consent to any health care that the adult could have given or refused consent for when capable, with the exception of non-therapeutic sterilization. A personal guardian acts for the benefit of the adult and may withdraw a consent or refusal given by the adult in an advance directive, or by a representative or TSDM. A personal guardian should make themselves known to the adult's health care providers.

23. What makes an advance directive legal?

The legal requirements for an advance directive are that it be in writing (i.e., not verbal), be made and signed by the adult at a time when the adult is capable, and be witnessed by two people who may each act as a witness (or one person if the witness is a lawyer or a notary public).

Additionally, in the advance directive, the adult must indicate in writing that the adult knows:

- A health care provider may not provide to the adult any health care for which the adult refuses consent in the advance directive, and
- A person may not be chosen to make decisions on the adult's behalf for any health care for which the adult has given or refused consent in the advance directive.

There is no prescribed (required) form in B.C. to make an advance directive. The Ministry of Health included an optional advance directive form in the [My Voice: Expressing My Wishes for Future Health Care Treatment](#) advance care planning guide, and the form includes the statements that are required to be in an advance directive as set out by the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#).

24. Who may witness my Advance Directive?

Your advance directive should be witnessed by two adults (or one person if the witness is a [lawyer](#) or a notary public who is a member in good standing with the [Society of Notaries Public of BC](#)). Your witness(es) for your advance directive must be over the age of 19 years and able to understand the type of communication or language you use, unless an interpreter is present. A witness may not be a person who provides paid personal care, health care or financial services to you (other than a practicing lawyer or a notary public) or be that paid person's spouse, child, parent, employee or agent. Also see questions # [51](#) and # [52](#).

If you have a person sign your advance directive on your behalf because you are unable to sign it yourself, that same person may not also be your witness.

25. In what situation may an advance directive not be followed?

By law, there are situations where an advance directive is not followed. In these situations, if the adult has not made a representation agreement, the health care provider must choose a TSDM. A TSDM will be chosen if the advance directive:

- does not deal with the decision at issue;
- is too unclear to determine that the adult gave or refused consent to the health care;
- is in conflict with the person's known wishes, values or beliefs;
- was made before changes in medical knowledge or technology that might benefit the adult (unless the advance directive states that it applies even if changes in medical knowledge or technology occur);
- was not made voluntarily;
- was obtained by fraud or misrepresentation; or
- the adult was not capable of making the advance directive at the time it was made.

26. How long is an advance directive in force, once it is signed?

If an adult has an advance directive, then the advance directive stands unless and until the adult cancels (revokes) it. If a health care provider reasonably believes that an adult's wishes, values or beliefs in relation to a particular health care decision have significantly changed since the advance directive was written, and the change is not reflected in the advance directive, then the health care provider must obtain substitute consent from a committee of the person or representative, if the adult has one, or from a TSDM chosen by that health care provider. The substitute decision maker will make a decision in the adult's best interests and they must consider the adult's current wishes and known beliefs and values.

27. What happens to my Advance care plan or 'living will' or advance directive-like document made before September 1, 2011?

Documents that were made in B.C. before September 1, 2011 which are called an advance care plan or 'living will', or are like an advance directive, may be deemed a valid advance directive ONLY if they meet all of the requirements for advance directives set out in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#). [See question # 23.](#)

An advance care planning document or 'living will' or advance directive-like document made before September 1, 2011 that is not a deemed advance directive may be relied upon by your TSDM or representative as an expression of your instructions or wishes, if a health care treatment decision needs to be made on your behalf.

28. If my advance directive refuses consent to cardiopulmonary resuscitation (CPR), will emergency medical assistants (“paramedics”) still perform CPR on me?

No. Licensed emergency medical assistants (EMA), including licensed first responders such as firefighters with an EMA-FR license, must not perform an emergency procedure on an adult if they have reasonable grounds to believe that the adult has made an advance directive that refuses consent to the emergency procedure. If an EMA has reasonable grounds to believe that you made an advance directive that refuses consent to CPR, then they must not perform CPR on you.

29. What is a ‘No CPR’ form?

A ‘No CPR’ form signed by your physician is a valid physician’s order that authorizes emergency medical assistants to not give you cardiopulmonary resuscitation (CPR) when your heart and lungs stop working. The form is published by the Ministry of Health in collaboration with the B.C. Ambulance Service and the British Columbia Medical Association. This form helps alert professionals and first responders in a timely manner about your decision to refuse consent to CPR. A signed No CPR form is part of the Ministry of Health protocol for planning for an expected, natural home death. See [#30](#) below.

If you have a signed No CPR form, you can obtain a MedicAlert® No CPR bracelet or necklet at no cost from the MedicAlert Foundation of Canada®. To learn more about CPR and the MedicAlert necklet, or to download a No CPR form, see www.healthlinkbc.ca and search “Should I have CPR?” and then follow the link to B.C. specific information.

30. Do I need a ‘No CPR’ form in addition to my advance directive form to refuse cardiopulmonary resuscitation (CPR)?

No, you do not need to complete a ‘No CPR’ form to refuse CPR. If you have made an advance directive on or after September 1, 2011 that refuses consent to CPR, then CPR will not be performed by health care providers, including emergency medical assistants.

You may be asked to complete a No CPR form, however, by your physician or community nurse if you are doing end-of-life care planning for an expected natural home death, or if you are entering a hospice for end-of-life care. The Ministry of Health includes use of the No CPR form in the [Joint Protocol for an Expected/Planned Home Death](#). For more information on the *Joint Protocol*, speak to your health care provider or visit [End-of-Life Care](#) on the ministry’s website.

31. Where can I get a No CPR form?

A No CPR form is often used by patients who know they have a life-limiting illness or are at the natural end of their lives, and have discussed the use of a No CPR form with their family physician. Once the form is signed, you can obtain a MedicAlert® No CPR bracelet or necklet at no cost from the MedicAlert Foundation of Canada®. To learn more about CPR and the MedicAlert necklet, or to download a No CPR form, see www.healthlinkbc.ca and search “Should I have CPR?” and then follow the link to B.C. specific information.

32. Do I have to create an advance care plan, advance directive, or representation agreement, or sign a No CPR form for admission to a licensed care facility?

No. You cannot be required to make an advance care plan, advance directive, or representation agreement, or sign a No CPR form to receive a good or service, including admission to a licensed care facility, such as residential care. Hospice clients, however, may be requested to sign a No CPR form on admission to hospice.

33. I moved here from another part of Canada. Is my future health care planning document made outside B.C. going to be respected and followed in British Columbia?

While it is unlikely that documents similar to advance directives that were made outside B.C. will meet all the requirements to be a valid advance directive in B.C., they could be used to inform your substitute decision maker and your health care provider about your wishes and instructions. If you have a document from another jurisdiction that expresses an instruction to refuse consent to emergency health care, and this is available at the time when you need the emergency health care, then that emergency health care will not be provided. Section 9 of the [Representation Agreement Regulation](#) provides a way to have documents that are like representation agreements deemed a representation agreement in B.C. – [see # 34 below](#).

34. I recently moved to B.C. from another part of Canada. Before I moved, I signed a legal document that gives my son authority to manage all my financial affairs and to make personal and health care decisions for me if I become incapable, including refusing CPR. Does my legal document from outside B.C. work in B.C., or do I have to make a new one?

The document may be deemed both a power of attorney and a section 9 representation agreement valid in B.C., if the requirements below are met:

- You were ordinarily resident outside B.C. but within Canada, or within the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia or New Zealand, when the document was made;
- The document was validly made in accordance with the laws of the jurisdiction in which you were ordinarily resident and in which the document was made;
- The document continues to be effective in that jurisdiction; and
- A solicitor permitted to practice in that jurisdiction signs a certificate as set out in the [Representation Agreement Regulation](#), and the [Power of Attorney Regulation](#).

Note: An exception to the above is that some agreements made under Yukon's *Adult Protection and Decision-Making Act* cannot be deemed a valid representation agreement in B.C. – see the [Representation Agreement Regulation](#), Section 9 (3).

For more information about the authority of the representative or attorney acting under a document deemed valid in B.C., see the [Representation Agreement Regulation](#), Section 9, and the [Power of Attorney Regulation](#), section 4.

35. My Section 7 representation agreement authorizes my representative to make routine financial decisions, personal care decisions, and some health care treatment decisions. Do I need to make an enduring power of attorney document too?

If you have a Section 7 or “standard” representation agreement that includes routine financial decision making in addition to health and personal care decision making, your representative may make or help make those decisions on your behalf when you become incapable of making those decisions independently. This includes decisions about the routine management of financial affairs, including, subject to the [Representation Agreement Regulation](#), the payment of bills, receipt and deposit of pension and other income, purchases of food, accommodation and other services necessary for personal care, and the making of investments. A Section 7 representation agreement may also include obtaining legal services for the adult and instructing counsel to commence proceedings, except divorce proceedings, or to continue, compromise, defend or settle any legal proceedings on the adult's behalf.

You might need an enduring power of attorney if you wish to appoint someone to act on your behalf for financial and legal affairs that are not covered by the Section 7 representation agreement. You may not need an enduring power of attorney if your standard representation agreement authorizes your representative to do everything you want your representative to do on your behalf. For more information, see the [Representation Agreement Regulation](#).

36. What is an enduring power of attorney and can the attorney make health care decisions on another adult's behalf?

An enduring power of attorney may be made under the [Power of Attorney Act](#). It is a way you can appoint someone to act on your behalf with respect to your financial and legal affairs, and they may continue to act even if you become incapable. It does not include power to make health care decisions.

37. May I give consent to be an organ donor in my advance directive, representation agreement, or enduring power of attorney form?

Registering with the BC Transplant [Organ Registry](#) is the best way to record your decisions to be an organ donor, and ensures that health care providers in every hospital in B.C. have access to your confidential donor information. You can sign up [online](#) or call 1 800 663-6189 to get a registration form in the mail.

B.C. law provides that if you are a capable adult, you may give or refuse consent to the use of your body, or parts of it, after death for organ donation or medical education or scientific research purposes, in your representation agreement, advance directive or your enduring power of attorney, providing the form(s) has been completed properly and you sign the form on your own behalf.

B.C. law, however, does not allow you to give consent to *living* organ donation through an advance directive, representation agreement or enduring power of attorney form.

For more information about organ donation, please review the [BC Transplant website](#).

QUESTIONS FOR REGULATED HEALTH CARE PROVIDERS

Health care providers may also wish to review the general questions and questions for emergency medical assistants. [See question # 9](#) about the term ‘health care provider’.

38. Where can I find more information about health care consent?

The Ministry of Health has updated the [Health Care Providers’ Guide to Consent to Health Care \(2011\)](#). The updated guide helps health care providers to understand the basic legal requirements for securing valid consent or refusal to a course of health care for an adult in BC and includes new consent flow charts and scenarios.

39. Can a health care provider write a medical order for future health care, such as a MOST (medical order for scope of treatment), DNR (do not resuscitate) or LOI (level of intervention) form that is based on an adult’s **advance directive**?

If the adult is capable, the health care provider must seek consent or refusal to a course of health care or intervention directly from the adult, not from their advance directive.

If the adult is not capable and has a valid advance directive, the health care provider could write an order on one of the above forms on the basis of the instructions in the advance directive. If the adult also has a representative in addition to an advance directive, the health care provider must seek consent for writing and administering the orders from the representative (unless the representation agreement states that a health care provider may act on the advance directive without consent from the representative). If the adult also has a personal guardian (committee of the person) in addition to an advance directive and/or a representative, the health care provider must seek consent to write and administer the orders from the adult’s personal guardian.

The adult’s representative and/or personal guardian should make themselves known to the adult’s health care providers. The consent flow charts in the back of the [Health Care Providers’ Guide to Consent to Health Care \(2011\)](#) may be useful to help determine when substitute consent should be obtained.

40. Can a health care provider write a medical order for future health care that is based on an adult's **advance care plan**?

If the adult is capable, the health care provider must seek consent or refusal to a course of health care or intervention directly from the adult. If the adult is not capable and has an advance care plan that does not include an advance directive or a representation agreement, the health care provider must seek consent for writing and administering the orders from a person chosen by the health care provider as a TSDM. The TSDM will be guided by the adult's wishes in the advance care plan when making health care decisions on the adult's behalf. If the health care does not begin within 21 days of the consent being given, the health care provider must confirm in writing that the adult is still incapable and that the TSDM confirms that the health care should begin.

The consent flow charts in the back of the [Health Care Providers Guide to Consent to Health Care \(2011\)](#) may be useful for health care providers to help determine when to obtain substitute consent.

41. If an incapable adult with an advance directive is admitted to a hospital or care facility, and the health care provider writes a set of orders based on the instructions in the advance directive, do they have to keep using the advance directive prior to administering those orders? Does a TSDM have to give consent to the orders?

If the health care treatment orders are based on the instructions in the advance directive, the health care provider is complying with the adult's instructions and does not need to keep reviewing the advance directive prior to administration of the orders, nor does the health care provider need to choose a TSDM. If there were a change in the adult's condition, or an earlier order was no longer appropriate, the advance directive would need to be reviewed again. Similarly, if the adult were to have become capable, the consent of the adult would be required before the orders could be followed.

42. If my patient or client is incapable, how do I know if they have an advance care plan, advance directive, or representation agreement?

Often, an adult may not have their advance care planning documents with them when they need unexpected health care treatment. The adult's emergency contact or TSDM may know if the adult did any advance care planning. Some health authorities and health care providers are developing ways to note, track or attach an adult's advance care planning documents to office, hospital or care facility records (e.g. plastic folders called "green sleeves" in some health authorities that fit on top or inside a patient chart or medical record). A representative and/or a personal guardian should make themselves known to the adult's health care providers.

43. As a health care provider, I know that I must comply with an adult's instructions in their advance directive. What happens in an emergency if I don't know whether the person has an advance directive, or not?

Emergency health care may be provided when the adult is not capable of giving or refusing consent, and it is necessary to provide health care without delay in order to preserve life or prevent serious physical or mental harm or alleviate serious pain, and the adult does not have an immediately available representative or personal guardian (also known as committee of the person), and, where practicable, a second provider confirms the need for health care and incapability.

If the health care provider has reasonable grounds to believe that the adult expressed a wish or instruction while capable to refuse consent to the emergency care needed, then the provider must not give that care (e.g., wearing a MedicAlert® bracelet or necklet to refuse CPR).

If treatment is started without consent, and a substitute decision maker subsequently refuses treatment, or an advance directive is located that refuses treatment, the treatment must be withdrawn.

44. What should the health care provider do when an adult needs health care and the instructions in an advance directive don't deal with the health care at issue?

If the instructions in an advance directive do not deal with the health care decision required, and the adult does not have a representative or personal guardian (committee of the person) with authority to make a decision about the matter, a health care provider must choose a TSDM in accordance with the list set out in the [Health Care \(Consent\) and Care Facility \(Admission\) Act](#). [See question # 10](#).

45. There is no TSDM available for my patient. How do I contact the Public Guardian and Trustee to authorize a person to be chosen as a TSDM outside of regular office hours?

For health care decisions outside of regular office hours, you can phone the toll free number at 1 877 511-4111. Office hours are 8:00 am - 5:00 pm (Monday-Friday) and 8:00 am - 12:00 noon (Weekends and Holidays). During office hours, you can phone the Public Guardian and Trustee's Regional Office or the toll free-number at 1 877 511-4111.

Greater Vancouver Office : 604 775-1007
Vancouver Island Office: 250 356-8160

Lower Mainland Office : 604 775-1001
Interior-North Office: 250 712-7576

46. Is there a fee code for general practice physicians to do advance care planning with patients?

General practice physicians may be compensated for advance care planning conversations with their patients who have reached the palliative stage of a life-limiting illness (life expectancy of up to six months). The G14063 Palliative Care Planning Fee is payable upon development and documentation of a palliative care plan. The general practice physician who has created and billed for G14063 may bill for clinical follow-up management using the G14069 Palliative Care telephone/email follow up management fee (maximum of five times).

47. Is a person who has the capability of making a Section 7 representation agreement that does not include decisions about life-prolonging medical interventions, capable of making an advance directive that may include refusal of life-prolonging medical interventions?

A definitive response to this question cannot be provided. Whether a person is capable of making an advance directive will depend upon the person's capability at the time when they wish to make an advance directive.

48. What is the duty/role of unregulated health care providers (e.g., respiratory therapists, lab technicians, home support workers etc.) regarding advance directives in the following two situations:

A) When administering routine health care (e.g., respiratory tests, treatments, home care/personal care - bathing etc.) re: the consent/refusal issue for care delivered:

An unregulated care provider may provide care on the instructions of a health care provider who is acting in accordance with an advance directive.

B) When administering routine health care as above AND a health emergency takes place, e.g., the adult has a cardiac arrest?

If the adult has an advance directive that contains instructions that no CPR is to be administered in the circumstances, and the unregulated health care provider is aware of this, the unregulated health care provider should comply with these instructions and should not provide CPR.

49. What are the consequences for a health care provider who does not follow the *known* instructions in an adult's advance directive? For example, the person has refused to receive CPR and/or defibrillation, yet it is knowingly given against the person's instructions.

The health care provider could be disciplined by his/her licensing body and could be sued by or on behalf of the adult to whom the emergency care was given

50. If an adult's advance directive refuses consent to admission to hospital and the community health care provider (or emergency medical assistant) attends the person and finds them in need of health care and reads their advance directive, how should they respond?

The health care provider or emergency medical assistant must determine if the valid advance directive clearly addresses the health care treatment decision that has to be made. For example, the advance directive may refuse admission to hospital but not for emergency treatment.

If the health care provider or emergency medical assistant determines that the adult is vulnerable, unable to seek or refuse support and assistance, or is suffering from self-neglect, then the adult should be referred to the appropriate agency designated to receive reports and act in situations of adult abuse, neglect and self-neglect in accordance with the [Adult Guardianship Act](#) Part 3.

51. May a physician's medical office assistant act as a witness for an adult's advance directive when that medical office assistant works for the adult's physician?

If a medical office assistant is employed by a physician who provides health care to an adult for compensation, the combination of [s. 19.5 \(5\)](#) (a) and (b) of the [Health Care \(Consent\) and Care Facility Admission Act](#) would prevent that medical office assistant from acting as a witness to the signing of an advance directive by the adult. See question [#24](#).

52. May a health care provider or a person who works for them, act as a witness for an adult's advance directive, when that health care provider is not providing health care to the adult for compensation, such as a working in a different unit in a hospital or neighbouring clinic, or has a personal relationship with the adult and are not also acting as the adult's health care provider?

A health care provider, who is not providing care to an adult, or a person who is an employee or agent of that health care provider, may be able to witness the signing of an advance directive by the adult, provided the health care provider does not have a financial interest in the adult's health that might put them in a position of conflict of interest. This concern about potential financial conflict of interest would not appear to be present in situations where a health care provider is not providing paid health care to the adult or is not the business partner of someone who is. See question [#24](#) about who can witness an Advance directive.

QUESTIONS FOR EMERGENCY MEDICAL ASSISTANTS

Emergency medical assistants may wish to review the other frequently asked questions.

53. Are licensed first responders, including emergency medical assistants and firefighters, required to follow an adult's instructions in their advance directive?

As of September 1, 2011, all persons licensed as emergency medical assistants (EMAs) in B.C. (including licensed first responders such as firefighters with an EMA-FR license) and acting under the [Emergency and Health Services Act](#), must not perform an emergency procedure if the EMA or EMA-FR has reasonable grounds to believe that the adult has made an advance directive that refuses consent to the service. See the [Emergency and Health Services Act, s. 11.1](#).

54. Does a person licensed as an emergency medical assistant (EMA), who sometimes works as an occupational first aider (OFA), have to comply with a person's advance directive when they are working as an OFA, but not as an EMA?

In this situation, the person acting as an OFA is not providing a service under the [Emergency and Health Services Act](#). However, under the common law, emergency health care must not be provided to a person if it would be contrary to his or her wishes or instructions expressed while capable. If an OFA is aware that a person has made an advance directive expressing an instruction or wish applicable to the circumstances, and refusing consent to emergency health care, the OFA should not provide that health care.

55. Does an emergency medical assistant who has reasonable grounds to believe an adult has made an advance directive AND a representation agreement have to seek refusal for an emergency procedure through the adult's representative when the advance directive refuses consent to that procedure?

No, the emergency medical assistant (EMA) should proceed on the basis of the advance directive alone. If an adult has both a representation agreement and an advance directive, then the EMA follows the advance directive and doesn't need to seek a decision from the representative.

56. Does an emergency medical assistant who believes an adult has made a representation agreement have to seek a decision about an emergency procedure from the adult's representative?

Yes, if the representative is immediately available. If the representative is not immediately available to give or refuse consent, and there is no strong evidence that the adult does not want emergency medical care (such as a No CPR order, or a MedicAlert® No CPR bracelet/necklet or advance directive that refuses emergency medical care), the emergency medical assistant should proceed to provide emergency health care to the adult in accordance with normal procedure.

57. What are the consequences for an emergency medical assistant who does not follow the *known* instructions in an adult's advance directive? For example, the person has refused to receive CPR and/or defibrillation, yet it is knowingly given against the person's instructions.

The emergency medical assistant could be disciplined by his/her licensing body and could be sued by, or on behalf of, the adult to whom emergency care was given.