

Adult Guardianship & Trusteeship Act Frequently Asked Questions

The Adult Guardianship & Trusteeship Act (AGTA) provides a range of decision-making options for Albertans who have capacity, whose capacity is impaired, or who are incompetent to make decisions. These decision-making options affect how consent is obtained from patients. Until AHS can develop a province-wide policy to guide the practice of obtaining consent in all AHS care settings, a directive addressing the AGTA is in place. This directive, along with supporting information, can be found on the Alberta Health Services web site at <http://www.albertahealthservices.ca/853.asp>.

Information can also be found at the web site of the Office of the Public Guardian (OPG) (<http://www.seniors.alberta.ca/opg/guardianship/>) and in a special section for health care providers (<http://www.seniors.alberta.ca/opg/guardianship/ServiceProviders/>)

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The following information addresses questions that have been received from clinical and other areas.

Co-Decision Making

Q: What is co-decision-making? If a person is able to agree to consent, why is it court ordered?

Co-decision-making is less intrusive than full guardianship and applies when an adult needs formalized support but still has some capacity to participate in decision-making. The adult and the co-decision-maker work cooperatively through the decision-making process and the co-decision-maker cannot unilaterally make decisions on behalf of the adult. Both the adult and the co-decision-maker are required to provide consent.

See the Co-Decision Brochure at <http://www.seniors.alberta.ca/opg/Guardianship/Brochures/opg5610.pdf> for further details.

Q: If an individual has a co-decision-maker but is unable to provide informed consent, would the co-decision-maker be allowed to sign the consent?

No. The intent of co-decision-making is for the adult and co-decision-maker to make decisions together. If the patient does not have the capacity to make a decision with the support of their co-decision-maker, then further assistance is required. In such cases a number of options exist. For example, if there is a Personal Directive and it can be enacted, the Personal Directive should be utilized. If there is no Personal Directive or guardian, decision-making may fall to a specific decision-maker identified by the health care provider. If there is a change in capacity that appears to be permanent, then other long term solutions would need to be explored, such as guardianship.

Minors

Q: Who provides consent if a mature minor is unable to?

The AGTA deals with the adult population only. Issues of obtaining consent from youth will be addressed in an AHS consent policy. All policies and procedures in former region pertaining to youth and to mature minors are still in effect until revoked.

Choosing the Right Decision-Making Option

Q: How does a health care provider decide on the right decision-making option?

Decision-making options are on a continuum and are influenced by any number of circumstances (e.g. family and/or social support network of the patient; the type and/or urgency of care required; the capacity of the patient, etc.). The least intrusive option is always preferred and the patient should only progress along the continuum according to capacity. What works for one individual may not work for another. Individual circumstances, as well as the requirements of capacity assessments – for specific decision-making, co-decision-making and for guardianship – will help to guide the patient, their family, health care providers, and the court, to the appropriate decision-maker (i.e. the patient or another individual).

Emergency Health Care

Q: When providing Emergency Health Care to an adult, what is required from the Registered Nurse providing the second signature? Is there an implied degree of diagnosis involved?

When providing emergency health care a physician obtains a written opinion from a second physician that the situation meets the criteria for providing emergency health care. If a physician is unavailable then a nurse practitioner or R.N. can provide this opinion. No specialized training (i.e. for assessing competency) is required. The opinion only concerns the criteria that: 1) the health care is necessary to preserve life, prevent serious harm or alleviate severe pain; and 2) the patient lacks capacity due to impairment, lack of consciousness, or other causes. The opinion does not concern treatment options.

For the Emergency Health Care processes – and for the criteria of an emergency situation – Refer to the *AGTA Emergency Health Care for Adults Algorithm* on the AHS website for Health Professionals (Quick Facts section)

<http://www.albertahealthservices.ca/853.asp>.

Q: If a physician orders an emergency procedure and the second health care provider does not agree with the need for this, who then signs the consent form?

The second opinion only concerns whether: 1) health care is necessary (to preserve life, prevent serious harm or alleviate severe pain); and 2) the adult lacks capacity. See process at: <http://www.albertahealthservices.ca/files/agta-emerg-health-carealgorithm.pdf>.

If you feel uncomfortable with a treatment going forward, it is important to follow your current policies regarding disagreement with a clinician, remembering that we have a duty to provide safe care to patients. It also may be helpful to request an ethics consult.

Consent

Q: When a procedure is to be done that does not require a physician (e.g. debridement of a wound), will the physician now be required in the consent process?

Continue to follow the current consent policies in place in your region regarding who obtains consent. The principles and processes regarding supportive decision-makers, co-decision-makers, and specific decision-makers apply.

For further information please refer to the AHS directive at <http://www.albertahealthservices.ca/files/agta-consent-directive.pdf>.

Q: What is being done to communicate to physicians' offices outside of Alberta Health Services (e.g. re: signed surgical consents, etc)?

Current practice is to continue using existing consent policies and forms. This has been communicated widely. Information about the AGTA legislation has been sent from the Office of the Public Guardian directly to all physicians in the province via the College of Physicians and Surgeons and there has also been information about the AGTA in *The Messenger*.

Q: Will there be the ability for a family member to provide consent for an incapacitated patient in ICU for collecting forensic evidence (e.g. sexual assault exam)?

If the exam is done for police purposes (e.g. to preserve DNA for court purposes) then the processes to support AGTA (i.e. re: decision-makers) do not apply. Staff and physicians should only examine or collect for the purposes of a court application or charges with the consent of the patient or when compelled to do so by warrant or subpoena.

Q: If a patient presents and seems capable of making a decision but a family member states that the patient is unable to consent, how does staff know who has the ability to sign the consent? Does the family member have to provide documentation?

This would depend upon the circumstances. It is reasonable for the health care provider to ask to see any applicable court order or personal directive. If the family member provides documentation (i.e. a valid court order or personal directive and declaration of incapacity) then the health care provider should be guided by that information. If a co-decision-maker, agent or guardian does not have documentation, then the health care provider can contact the Office of the Public Guardian to determine if an order or personal directive is in place (contact information at: http://www.seniors.alberta.ca/contact_us/opg/). If there is no documentation, and the circumstances warrant it, the health care provider may choose to employ specific

decision-making. Specific decision-making has its own capacity assessment process that may lead to a resolution (i.e. whether the patient has capacity to consent or not).

Q: There is a wide spectrum of treatment and procedures in delivery of health care. Is there a list of procedures that do or do not require engagement of this consent process?

Current policies in place in the former regions that pertain to consent for specific procedures are still valid. The development of a provincial policy for consent is underway and will address the clarification of what procedures require written consent or not.

Many consent policies have a list of procedures, usually invasive or high risk, that require a consent form being signed. Remember that consent is an ongoing process and includes discussions with the patient or their legal representative and signing of the consent form. The consent form is only evidence that the process has occurred.

Capacity Assessment

Q: Will there be training for Capacity Assessors?

A: No training is required to assess capacity for specific decision-making. A physician, nurse practitioner or dentist can assess capacity for the purpose of identifying a decision-maker. Regulated forms, which outline the process, must be used.

The Office of the Public Guardian will be providing training regarding capacity assessment for the purpose of making a court application under the AGTA (i.e. capacity assessment for guardianship or co-decision-making applications). The process for assessing capacity has changed. In the past physicians and psychologists have assessed capacity for court ordered processes. The professions authorized to conduct capacity assessments under the AGTA has expanded to also include registered nurses, registered psychiatric nurses, occupational therapists and social workers. After completing required training, professionals from these professions can be designated as capacity assessors under the AGTA (physicians and psychologists are automatically qualified to conduct capacity assessments under the AGTA).

Please check the Capacity Assessment section at
<http://www.seniors.alberta.ca/opg/guardianship/ServiceProviders/>

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Q: Under what circumstances can a resident or chief resident perform a capacity assessment?

For specific decision-making, a physician, nurse practitioner, or dentist can assess capacity. Since a resident is not considered a physician until registered, as per the *Medical Profession Act* (i.e. following completion of a residency), they cannot assess capacity for specific decision-making. For other court-ordered decision-makers (guardianship, co-decision-making), the persons who can assess capacity are a physician, psychologist, or other designated capacity assessor. A resident may complete a capacity assessment for this purpose only if they have been designated as a capacity assessor.

Registry for Guardianship and Co-Decision-Making Orders

Q: I've seen a presentation that mentioned a central registry for AGTA. What is this?

A registry of court orders (guardianship, trusteeship, co-decision-making orders) will be available to confirm what orders exist for a patient. Access will be through the Office of the Public Guardian. This registry is separate from the registry that contains personal directives. While the registry has not been officially launched yet, the Office of the Public Guardian currently has the capacity to confirm if a guardianship order is in place for an individual.

Contact information at: http://www.seniors.alberta.ca/contact_us/opg/

Personal Directives

Q: How are personal directives to be handled under the AGTA?

There is no change to current practice as regards personal directives. Personal directives allow the adult to choose an agent while still capable. The range of decision-making options in the AGTA will address situations when there is no personal directive to guide decision-making. Further information about personal directives is available at <http://www.seniors.alberta.ca/opg/personaldirectives/>.

Out of Province

Q: Staff have encountered substitute decision-making orders (e.g. guardianship) from other provinces. How are these to be considered?

Guardianship orders made in other provinces are recognized by the "receiving" province when the adult is temporarily in the "receiving" province. If the adult was to move to Alberta permanently then the guardian would have to apply to the Court of Queen's Bench in Alberta to have their order "resealed" (i.e. accepted as a permanent order in Alberta).

Q: The guardian of a patient lives in another province. Is that alright?

Under the AGTA, a guardian can reside in another province or country while the dependent adult lives in Alberta. The most important element is where the dependent adult lives, not where the guardian lives.

Q: What if the condition of a patient from out-of-province changes while they are receiving care here in Alberta? Can AGTA decision-making options be used?

Yes, though remember to check first if the patient already has an advanced planning tool like a personal directive. The *Alberta Personal Directives Act* specifies that as long as an advanced planning document complies with Alberta requirement it has the same effect (i.e. it can be recognized) as if it were made in Alberta. If it does not comply with Alberta's legislation, refer the matter to AHS Clinical Legal Services. If there is no advanced planning tool in place, staff may want to support the patient in considering the

preparation of a personal direction. Depending on the circumstances, specific decision-making may also be employed.

AHS Clinical Legal Services can be consulted for specific assistance (Provincial Clinical Legal Intake Line: 1-888-943-0904).

Documentation/Chart Requirements

Q: For specific decision-making situations, does the capacity assessment have to be kept on the chart with the consent?

The AGTA and its regulation requires a written record to be kept of: 1) the assessment of capacity of the adult to make a decision; 2) the declaration of the specific decision-maker; and 3) a record of the decision made by the specific decision-maker. The following forms from the Office of the Public Guardian contain this information and must be used for specific-decision-making:

- Assessment of Capacity of Adult to Make Decisions Respecting the Adult's Health Care (Specific Decision Making) - Form 6

OR

- Assessment of Capacity of Adult to Make Decisions Respecting the Adult's Temporary Admission to or Discharge from a Residential Facility (Specific Decision Making) - Form 7
- Declaration of Specific Decision Maker - Form 8
- Health Care Provider's Record of Specific Decision Making - Form 9

Q: Does a copy of the court order for co-decision-maker or guardianship need to be on the chart with the consent?

There is no requirement in the AGTA for this; health care providers should follow the applicable charting/documentation policies and guidelines of their former region, and follow the AHS policies once they are in place. Generally, it is good practice for clinicians to keep copies of these types of orders to support that valid consent was obtained. Where requests for a copy of a court order have been refused, best practice would be for health care providers to review the order and to document the refusal.