

MEMORANDUM

This Memorandum is meant to provide you with an overview of the process involved in applying to the Public Trustee for consent to medical treatment. Please find attached for your records a copy of Forms "A" through "F" and Schedule "H" referred to in the body of the Memorandum. Please keep these documents on file for future use.

The Public Trustee has the authority to consent to medical treatment on behalf of individuals who lack the capacity to consent on their own behalf, pursuant to sections 54 and 55 of the *Hospitals Act*. These sections read as follows:

Consent to hospital treatment

54 (1) No person admitted to a hospital shall receive treatment unless he consents to such treatment.

(2) If a person in a hospital is found by declaration of capacity to be incapable of consenting to treatment then that person may be treated either upon obtaining the consent of the guardian of that person, if he has one, or if he has not a guardian upon obtaining the consent of his spouse or common law partner, if the spouse or common law partner is cohabiting with the person in a conjugal relationship, or next of kin and where the spouse or common-law partner or next of kin is not available or consent is unable to be obtained upon obtaining the consent of the Public Trustee.

55 The examination of a person in a hospital by a psychiatrist to determine whether or not that person is competent to administer his estate or capable of consenting to treatment may be performed at any time as the need arises, and notwithstanding this, such an examination in a facility shall be performed

- (a) at least once every three months for the first year during which the person is a patient;
- (b) at least once every twelve months thereafter.

This means that the Public Trustee's authority to consent to medical treatment arises when a patient:

- (a) is in a hospital; and
- (b) found by declaration of capacity to be incapable of consenting to treatment; and
- (c) does not have a guardian, or spouse or next of kin available to consent or such consent is unable to be obtained; and
- (d) the proposed treatment is necessary for the benefit of the patient.

The legislation precludes the Public Trustee from consenting to treatment of individuals in a physicians office, nursing home, or small options home etc. and appears to make it mandatory to admit all such patients in the hospital for medical and/or surgical procedures.

A typical application to the Public Trustee for a consent to treat order may proceed as follows:

1. The physician in a long term care facility, believing that the patient requires treatment, will prepare and deliver to the administrator of the long term care facility a written diagnoses and treatment recommendation in affidavit form (see Form "A" attached). It will not be necessary to prepare Form "A" if Forms "D" and "E" (see attached) are prepared by physicians, setting out the diagnosis, treatment plan and the need for treatment.
2. The administrator of the long term care facility and a social worker who has knowledge of the patients social background, if available, will each make an affidavit describing why they believe that patient has no guardian, spouse, or next of kin available to consent or why such consent is not able to be obtained (see Forms "B" and "C" attached).
3. The physician in a long term care facility, the administrator of the long term care facility and/or the social worker will arrange for the patients admission to a hospital.
4. Forms "A", "B" and "C" should be delivered to the hospital administrator prior to the patient being admitted or upon admission.
5. After the patient is admitted at the hospital they should be seen immediately by a psychiatrist, who will make, or decline to make and file with the hospital administrator, a declaration of capacity as per Schedule "H", Regulation 10, *Nova Scotia Hospitals Act* (see attached).
6. The patient will then be examined by staff physicians who will make a diagnosis and recommend a treatment plan. After assessment and

consultation, Form “D” should be prepared by the qualified physician who will be carrying out the medical treatment. Attached to Form “D” should be the medical report, which includes the diagnosis and recommended medical or surgical procedure. It should always be remembered that the Public Trustee is not a physician, so, the report should be written in a manner and in terminology understandable to a non-medical person, a patient or a family member of the patient. (The above mentioned medical report is referred to as an exhibit in paragraph 6 of Form “D”.) Form “E” should be completed by another physician who participated in the diagnosis and concurs with the recommendation for treatment.

7. If the patient is not expected to require a hospital bed for one full day or more (e.g. they are being admitted for day surgery), he or she should be taken to the hospital where he or she will be treated, at an earlier date, not more than three months in advance of the date of the scheduled procedure, to allow the physicians to do the examinations necessary to prepare the treatment plan and the Declaration of Capacity (Schedule “H”).
8. As soon as the medical decisions and affidavits have been made, the hospital administrator, or a member of the hospital's social work department, should make a formal application to the Public Trustee for consent to treatment (see Form “F”). It is recommended that you provide the Public Trustee office with as much advance notice of the application as possible.
9. Once the Public Trustee receives all the required documentation, and it is established that the individual is in the hospital, has been found to be incapable of consenting to treatment, does not have a guardian, or spouse or next of kin available to consent or such consent is unable to be obtained and that the proposed treatment is for the benefit of the individual, she will grant her consent to treat and immediately send notice to the hospital where the medical treatment is being carried out.

Generally, Forms “B” through “F” (Form “A” is often not required) are sent to the Public Trustee well in advance of the individual's admission to the hospital, thereby providing the Public Trustee with notice that a consent to treat is required and when it will be required.

It is not uncommon for the Public Trustee to receive consent to treat applications from administrators of long term care facilities, social workers at long term care facilities, or from the administrators or members of the social work department from the treating hospital, in situations where diagnostic tests and procedures cannot be carried out on a person without the administration of a general anaesthetic. In such a case, the application to the Public Trustee will be an application for consent to the administration of a general or specific diagnostic procedure (under general anaesthetic if recommended) and not necessarily for consent to specific remedial treatment.

It also must be understood that the consent to medical treatment or specific diagnostic procedure granted by the Public Trustee will cover only the treatment plan set out in the application. This means that if one month later the same individual requires further medical treatment, an additional application will have to be made to the Public Trustee.