



AL0200 CONSENT - PERSONS UNDER 19 YEARS OF AGE

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1.0 PURPOSE

To ensure a valid consent process that is congruent with provincial legislation and regulations and standards of professional practice.

2.0 DEFINITIONS

TERM	DEFINITION
Best interest	The expectation that the health care to be given will improve (or prevent deterioration or impairment of) physical or psychological health.
Guardian	A person who has legal authority to make decisions on behalf of a person under 19 years of age and includes a parent of the person under 19 years of age.
Emergency health care	Treatment required to preserve life or prevent serious physical/mental harm or alleviate severe pain.
Essential health care	Treatment required to prevent serious or permanent impairment to health.
Implied consent	When a person under 19 years of age presents themselves for routine diagnostic and treatment/service measures in emergency, out-patient, and clinic settings, or when they accept health care services, or by conduct (nodding the head, cooperating with examination, etc.)
Person under 19 years of age	Anyone who has not yet reached the age of 19 years.
Minor health care	All health care not considered to be essential and includes routine tests to determine if health care is necessary, routine dental treatment that prevents a condition or injury caused by disease or trauma and preventative health care including immunizations.

3.0 POLICY

3.1 Consent Requirement

A valid consent must be obtained prior to providing any health care requested by or provided to a person under 19 years of age.

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3.2 Exceptions from Obtaining Consent

A health care provider may proceed with providing health care without consent:

- if **emergency** health care is required, and after
 - checking for alerts on the person or in the possession of the person under 19 years of age;
 - making a reasonable effort to locate the parent/legal guardian; and
 - confirming the immediacy of the treatment with a second practitioner if deemed necessary.
- when involuntary **psychiatric** treatment for a certified patient is authorized by a Director appointed under the *Mental Health Act*; and
- when a person under 19 years of age requires treatment of a reportable communicable disease. (Under the authority of the *Health Act Communicable Disease Regulations* and *Venereal Diseases Act*, treatment is compulsory if ordered by the Medical Health Officer).

3.3 Form of Consent

- a) Consent to health care may be expressed orally, in writing or be inferred from conduct (implied consent).
- b) Telephone/facsimile consent from the person under 19 years of age's parent/guardian is acceptable in circumstances where it is not possible/practicable to obtain consent in person.

3.4 Age of Consent

- There is no set age when a person under 19 years of age has the ability to consent. It depends on the maturity of the person and the seriousness of the proposed treatment.
- In general, the younger the person, the greater the effort should be in obtaining parental/legal guardian involvement and concurrence, especially if the patient is under 14 years of age or the proposed procedure/treatment carries complex risks.
- **Note:** Persons under 19 years of age, who demonstrate the ability to consent, may consent to health care for their children.

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3.5 Ability of Person Under 19 Years of Age to Consent

A person under 19 years of age's consent is only valid if the health care provider:

- has determined that the proposed health care is in the person's "best interest", and
- has explained to the person and is satisfied the person under 19 years of age understands the nature and reasonably foreseeable benefits and risks of the proposed health care.

3.6 Person Under 19 years of Age is Unable to Consent

- If the health care provider determines that the person under 19 years of age does not meet the requirement to provide consent, the health care provider must then obtain consent from the person's parent/guardian.
- See Appendix B – Determining Parent/Legal Guardian

3.7 Person Under 19 years of Age Instructs No Contact with Parent/Guardian

- If a person under 19 is **able** to consent and advises the health care provider not to contact his/her parent/guardian this instruction must be honoured.
- If a person under 19 is **unable** to consent because of an "altered level of consciousness" but advises he/she does not want his/her parent/legal guardian contacted this request must be honoured unless the health care provider determines:
 - the person under 19, due to age or other reasons, would not have the ability to consent even if they were not in an altered state of consciousness, or
 - emergency health care is required.

3.8 No Legal Guardian or Guardian is Incapable

If there is no parent/legal guardian or if the parent/legal guardian is incapable of providing consent, then the health care provider must notify the Director of Child Protection.

3.9 Refusal of Essential Treatment

- If a person under 19 years of age/parent/legal guardian refuses to consent to an essential treatment, the health care provider must contact the Director of Child Protection who may authorize treatment, without assuming guardianship of the person under 19 years of age. Treatment should not be given until legal authorization is obtained, unless the situation becomes an emergency.

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- It should always be determined in advance (by the Director of Child Protection) of seeking a court order, that the medical practitioner **will in fact perform** the ordered treatment, in the face of continued refusal on the part of the person under 19 years of age.

Note: Section 29 of the Child Family and Community Service Act qualifies the rights a child has under s.17 of the Infants Act. Section 29 of CFCSA operates in situations where a capable person under 19 years of age, or the parent/guardian refuses to give consent to health care that in the opinion of two medical practitioners, is necessary to preserve the child's life or to prevent serious or permanent impairment of the person under 19 years of age's health. Under this section, a child need not be in the care of the ministry, but the court can never the less make an order authorizing the required care. (see Appendix A - for determining person under 19 years of age's relationship with MCFD.

3.10 Documentation of Consent

- The health care provider must document the consent process on the person under 19 years of age's health record.
- A completed consent form is an acknowledgement that the consent process has been completed.
- A patient consent record is required, which documents that a valid consent process has taken place for all surgical procedures, procedures requiring general anesthetic, medical/diagnostic procedures with an appreciable risk, use of blood and blood products, labour and delivery (interventional obstetrics), removal and donation of body tissues, some types of immunization, use of investigative drugs/procedures and for any other treatment that presents appreciable risk to the person under 19 years of age.
- If consent is revoked before or while receiving care, the health care provider must document the decision to revoke care in the patient's health record.

4.0 PROCEDURE

4.1 OR Booked Procedures – see attached algorithm – SCHEDULE 1 IN APPENDIX B

4.2 Appreciable Risk Procedures – see attached algorithm - SCHEDULE 2 IN APPENDIX B

4.3 Nurses and Other Regulated Health Care Professionals

- Develop a plan for providing necessary care/service, involving the person under 19/parent/guardian,

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- Explain the health care/service/minor health care plan you will be carrying out, by explaining to the person under 19/parent/guardian the risks, benefits and alternatives,
- Verify that the person under 19/parent/guardian is in agreement with the health care/service/minor health care plan and obtain consent,
- Carry out the care/service if consent given, and
- Document the consent process on the person under 19's health record.

Note: In some circumstances a MCFD social worker can delegate the Consent of the Director of Child Protection to a caregiver. This Consent is for routine medical care only (including immunizations). The caregiver will have a form, from the Ministry, showing this authorization.

5.0 REFERENCES

1. Infants Act of British Columbia.
2. Child Family and Community Service Act of British Columbia
3. Public Health Nursing Policy, Standards and Guidelines – Section 111 – Informed Consent – June 29, 2001.
4. British Columbia Canadian Bar Association – Children and Consent to Medical Care – Dial-A-Law Topic 422.
5. BCHA, Health Care Memorandum #253, Guidelines for Consent of Treatment of Persons Under 19 Years, May, 1993.
6. BC Ministry for Children & Families, Child Protection Division, Draft Practice Guidelines for Managing Critical Health Care Decisions including Advance Health Care Directives, Oct., 1999

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APPENDIX A: DETERMINING PARENT/LEGAL GUARDIAN

PARENT/LEGAL GUARDIAN HIERARCHY

The following hierarchy is used in determining a person under 19 years of age's legal guardian:

1. If the mother and father live together, usually they are joint guardians, and either parent may consent (it is not necessary that both parents agree). In the event of a disagreement, attempts should be made to resolve the issue, but in some instances, the Ministry for Children and Family Development may need to be contacted.
2. If separated parents are joint guardians by court order or separation agreement, either may provide consent.
3. If separated parents have no reference to guardianship or custody in court orders or separation agreement, the parent with day-to-day custody may consent.
4. If the parents were not married and did not live together and do not share joint guardianship, the child's mother is the sole guardian who can provide consent.

Note: Efforts to ascertain the nature of the legal arrangement between the consenting person and the person under 19 years of age should be noted on the health record.

TEMPORARY CAREGIVER

If a person under 19 years of age who is unable to consent is in the temporary custody of a teacher, babysitter, friend, etc., all reasonable efforts should be made to contact and obtain parent/legal guardian consent.

- If the person with temporary custody has written authorization from the parent/legal guardian to consent, they may consent on behalf of the parents. However, care must be taken not to exceed written authorization.

FOSTER PARENTS

Foster parents are not considered legal guardians and cannot provide consent, unless authorized for emergency purposes by the Director of Child Protection or specifically provided for in a court order (normally a social worker is so authorized).

MINISTRY FOR CHILDREN AND FAMILY DEVELOPMENT

Care and Control by Director for Child Protection

When a child is in care of the Director of Child Protection, the Director has the "physical care and control of the child". The Director authorizes necessary health care for the child if, in the opinion of a health care

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provider the health care should be provided without delay under section 32(2) of the CFCSA, but only if the person under 19 years of age does not have the ability to consent.

Care and Control by Parent(s) with Supervision Agreement

If the Director has returned the physical care and control of the person under 19 years of age to the parent(s) by way of a supervision agreement etc. it is the parent(s) who give consent, but only if the person under 19 years of age does not have the ability to consent, or it is specifically stated otherwise in the supervision agreement.

Care and Control by Other Parties with Supervision Agreement

If the Director has given the physical care and control of the person under 19 years of age to someone other than the his/her parent(s) by way of a supervision agreement etc., the supervision agreement will specify who has the legal authority to give consent if the person under 19 years of age does not have the ability to consent.

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APPENDIX B: HEALTH CARE CONSENT FLOW CHARTS

- **SCHEDULE 1** - OR Booking Request Process – page 9
- **SCHEDULE 2** - Appreciable Risk Process – page 10
- **SCHEDULE 3** - Consent for Person Under 19 Years of Age Health Care – page 11
- **SCHEDULE 4** - Consent for Essential Health Care – page 12
- **SCHEDULE 5** - Consent for Emergency Health Care – page 13

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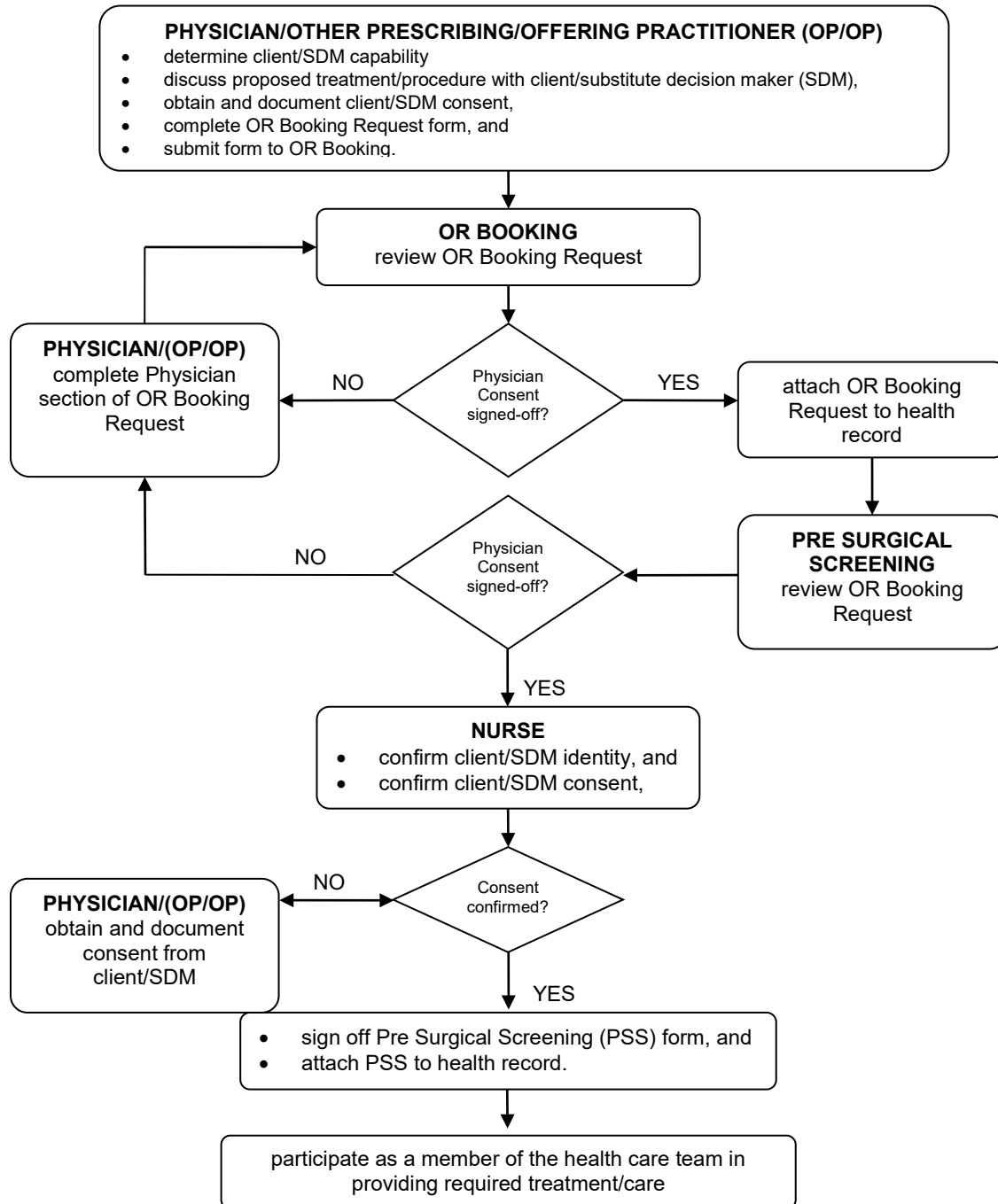
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SCHEDULE 1 - OR BOOKING REQUEST PROCESS

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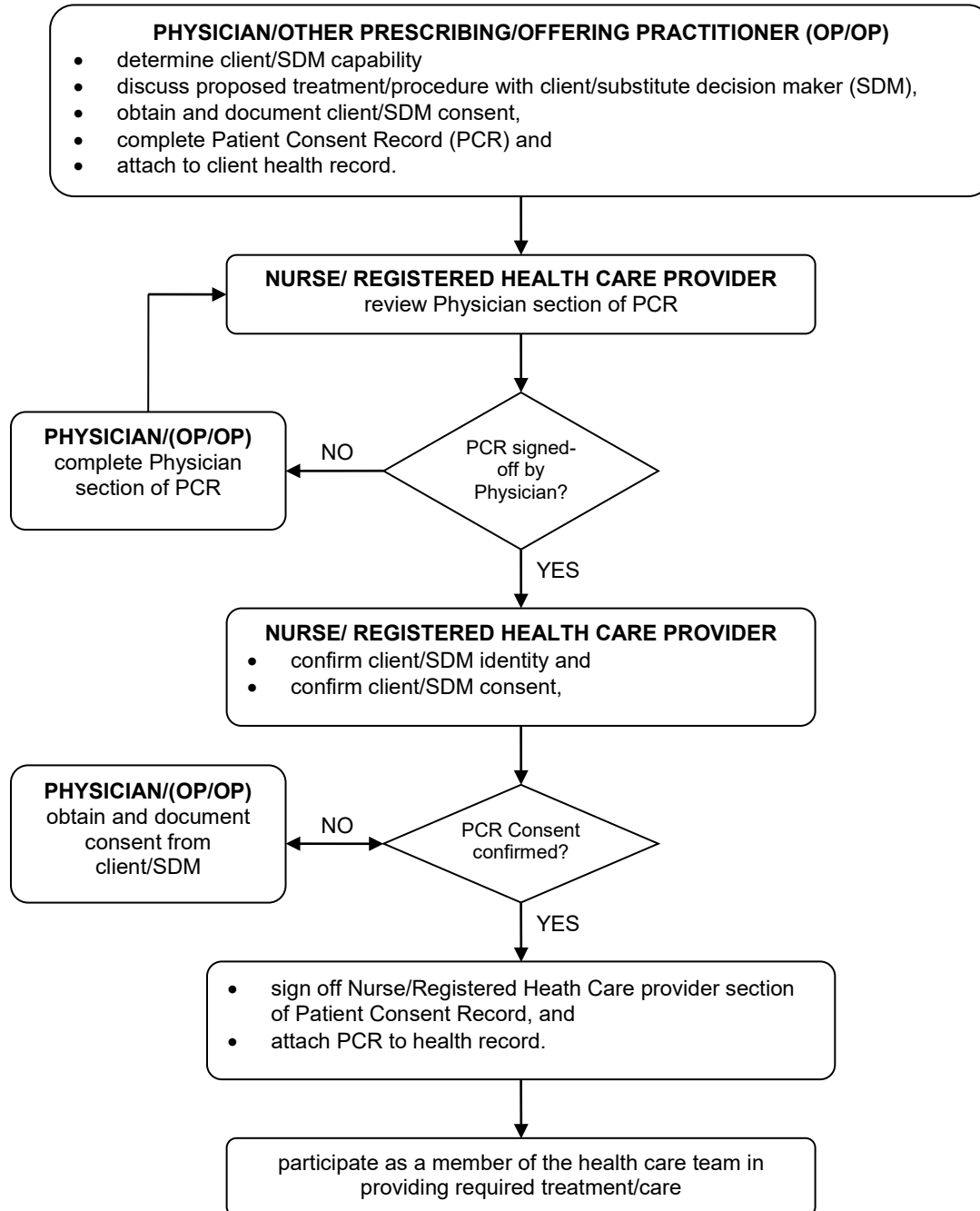
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SCHEDULE 2 - APPRECIABLE RISK PROCESS

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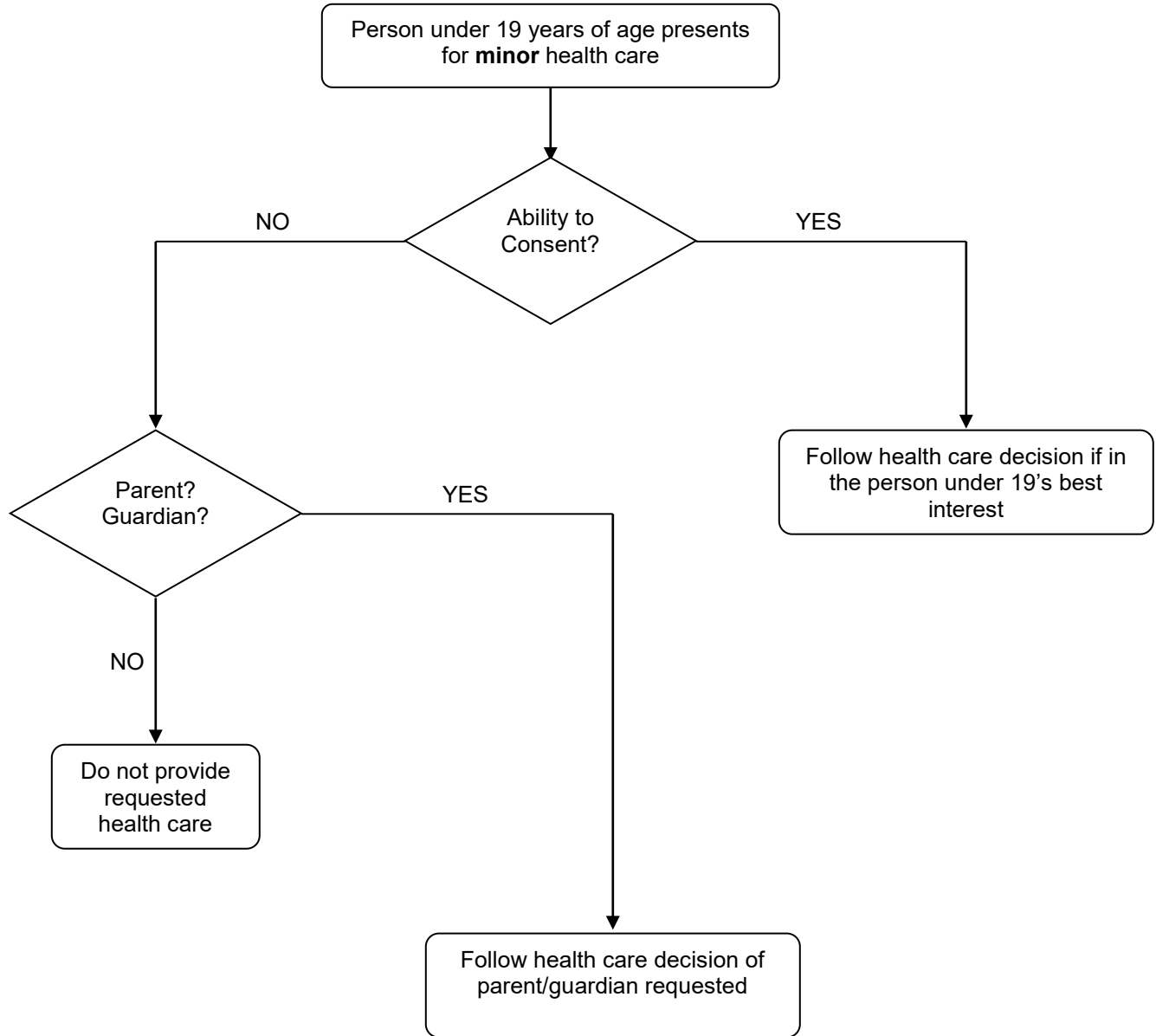
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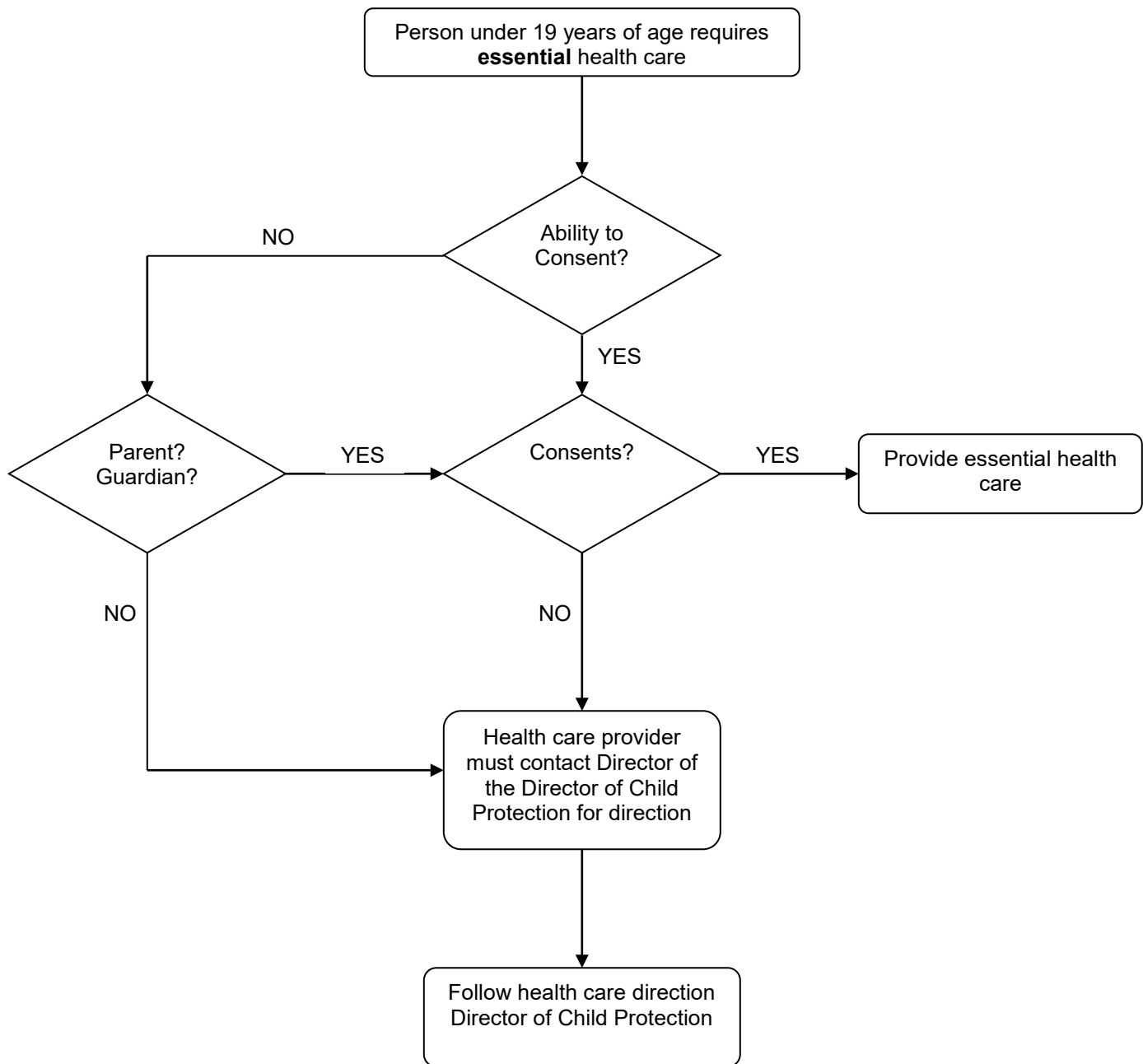
SCHEDULE 3 - CONSENT FOR MINOR HEALTH CARE



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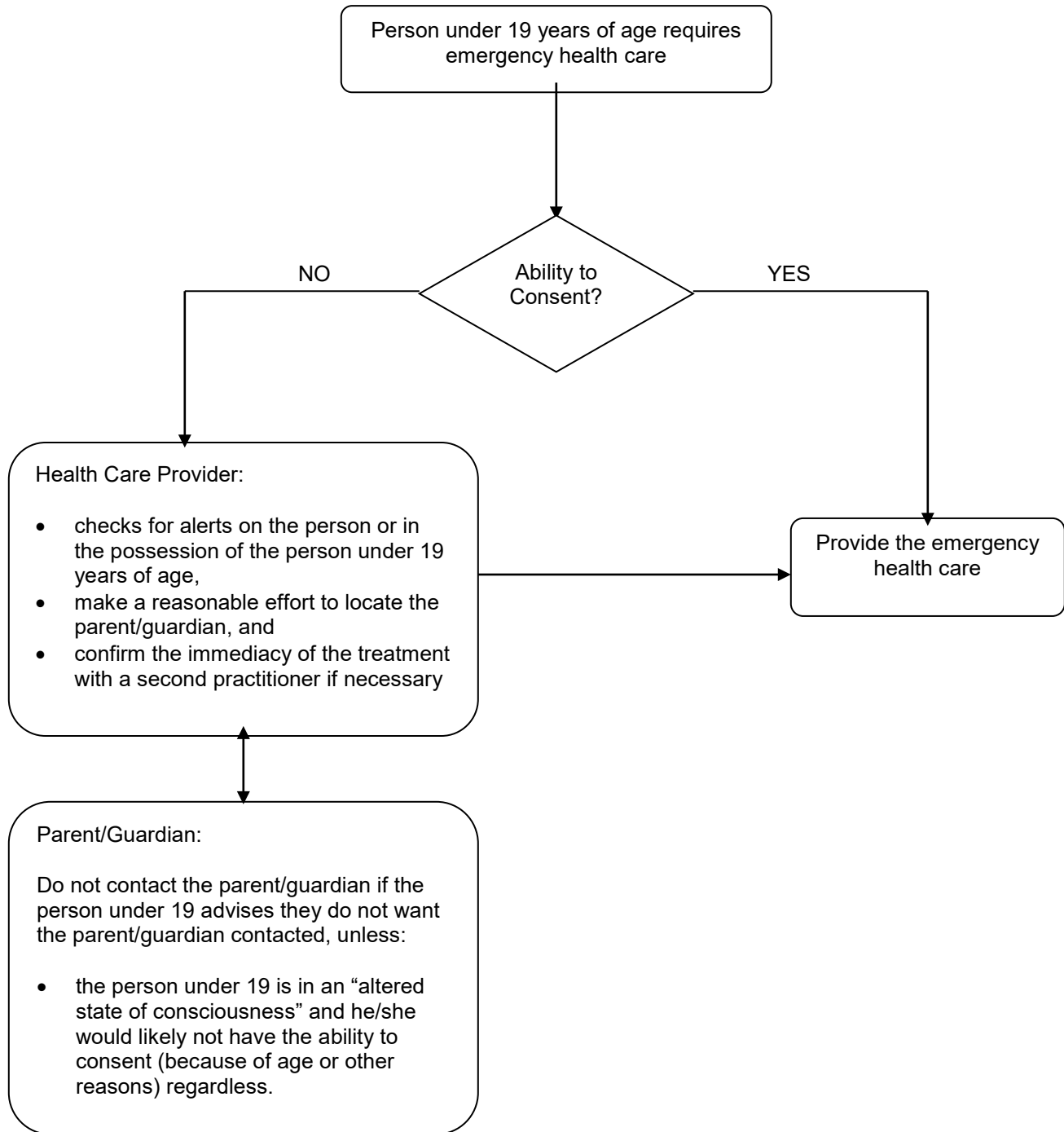
SCHEDULE 4 - CONSENT FOR ESSENTIAL HEALTH CARE



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SCHEDULE 5- CONSENT FOR EMERGENCY HEALTH CARE



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APPENDIX C: FORMS

The Patient Consent Record is available at the following hyperlink:

<http://inet.interiorhealth.ca/infoResources/forms/Documents/826034.pdf>

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