



October 7, 2009

To: Chief Medical Health Officers
Directors of Health Protection
Regional Managers of Licensing

Re: Consent for use of restraints in residential care facilities

Following a broad-ranging consultation and review, the regulations governing licensed residential care have recently been renewed by the Ministry of Healthy Living and Sport. The new Residential Care Regulation (the "Regulation"), which replaces the Adult Care Regulations, provides greater protections for persons in care in a number of areas. With respect to restraints, Division 5 of the Regulation contains a new requirement that employees who administer restraints must have received training in alternatives to the use of restraints and in determining when alternatives are most appropriate, as well as in the use and monitoring of restraints. In addition, their increased accountability for the use of restraints is provided for through a requirement of written consent from both the person in care (or representative) and the medical practitioner or nurse practitioner for the use of restraints. As consent is a complex issue, the attached standard of practice is issued to assist in determining how the consent of a person in care or his/her representative may be obtained.

This Director of Licensing Standard of Practice was developed under the authority of section 4(1) of the *Community Care and Assisted Living Act*, which provides that the Director of Licensing may:

- (e) specify policies and standards of practice for all community care facilities or a class of community care facilities....

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A copy of the Standard of Practice is attached. Please ensure that this information is communicated to your licensing staff and colleagues and to licensed community care facilities that provide residential care within your health authority.

Yours truly,

A handwritten signature in black ink, appearing to read "Sue Bedford". The signature is written in a cursive style with a large initial "S" and "B".

Sue Bedford
Director of Licensing

pc: Ms. Paula Grant, Director of Policy, Community Living BC
Ms. Katie Hill, Director, Home and Community Care, Ministry of Health Services

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	Number:	01/09
	Effective:	October 1, 2009
	Revised:	October 1, 2009

This Standard of Practice is made under the authority of section 4(1)(e) of the *Community Care and Assisted Living Act* (the “CCALA”), which permits the Director of Licensing to “...specify policies and standards of practice for all community care facilities or a class of community care facilities...”

Section 74 of the Residential Care Regulation, which is made under the CCALA, provides as follows:

- (1) Subject to subsection (2), a licensee may restrain a person in care
 - (a) in an emergency, or
 - (b) if there is **agreement** to the use of a restraint **given in writing** by both
 - (i) the person in care, the parent or representative of the person in care or the relative who is closest to and actively involved in the life of the person in care, and
 - (ii) the medical practitioner or nurse practitioner responsible for the health of the person in care.
- (2) A licensee must ensure that a person in care is not restrained
 - (a) for the purpose of punishment or discipline, or
 - (b) for the convenience of employees.

This standard of practice is made to clarify what is meant by “agreement in writing” with respect to any adult person in care who is mentally capable but is physically unable to write or is not literate.

The *Adult Guardianship Act* provides, in section 3:

- (1) Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about personal care, health care, legal matters or about the adult's financial affairs, business or assets.
- (2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of making decisions about anything referred to in subsection (1).

Similar provisions are also included in the *Health Care (Consent) and Care Facility (Admission) Act* and the *Representation Agreement Act*. These should be read together with section 74 of the Residential Care Regulation. The result is that if an adult in care is mentally capable but physically unable to write, or not literate, s/he may demonstrate agreement to the use of restraints in a manner other than a signature. For example, if the person is not literate, his/her "X" is sufficient if this is the person's standard means of executing legal documents. If a person is physically unable to write, then similarly, his/her standard means of executing a legal document is sufficient.

In both situations, a caregiver must document the facts concerning the person's inability to write in facility records and in the file of the person in care. A notation describing how agreement to the use of restraints was discussed with, and obtained from, the person in care should also be made on the consent form used by the facility.