



## MONTANA STATE HOSPITAL POLICY AND PROCEDURE

### INFORMED CONSENT FOR TREATMENT

**Effective Date:** June 8, 2020

**Policy:** PR-02

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- I. **PURPOSE:** To establish guidelines for obtaining and documenting informed consent for treatment from patients and their guardians.
- II. **POLICY:**
  - A. Montana State Hospital (MSH) recognizes the right of patients to make independent and informed decisions regarding their healthcare. Informed consent procedures will be applied within the context of psychiatric illnesses, patient rights, involuntary commitment laws, and the rights of others.
  - B. Information regarding treatment prescribed or recommended will be provided to patients in a manner they can understand in order to assist them in making informed, voluntary decisions regarding their treatment. Patient consent to treatment will be documented in the patient's medical record.
  - C. Under certain conditions, Montana state law permits the administration of medications without consent in order to protect the patient, or the public, or to facilitate effective treatment (53-21-127, M.C.A.). MSH policy PS-02, *Involuntary Medications* governs these procedures.
  - D. A patient's right to refuse treatment will be respected with the following exceptions (53-21-162(5)(c) M.C.A.):
    1. During an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or
    2. Permitted under the applicable law in the case of a person committed to a facility by a court.
  - E. In the event the Order of Commitment does not include a provision authorizing the Involuntary Administration of Medication under applicable circumstances, and a patient has been evaluated and determined to be incompetent to give informed consent to treatment, guardianship proceedings will be initiated according to the provisions of Title 72, chapter 5 of the Montana Code Annotated and MSH policy TX-07, *Guardianship*.

- F. When a guardianship has been established for a patient, staff will obtain consent for treatment from the guardian within the scope of the provisions for guardianship.

**III. DEFINITIONS:**

- A. **Informed Consent:** The expressed consent displaying an understanding of the benefits, risks, and alternatives of a proposed treatment with an exhibited understanding of how this proposed treatment is likely to affect the individual.
- B. **Implied Consent:** The passive involvement of the individual in a non-invasive aspect of the treatment experience (may include assessment and evaluation activities).
- C. **Emergency situation:** Consistent with Montana state law, “means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment” (53-21-102 M.C.A.).
- D. **Licensed Independent Practitioners:** Staff licensed and privileged to prescribe medications, perform surgical procedures, and order patient treatments. To include physicians, advanced practice nurse specialists, and dentists.

**IV. RESPONSIBILITIES:**

- A. **Licensed Independent Practitioners:** Explain the rationale for prescribing medications and other forms of treatment to the patient, along with information concerning side effects and other treatment alternatives. Document the provision of this information to the patient in the patient’s medical record and evidence of the patient’s consent to treatment.
- B. **Treatment Team Members:** Support efforts by Licensed Independent Practitioners to provide information to patients regarding treatment and to obtain and document informed consent for treatment.

**V. PROCEDURE:**

- A. The need for prescribing medications and other invasive forms of treatment shall be explained to all patients by the Licensed Independent Practitioner having primary responsibility for the patient’s overall treatment. The patient’s response to this information and decision whether to consent to treatment will be documented in the patient’s medical record.
- B. If a patient fails to consent to treatment, and the original Order of Commitment includes provisions for permitting involuntary treatment, the patient will be presented to the Hospital’s Involuntary Medication Review Committee. See MSH policy, #PS-02, *Involuntary Medications*.

- C. If a patient is on Voluntary admission status, or the Order of Commitment does not contain provisions for involuntary treatment, the patient will be evaluated by a Licensed Independent Practitioner for competency to give consent. If the patient is determined to be incompetent, efforts to arrange for a guardianship will be undertaken. If the findings of the assessment are the patient is competent, efforts will be continued to either seek their consent or identify a reasonable alternative to which they will consent. If consent cannot be obtained, the hospital may either notify the court in order to seek authorization for involuntary treatment or discharge the patient as allowed by Montana state law.
- D. The Licensed Independent Practitioner is responsible for providing the patient with an adequate explanation of their psychiatric/medical condition, the nature and purpose of prescribed or recommended treatment, the major consequences and risks of treatment, the feasible alternative and the consequences of refusing all or part of the treatment. It is recognized not all risks of treatment can be disclosed. The guideline is to provide adequate information to describe the risks which could result in the most severe consequences and the risks which have a large probability of occurring. This must be done using terminology and language likely to be understood by the patient.
- E. Consent to treatment must be voluntarily given by the patient after he/she has had a reasonable opportunity to make a decision regarding the information presented. Under no circumstances shall coercion or undue inducement be used to obtain consent.
- F. For the purpose of documenting consent, Licensed Independent Practitioners will write a progress note indicating the information provided to the patient, questions the patient may ask about the recommended treatment, the patient's expressed understanding of the information, and their stated preference.
- G. It is not necessary to obtain a new consent for every adjustment in medication or other treatments. However, information about the change or adjustment must be conveyed to the patient who must have an opportunity to have any questions answered. The patient's acceptance of the medication adjustment or treatment will be considered implied consent to the change or adjustment. When a significant change in the patient's condition or in prescribed or recommended treatment/medication occurs, the informed consent shall be updated in the clinical record.
- H. The patient has the right to withdraw consent to treatment at any time. The patient may refuse all treatment or selectively indicate those treatments acceptable and those not. Withdrawal of consent or treatment refusals shall be documented and reported to the attending Licensed Independent Practitioner and others involved in the patient's treatment as soon as possible. Consequences of refusing prescribed or recommended treatment shall be explained to the patient. Withdrawal of consent may result in

evaluation of competency for guardianship or presentation of the patient before the Involuntary Medication Review Board when applicable.

- I. Legal guardians will be requested to provide consent for patients who have been determined to be incompetent to make decisions regarding psychiatric/medical treatment and for whom a guardian has been appointed to make decisions regarding psychiatric or medical treatment. The attainment of verbal authorization shall be documented in the progress notes of the patient's medical record.
- VI. **REFERENCES:** 53-21-102, 53-21-127, and 53-21-162 M.C.A.; and Title 72, Section 5, M.C.A., *Guardians of Incapacitated Persons*.
- VII. **COLLABORATED WITH:** Hospital Administrator, Medical Staff, and Office of Legal Affairs.
- VIII. **RESCISSIONS:** PR-02, *Informed Consent for Treatment*, dated August 25, 2016; PR-02, *Informed Consent for Treatment*, dated August 1, 2016; PR-02, *Informed Consent for Treatment* dated July 1, 2009; PR-02, *Informed Consent for Treatment* dated August 22, 2006; PR-02, *Informed Consent for Treatment* dated March 31, 2003; PR-02, *Informed Consent for Treatment* dated May 20, 2002; PR-02, *Informed Consent for Treatment* dated February 14, 2000; H.O.P.P. 13-031C 102293, *Informed Consent for Treatment* dated October 22, 1993.
- IX. **DISTRIBUTION:** All hospital policy manuals.
- X. **ANNUAL REVIEW AND AUTHORIZATION:** This policy is subject to annual review and authorization for use by either the Administrator or the Medical Director with written documentation of the review per ARM § 37-106-330.
- XI. **FOLLOW-UP RESPONSIBILITY:** Medical Director.
- XII. **ATTACHMENTS:** None.

Signatures:

Kyle Fouts  
Hospital Administrator

Thomas Gray, MD  
Medical Director