



<p>Team Name: Health Information Services</p> <p>Team Lead: Manager, Health Information Services</p> <p>Approved by: Regional Lead – Corporate Services & Chief Financial Officer</p>	<p>Reference Number: ORG.1410.PL.551</p> <p>Program Area: Health Information Services</p> <p>Policy Section: Health Information</p>
<p>Issue Date: April 13, 2023</p> <p>Review Date:</p> <p>Revision Date:</p>	<p>Subject: Staff Witness to Legal Documents</p>

Use of pre-printed documents: Users are to refer to the electronic version of this document located on the Southern Health-Santé Sud Health Provider Site to ensure the most current document is consulted.

POLICY SUBJECT:

Staff Witness to Legal Documents

PURPOSE:

This policy provides Southern Health–Santé Sud staff guidance in the event that a Client identifies the desire to make and/or amend any Legal Document.

BOARD POLICY REFERENCE:

- Executive Limitation (EL-01) Global Executive Restraint & Risk Management
- Executive Limitation (EL-02) Treatment of Clients
- Executive Limitation (EL-03) Treatment of Staff
- Executive Limitation (EL-07) Corporate Risk

POLICY:

In the event that a Client identifies the desire to make and/or amend any Legal Document or Government or Quasi-Government document, Southern Health–Santé Sud staff are not to act as a witness, unless no other persons are available to act as witnesses within a 24-hour timeframe, and/or if there are Exceptional Circumstances. In such circumstances, only a Designated Staff Member is to witness the signing of a Legal Document.

An individual who signs as witness is not considered to be commenting (and should not comment) on the validity of the document or the sufficiency of the witnessing. Some Legal Documents have special signing and witnessing requirements that Designated Staff Members may be unable to fulfill. As a result, the witness may only confirm:

- the person who signed the document was the person whose name appears on the document as the signatory; and

- the staff member saw the signatory sign; and
- the staff member saw the other witness sign (if the document has more than one witness); and
- the signatory has Decision Making Capacity and did not appear to be acting under duress.

A person shall not witness any document, unless the person knows who the Client is or the Client has provided proof of their identity.

Any Designated Staff Member who acts as a witness cannot be a beneficiary or a spouse or common law partner of a beneficiary identified in the Legal Document.

If the Legal Document relates in any way to medical decisions (rather than a document which has no connection to health care, such as a passport application), the Designated Staff Member should not be someone who is or will be involved in direct delivery of health care to the Client. Under no circumstances shall any staff member be required to act as a witness for any document which is not related to their duties and responsibilities as a staff person of Southern Health-Santé Sud.

Staff should be aware that if they witness a document, they may be called to testify about witnessing the Legal Document in a court proceeding (including as to the authenticity of the signature, that the Client had Decision-Making Capacity and that the Client did not appear to be acting under duress).

To respect Client privacy, Designated Staff Members should avoid reading the contents of the Legal Document, to the extent possible. Rather, Designated Staff Members should limit their review of the Legal Document to the Client's signature and doing what is necessary to confirm the nature of the Legal Document (e.g., that it is a power of attorney, health care directive, will, etc.).

DEFINITIONS:

Client: refers to:

- any individual that is the recipient of health care services.
- Client may be used interchangeably with the terms "resident" (e.g. in personal care home) and "patient" (e.g. in acute care facility).

Designated Staff Member:

- Chief Executive Officer
- Regional Leads and Leads
- Client Services Manager
- Other professional health care staff designated by one of the above designated staff

Exceptional Circumstances: any circumstances which result in an inability to make timely arrangements for a non-staff witnessing of a document, including, but not limited to, the Client's limited life expectancy or unanticipated major medical circumstances.

Government or Quasi-Government Documents: documents/forms that allow access to services or benefits. Examples include applications for benefits with Old Age Security, Income Security, Housing, Handi-transit, Vital Statistic documents, etc. These documents/forms are not Legal Documents and therefore do not involve the delegation of decisions about medical treatment or financial affairs, or the distribution of property upon death.

Legal Document: a document that creates a binding legal relationship, or grants a legal right, and may include:

- **Health Care Directive:** a Legal Document specifying what medical treatment a Client may or may not want in different situations. A health care directive may also specify a proxy. A health care directive comes into effect when an individual no longer has Decision Making Capacity to make decisions respecting proposed treatments or is unable to communicate their wishes. A health care directive does not require a witness's signature unless another person signs the health care directive on behalf of the maker and at the maker's direction per subparagraph 8(2)(b)(iii) of The Health Care Directives Act.
- **Power of Attorney Document:** a Legal Document signed by a competent donor in favour of an attorney, which gives the attorney authority to manage some or all of the donor's financial and/or personal affairs. Witnesses of an Enduring Power of Attorney are limited to specific occupational groups listed in Subsection 11(1) of The Powers of Attorney Act.
- **Will:** a Legal Document in which the maker stipulates how they wish their property or estate to be dealt with upon their death.

Decision Making Capacity: being able to make your own decisions. Someone lacking capacity – because of an illness or disability such as a mental health problems, dementia or a learning disability – cannot do one or more of the following Decision Making Capacity steps:

1. ability to understand the information and to make a decision about the proposed course of action;
2. ability to understand the nature and anticipated effect(s) of the proposed course of action;
3. ability to understand the alternatives and risks, including the consequence(s) of not proceeding with the proposed course of action.

The Designated Staff Member assesses, determines and documents if an individual has Decision Making Capacity. If the Client is not of the legal age of majority, the Designated Staff Member should refer to CLI.4110.PL.001.FORM.01 Minors Rights to Demonstrate Capacity for Health Care Decision Making Tool and determine if the Client has Decision Making Capacity.

IMPORTANT POINTS TO CONSIDER:

- A Designated Staff Member may notify a Client's lawyer (if known) when requested by a Client to witness Legal Documents, unless the Client has instructed Southern Health-Santé Sud not to disclose this information.
- Per Subsection 3(1) of The Protection for Persons in Care Act, "A service provider or other person who has a reasonable basis to believe that a patient is, or is likely to be, abused or neglected shall promptly report the belief, and the information on which it is based, to the minister or the Minister's delegate."

PROCEDURE:

The following procedure is to be used by a Designated Staff Member if the criteria for Exceptional Circumstances has been met as defined within this policy:

1. Staff person contacts a Designated Staff Member who is their immediate supervisor to confirm whether the Exceptional Circumstances criteria have been met.
2. Designated Staff Member confirms whether the Exceptional Circumstances criteria have been met and makes a determination if the Legal Document is to be witnessed.
3. Where two witnesses are required. Designated Staff Member confirms there are at least two (2) witnesses, one (1) of whom is a Designated Staff Member, and one (1) of whom is a non-staff member, natural support or other health care provider, if possible. The two (2) witnesses are to jointly witness the Client's signature, in the presence of the Client, and then sign the Legal Document in their capacity as witnesses. If there is doubt as to the Client's Decision Making Capacity to execute any Legal Document that requires a witness, or if the Designated Staff Member is of the opinion that the Client is acting under duress, the Designated Staff Member is not to act as a witness, informs their supervisor and may inform the Client's lawyer and the Client's physician (unless the Client has instructed Southern Health-Santé Sud not to disclose this information to their lawyer and/or physician).
4. Designated Staff Member is to document in the Client's health care record:
 - that the Legal Document was witnessed by the Designated Staff Member;
 - the names of those acting as witnesses; and
 - that the Designated Staff Member believed the Client had Decision Making Capacity and did not appear to be acting under duress, to the best of their knowledge, at the time the Legal Document was signed by the Client and witnessed by the Designated Staff Member. If there is any doubt the Client may have Decision Making Capacity, a formal assessment should be undertaken and documented in the health care record before witnessing any documents.

REFERENCES:

Gardner, W.S. Pitblado LLP communications received September 19, 2018.

Government of Manitoba Laws (1992). *The Health Care Directives Act*, Chapter H27 of the Continuing Consolidation of the Statutes of Manitoba.

<https://www.canlii.org/en/mb/laws/stat/ccsm-c-h27/latest/ccsm-c-h27.html>

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<http://www.gov.mb.ca/health/protection/> Retrieved September 13, 2019.

Prairie Mountain Health, *Witnessing Legal Documents for Patients/Residents/Clients* (Policy number R.LGL.007) May 2012; and *Witnessing of Documents* (Policy number ADM-XII-858) May 2009.

Southern Health-Santé Sud Regional Policy: *Consent for Procedures, Treatment and Investigations*, April 24, 2018, CLI.4110.PL.001

Southern Health-Santé Sud Regional Policy: *Advance Care Planning – Goals of Care*, January 10, 2016. CLI.5910.PL.008

Southern Health-Santé Sud Regional Policy: *Minors Rights to Demonstrate Capacity for Health Care Decision Making Tool*, CLI.4110.PL.001.FORM.01