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Letter to the Editor

Ethical Considerations During COVID-19: Informed Consent Cannot Be Made in Advance

To the Editor:

Older adults in long-term care (LTC) are at the highest risk of mortality from COVID-19.[1] Ontario statistics from September 15, 2020, have confirmed 1824 LTC resident deaths, or 65% of all Ontario's COVID-19–related deaths.[2] At the peak of the first wave in mid-May, more than 260 Ontario LTC homes had an active outbreak.[2] On July 29, 2020, the province of Ontario launched a commission to investigate the effect of the pandemic's first wave on LTC homes.[3]

During the first wave of the pandemic, public officials wrestled with questions about health resource allocation. At the end of March, a triage protocol for admission to an intensive care unit (ICU) bed was released in Ontario.[4] Three levels of triage were developed, each level being proportionately more strict as system pressure increased during the pandemic. This protocol used the Clinical Frailty Scale (CFS),[5] among other clinical scenarios, to establish exclusion criteria for ICU admission at each triage level. Specifically, patients with CFS scores of greater than or equal to 7, greater than or equal to 5, and greater than or equal to 3 would be excluded at level 1, 2, or 3 triage, respectively. These CFS scores were chosen as triage cutoffs, as they would exclude those people with greater than 80%, 50%, and 30% predicted mortality, respectively. Thankfully, our province's health care system was never over capacity and the protocol was never implemented. The protocol's existence did, however, cause unexpected and undue pressure on LTC homes to avoid hospital transfers. Media reports documented that LTC residents and their family members were engaged in decision making about transfer to hospital even ahead of COVID-19 being present in their home. Although the impact of this anticipatory decision making might never be known, the fact that it occurred highlights a serious ethical question: should an LTC resident (or their substitute decision maker) be asked to make decisions about treatment and transfer before those decisions are actually relevant to that resident's particular situation? We strongly believe that they should not. In fact, we feel that ensuring treatment proposals are both individual and time-specific can ensure that transfers to hospital are wanted and beneficial: before, during, and after the COVID-19 pandemic.

A gap analysis performed on LTC resident transfers suggested that many transfers occur for consent-related, rather than care-related reasons.[6] As a result, the Prevention of Error-Based Transfers (PoET) project was created specifically to ensure that LTC homes align practices with Ontario's Health Care Consent Act (HCCA), and that transfers were in line with each individual resident's wishes, values, and beliefs. Since implementing PoET in 2012/2013, a 68% and 25% reduction was noted in the number of repeated end-of-life and all-cause hospital transfers, respectively, for 1 Ontario local health integration network.[6,7]

In the months before COVID-19, the authors had embarked on spreading PoET to more than 50 LTC homes in Southwestern Ontario (PoET Southwest Spread Project [PSSP]) through funding from Health Canada's Health Care Policy Contribution Program. In response to the pandemic, we have shifted to adapt to physical distancing and visitor restrictions; we are making resources and tools available on our Web site (www.poetproject.ca) and testing virtual options for implementation. Before COVID-19, the PSSP LTC Treatment Plan Proposal Template was introduced in all PSSP LTC homes and feedback has been positive; LTC homes have indicated that it has reduced resident and family uncertainty regarding diagnosis and prognosis before a crisis. Use of this adapted template has many benefits. First, it ensures physicians make treatment proposals for an individual resident at a specific time. The template, once fully completed, will also contain all the information that an LTC resident (or their substitute decision maker) would need to provide informed consent, as shown in Figure 1. The tool also helps LTC clinicians to formulate their treatment proposal and frame its discussion.

Our tool contrasts a recent innovation presented by Gaur et al in JAMDA.[8] While the "COVID-19 Communication and Care Planning Tool" serves as a communication and documentation template, it addresses only 2 aspects of decision making (ie, Do Not Hospitalize, and cardiopulmonary resuscitation [CPR] or no CPR).[8] Although this tool will be helpful to guide informed consent and decision making for those 2 situations, LTC clinicians may mistake this documentation as a substitute for informed consent. Furthermore, LTC residents and/or their substitute decision makers (SDMs) can face many other health care decisions that would still require their physician to make an individualized treatment proposal and obtain consent at the time that it is required. Our template helps to facilitate informed consent in any clinical situation, and prompts clinicians to obtain consent at the time of decision making, and not beforehand, as required by Ontario's HCCA. We acknowledge that this may be different in other jurisdictions with different legislation.

We have shared this tool on our Web site as part of our COVID-19 response to try to ensure LTC residents are presented with treatment proposals that are based on their individual and current situation. Our template directly addresses our earlier supposition: informed consent to treatment proposals that are both *individual* and *made at the time they are required* can reduce transfers to hospital that would occur otherwise. LTC residents risk not receiving treatment they both want and can benefit from if a treatment proposal is not both timely and individual. Making sure

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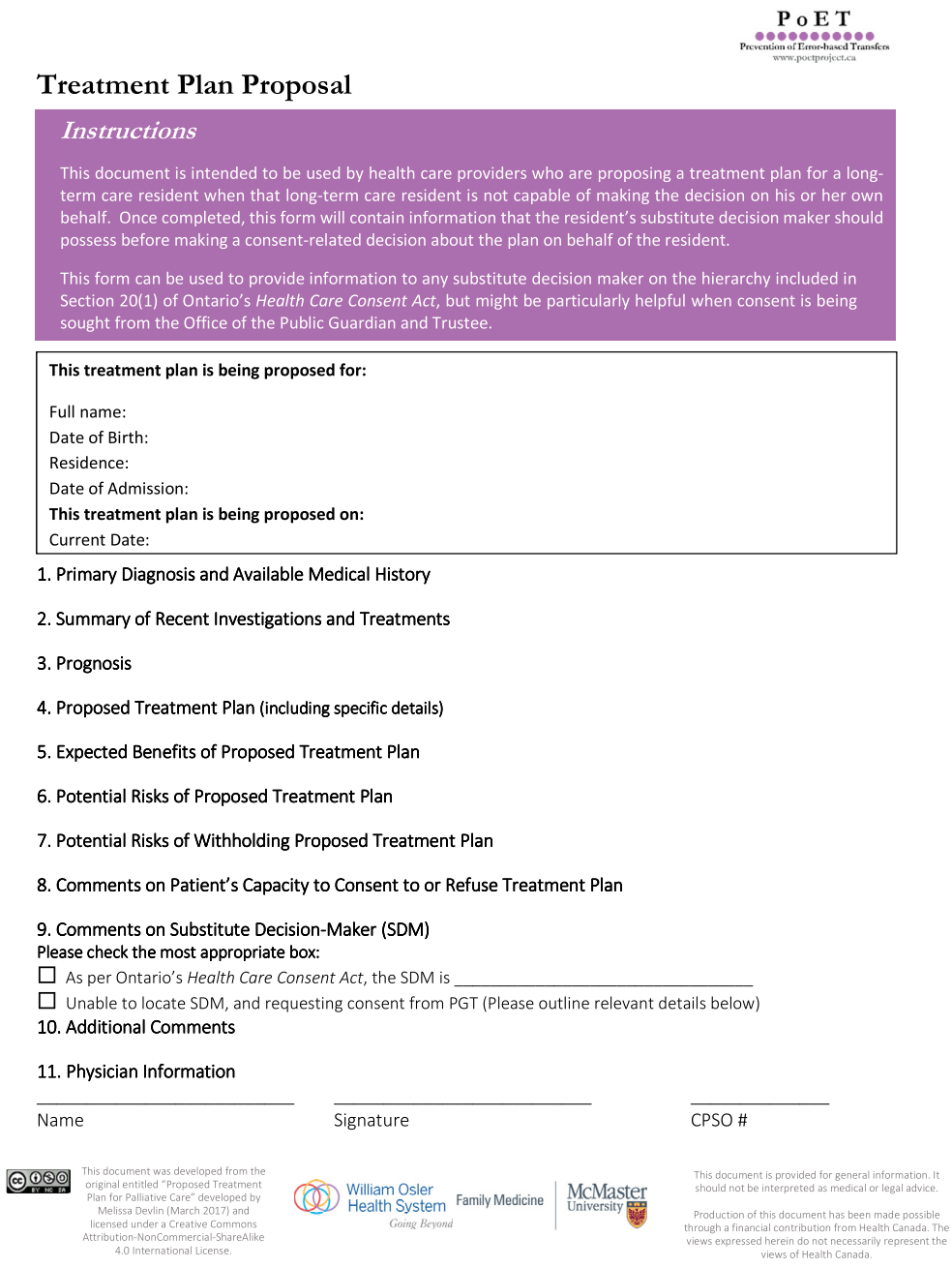

PoET
Prevention of Error-based Transfers
www.poetproject.ca

Treatment Plan Proposal

Instructions

This document is intended to be used by health care providers who are proposing a treatment plan for a long-term care resident when that long-term care resident is not capable of making the decision on his or her own behalf. Once completed, this form will contain information that the resident's substitute decision maker should possess before making a consent-related decision about the plan on behalf of the resident.

This form can be used to provide information to any substitute decision maker on the hierarchy included in Section 20(1) of Ontario's *Health Care Consent Act*, but might be particularly helpful when consent is being sought from the Office of the Public Guardian and Trustee.

This treatment plan is being proposed for:

Full name:
Date of Birth:
Residence:
Date of Admission:
This treatment plan is being proposed on:
Current Date:

1. Primary Diagnosis and Available Medical History

2. Summary of Recent Investigations and Treatments

3. Prognosis

4. Proposed Treatment Plan (including specific details)

5. Expected Benefits of Proposed Treatment Plan

6. Potential Risks of Proposed Treatment Plan

7. Potential Risks of Withholding Proposed Treatment Plan

8. Comments on Patient's Capacity to Consent to or Refuse Treatment Plan

9. Comments on Substitute Decision-Maker (SDM)
Please check the most appropriate box:
☐ As per Ontario's *Health Care Consent Act*, the SDM is _____
☐ Unable to locate SDM, and requesting consent from PGT (Please outline relevant details below)

10. Additional Comments

11. Physician Information

_____ _____ _____
Name Signature CPSO #

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Fig. 1. The Treatment Plan Proposal Template was initially developed by Melissa Devlin to obtain informed consent for end-of-life treatment proposals in an acute care setting, for those patients without a willing SDM. PSSP adapted this template for LTC health care providers to formulate treatment proposals and appropriately frame discussions, both of which promote role clarity in the consent process.

that individual treatment proposals are made at the time they are needed by individual residents avoids both nonbeneficial transfers that would result from panic, fear, and guilt, as well as transfers and treatments that may be forgone prematurely due to resource pressures.

The PoET project has always worked to promote the idea that informed consent is important in LTC; the pandemic has shown us that it is vital during a pandemic. COVID-19 serves as useful reminder to LTC homes that they must prepare and provide due diligence for every resident whenever a health care decision is required.

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