

## Standard for Consent

The [Health Care Consent Act, 1996](#) requires members of the College to obtain informed consent for all treatment they provide. **Informed** consent means that patients:

- have all the information they need in order to make an informed decision and
- know they have the right to decide to receive treatment, refuse treatment, or withdraw consent for treatment.

This standard addresses the following principles:

[Principle 1: Members must assess whether the patient is able to consent or not. If not, they must confirm a substitute decision maker](#)

[Principle 2: Members must obtain informed consent before and throughout treatment.](#)

[Principle 3: Members must always get written consent for treatment that involves contact with sensitive areas.](#)

[Principle 4: Members must respect the patient's right to withdraw consent at any time.](#)

[Principle 5: Members must follow the law for collecting, using, and sharing personal health information.](#)

### **Principle 1: Members must assess whether the patient is able to consent or not. If not, they must confirm a substitute decision maker.**

A person is able to provide informed consent if they understand:

- the nature of the treatment and its possible outcomes
- what will happen if they decide not to have the treatment.

### *Applying the principle to practice*

Members must keep in mind that ability to understand can come and go. A person may be able to consent to some treatments but not others. Members should keep assessing a patient's capacity as time goes on. This is to ensure that members are obtaining consent from the proper person.

Do not **assume** that a person is unable to consent because:

- they have a mental or neurological illness
- their speech is impaired
- there is a language barrier
- they have a disability
- they are minors or they have reached an advanced age.

Even if the patient has a substitute decision maker in place, the member should make sure that the patient understands the consent process. If needed, use gestures, interpreters, or communication tools such as computer software.

If the patient is unable to consent, tell them why this finding has been made. Explain that they have the right to a review. Members can help them with the review process or direct them to the College for help.

Make sure that the patient knows who will be making decisions for them. The patient should be involved in discussions between the member and substitute decision maker when possible.

### **Confirming the substitute decision maker**

In most cases, substitute decision makers are close family who come with the patient for treatment. If there is more than one substitute decision maker who is willing and able to do this, the member must decide which one will give consent. The *Health Care Consent Act* says the person who is **highest** on this list must be chosen:

1. A person appointed guardian by the courts with the authority to consent to treatment
2. A person who has a signed Power of Attorney for Personal Care that the patient made when they were capable
3. A representative appointed by the Consent and Capacity Board
4. A spouse or partner
5. An adult child or parent (custodial parent if the child is a minor)
6. A parent of a minor who is not the custodial parent but who has a right of access
7. A brother or sister
8. Any other relative

### **Record keeping**

Members must have the substitute decision maker's name and contact information on file. If there is a legal document such as a Power of Attorney for Personal Care, or proof of right of access for a custodial parent, a copy must be kept on record.

## **Principle 2: Members must obtain informed consent before and throughout treatment.**

Consent must be freely given and never obtained by telling the patient anything that is untrue.

Consent is an ongoing process. Members should re-confirm consent at each visit.

### *Applying the principle to practice*

Members must ensure that patients are informed before they decide about the proposed treatment. That means they must understand:

- The nature of the treatment (including the body parts that will be touched)
- What benefits they can expect from the treatment
- Any risks from having the treatment
- Any side effects of the treatment
- Other options instead of this treatment
- What will likely happen if they do not have the treatment
- What the treatment will cost.

Members must invite the patient's questions about the treatment and respond to all of them before they ask for consent.

### Expressed and implied consent

**Expressed** consent means that a person consents in a direct way to the treatment, by saying they consent or by consenting in writing.

**Implied** consent means that a person speaks or behaves in a way that shows they consent. For example, when a patient gives their health history, it implies that they are consenting to an assessment. Another example would be following instructions to prepare for treatment. For instance, if a member instructs a patient to fast for 24 hours and they do so, it implies consent to the treatment.

### When to ask for consent

In addition to getting consent before treatment starts, members must ask for consent again if:

- Any other person, such a student, or anyone under supervision will help with the treatment.
- The member wants to adjust the treatment in any way that changes the expected benefits, risks, or side effects.
- The member wants to start a new form of treatment.

### Are there times when members can give treatment without consent?

Yes, but this is very rare. Members can assess and treat a patient without consent if they are in an **emergency** situation and **all** of these factors apply:

- The member has tried to communicate with the patient but they are unable to give or refuse consent because of a language barrier, illness, or disability.
- Waiting to receive consent will cause prolonged suffering, or put the patient's health at risk.
- There is no reason to believe that the patient does not want treatment.

### Record keeping

The College strongly recommends that members ask patients to read and sign a general consent form before starting treatment. The consent form should be in clear, easy-to-understand language. It should state that:

- The member has explained the proposed treatment to them and the patient is [fully informed](#).
- The patient agrees to the treatment (Include details of what the patient consented to and did not consent to.)
- The patient consents (or does not consent) to having treatment from students and other staff under supervision.
- The patient consents to having their [personal health information](#) gathered, used, and shared within the limits of the law.

If members are using an interpreter or an alternative way to communicate with the patient, such as computer software, the consent form should note this. If the patient has a substitute decision maker, discuss the consent form with both present and have the substitute decision maker sign.

In addition to the general consent form, members must continue to ask for consent if anything about the treatment changes. A note of the patient's verbal consent to specific treatments should be kept in records.

### **Principle 3: Members must always get written consent for treatment that involves contact with sensitive areas.**

Sensitive areas include the upper and inner thigh, buttocks, penis, vagina, breasts, and chest wall muscles.

#### *Applying the principle to practice*

Members must advise patients what body parts will be touched during a proposed treatment (see above). However, when the proposed treatment involves sensitive areas, members must take extra care in explaining what areas will be touched, how it will be touched, why it is necessary to touch and whether it will be exposed during the treatment. All of this should be carefully charted to ensure that the patient and the member are in agreement on the limits of the consent.

If the touch involves the breast, members should not touch the nipple or the areola.

If sensitive areas are being treated, they should be exposed as little as possible.

When talking with patients about this, think about the patient's history, gender, and culture. These factors may affect how they feel about contact in sensitive areas.

#### **Record keeping**

Members must always have a record of the patient's written consent to treatment in sensitive areas. As noted above, this dialogue should be carefully charted to ensure that both the patient and the member are fully aware as to what can occur during the proposed treatment.

### **Principle 4: Members must respect the patient's right to withdraw consent at any time.**

Members must ensure that patients and substitute decision makers understand their right to withdraw consent.

#### *Applying the principle to practice*

When a patient decides to withdraw consent, respect their decision. Explain what will happen if they stop the treatment.

#### **Record keeping**

All services or treatment given to date must be documented in the patient file.

Document the reasons the patient gave for withdrawing their consent.

### **Principle 5: Members must follow the law for collecting, using, and sharing personal health information.**

The [\*Personal Health Information Protection Act, 2004\*](#) sets out when a member must ask for consent to collect, use, and disclose personal health information.

Here are some examples of personal health information:

- information about the patient's physical or mental health
- the health history of the patient's family
- names of the patient's other health care providers
- the patient's treatment plan
- information about health care coverage, such as the patient's OHIP number and extended health coverage
- name of the patient's substitute decision-maker.

### *Applying the principle to practice*

#### **Collecting information**

The Act allows members to collect **only** information that is needed for providing health care to the patient. In most cases, implied consent for collecting information is enough.

#### **Using information**

The Act allows members to use personal health information without consent **only** for the purpose it was gathered. For example, consent is not needed to use the information to:

- treat the patient
- improve the quality of care
- train other practitioners
- obtain payment.

Members must get the patient's consent if to use the information for any other purpose.

#### **Sharing information**

In most cases, members must have the patient's written consent if they wish to share personal health information with anyone outside their practice.

There are some exceptions to this rule. The Act says that members may share personal health information without consent when:

- Members share information with other health care providers
- Members have reason to believe that if they do not share information, someone is at risk of being harmed
- Members need to share information to help determine if the patient is able to give consent
- Disclosure is required as part of a legal process, such as a summons or court order
- The College asks for information as part of an investigation or the Quality Assurance program.

If members wish to use or share information for a reason that requires consent, they must have the patient's expressed consent.

#### **Record keeping**

Members must document both implied and expressed consent in the patient's file.

*Learn more about the laws governing our practice:*

[CTCMPAO's Jurisprudence Course Handbook](#)