

# Understanding consent to treatment (informed consent)

## Information for patients, residents and families

Read this handout to help you understand:

- What consent to treatment is
- When consent is necessary
- Who provides consent
- When a patient can be treated without consent

## What is consent to treatment?

Consenting to a treatment means communicating a voluntary and informed decision to have that treatment. Health care providers recommend treatments, and patients – or their substitute decision-makers (SDMs) – choose whether to consent. If a patient is capable (has capacity), it is the patient who decides. Except in some emergency situations, a health care provider cannot treat a patient without getting consent first.

Consent to treatment is sometimes called **informed consent**. For more information about how consent to treatment is defined by the Health Care Consent Act, see the Appendix at the end of this document.

## When must a health care provider get consent?

A health care provider must get consent before providing a treatment. A treatment is anything done for a “therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose” (HCCA, s.2).

For example, treatments include:

- Getting an X-ray or scan
- Taking medication
- Surgery
- Physiotherapy

Not every interaction with a patient counts as treatment. Asking you questions about your medical history and telling you your diagnosis are examples of interactions that are not treatments and do not require consent under the Health Care Consent Act.

## **What does it mean to be capable?**

To consent to or refuse a treatment, a person must be **capable** to make that decision.

According to the Health Care Consent Act, this means the person must be able to understand the information that is relevant to making a decision about the treatment and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

To be capable, the person must be able to do both of these things (understand **and** appreciate). If the person cannot do both of these things, they are considered to be **incapable**, and it is the patient's SDM who will give or refuse consent.

To learn more about how we determine if a patient is capable or incapable, see our handout:

**Understanding capacity for treatment decisions.**

To learn more about substitute decision-making, see our handout: **Understanding substitute decision-making for treatment decisions.**

## **Can a capable patient always refuse treatment?**

Yes, if they are capable, they can refuse any treatment that is offered to them. They have the right to decide for themselves, even if others do not agree. They are allowed to make decisions which others think are not in their best interests.

## Are there times when a patient can be treated without consent?

Yes. Depending on the circumstances, a patient may be treated without consent in a medical emergency (HCCA, s.25). Medical emergencies can make it impossible to get consent as quickly as needed, from either the patient or the patient's SDM.

In a medical emergency, treatment may be provided despite the objection of the SDM if the health care provider believes that the SDM is not following the rules of substitute decision-making (HCCA, s.27).

## How is consent communicated?

Consent can be communicated in different ways. It can be communicated through language. This is called **express consent**. In certain circumstances, consent can also be communicated through behaviour. This is called **implied consent** (HCCA, s.11(4)). For example:

- A patient who rolls up their sleeve and holds out their arm may demonstrate through their behaviour their consent to having a sample taken of their blood. Their consent is implied.

Written consent is not required by law, but might be required by a practitioner or institution (such as for surgery).

If you have any questions about the information in this handout, please speak to a member of your health care team.

## **Appendix: Consent to treatment and the Health Care Consent Act**

This handout refers to the Health Care Consent Act.

You can find the Act here:

[www.ontario.ca/laws/statute/96h02](http://www.ontario.ca/laws/statute/96h02)

Below is more information about how consent to treatment is described by the Act.

## **What are the elements of consent to treatment?**

Under the Health Care Consent Act, consent to treatment is an agreement to treatment, or a plan of care, that has the following four elements:

- It relates to the treatment
- It is informed
- It is given voluntarily
- It is not obtained through misrepresentation or fraud

If any of these four elements is missing, there has been no consent to treatment (HCCA, s.11(1)).

## **What does it mean for consent to be “informed”?**

Consent to treatment must be informed. Informed consent means that the patient has received the information that “a reasonable person in the same circumstances would require” about certain topics relating to the proposed treatment, and that they have received responses to their questions on those topics (HCCA, ss.11(2)(3)).

Depending on the circumstances, a patient may need information relating to some or all of these topics in order to provide informed consent:

- The nature of the treatment (for example, is it surgery, medication or physiotherapy?)
- The expected benefits of the treatment
- The **material risks** of the treatment
- The **material side effects** of the treatment
- Other treatments or approaches that could be tried instead
- The likely consequences of not having the treatment

**Material risks and side effects** are those risks and side effects that are common (for example, headache), as well as those that are less common but more serious (for example, a small chance of stroke).

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