DRAFT Standard of Practice:

Consent to Treatment (2024)

A **Standard of Practice** is the minimum standard of professional behavior and ethical conduct expected by the College on a specific issue.

Consent to Treatment

Preamble

Physicians have an ethical[1] and legal obligation to ensure that their patients understand a proposed treatment and provide consent. This standard sets out the College's expectations for obtaining consent.

The College recognizes that the legal principles surrounding consent are dynamic and subject to change. Physicians are responsible for keeping current on this topic and seeking legal advice when required.

Definitions

Treatment – the management and care of a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related purpose. Examples include but are not limited to physical examinations, investigations, and surgical interventions.

Substitute Decision Maker – a person who is entitled by law to make healthcare decisions on behalf of a patient when that patient lacks the capacity to make the decision for themselves.

Standard of Practice

Physicians must obtain consent from a patient (or their substitute decision maker) prior to a proposed treatment.

---

[1] *CMA Code of Ethics and Professionalism* para 11-17.

For consent to be valid, it must:

1. be voluntary;
2. be obtained from an individual who has capacity and authority to provide consent; and
3. be informed.

Voluntariness of Consent

Patients have the legal right to refuse or withdraw consent. Physicians must respect the wishes of a patient who chooses to refuse or withdraw their consent but should ensure that the patient understands the consequences of not undertaking the treatment and any available alternative treatment.

In circumstances where the patient has refused or withdrawn consent, the physician should document the treatment offered, the discussion with the patient regarding the treatment, including consequences and alternatives, and the patient's refusal or withdrawal of consent.

Capacity and Authority to Provide Consent

Physicians have a duty to take reasonable steps to be satisfied that their patient has the capacity to provide consent to treatment. A patient is generally capable of providing consent if they are able to understand the information that is relevant to making a decision about treatment and appreciate the reasonably foreseeable consequences of providing or withholding consent.

Capacity must be considered in relation to the point in time and specific treatment being offered. As such, a patient may be capable with respect to a specific treatment at one point in time and incapable at another.

Substitute Decision Makers

Consent must be obtained from the patient's substitute decision maker in circumstances where the patient lacks capacity. This individual has legal authority to act on behalf of the patient in respect of healthcare decisions.

In some cases, a patient may have appointed a substitute decision maker through legal documentation to act on their behalf in the event of incapacity. If a patient has not appointed a substitute decision maker, a physician should obtain consent from the applicable person outlined in the *Advance Health Care Directives Act*. It is important to be aware that the person listed as "next of kin" in the patient's medical record is not necessarily the patient's legal substitute decision maker.

In circumstances where two or more individuals have been appointed to act as substitute decision makers and these individuals disagree about care decisions, physicians should try and obtain consensus through discussing the goals of care in a manner that is patient centered. If consensus cannot be achieved, physicians are encouraged to seek ethical and legal advice on how to proceed.

Minors

Assessing capacity in a minor is based on maturity, not chronological age. In most cases[2], a minor is considered capable of consenting or refusing treatment if they have the capacity to fully appreciate the nature of the proposed treatment, its anticipated effect, and the consequences of refusing treatment. A minor may have the capacity to consent to certain treatments, but not others. Where a physician determines that a minor has capacity to consent, they must obtain consent from the minor. If a minor does not have capacity, consent must be obtained from the parent or guardian of the child.

A physician may proceed with providing treatment to a minor on the basis of having obtained consent from one parent with decision-making responsibility. If there is a dispute between parents about the proposed treatment, the physician should try and obtain consensus through discussing the goals of care in a manner that is patient centered. If consensus cannot be achieved, physicians are encouraged to seek ethical and legal advice on how to proceed.

Informed Consent

Physicians must provide their patients with adequate information regarding the treatment to allow them to make an informed decision. The adequacy of consent explanations is judged by the "reasonable patient" standard, that is, what a reasonable patient in the particular patient's position would have expected to hear before consenting. Material risks must be disclosed. This includes risks that occur frequently as well as those that are rare but very serious. In addition, physicians should consider whether the patient has any special circumstances which might require discussion of potential, but normally uncommon, risks of treatment.

Physicians must consider the specific circumstances of the patient and use their clinical judgement to determine what information must be provided. In most cases, physicians should advise the patient as to:

i) the nature of the treatment;
ii) the anticipated outcome of the treatment;
iii) the material risks involved in the treatment, including common risks, serious risks, and those that have particular relevance to the patient;
iv) the consequences of not undertaking the treatment; and

[2] An exception to the general rules regarding consent to treatment is medical assistance in dying (MAID). To be eligible for MAID, the patient must have reached the age of 18.

v) any alternatives available.

Physicians should be satisfied that the patient demonstrates a reasonable understanding of the information being provided regarding treatment.

Types of Consent

Consent is often implied based on the actions of the patient. Where a reasonable person would believe that consent has been given, implied consent may be inferred. If relying on implied consent, physicians should be confident the actions of the patient imply consent. When there is doubt, the patient should be asked to express their consent verbally.

When treatment may be more than mildly painful, carries appreciable risk, or is a surgical or invasive investigative procedure, the patient must be asked to specifically express their consent, either verbally or in writing. Express consent is also required for an examination of the pelvic, genital, breast, or rectal area of a patient's body.

Documenting Consent

A patient's consent should be documented through a contemporaneous note in their medical record.[3]

Documentation of the consent process is required in circumstances where the treatment is likely to be more than mildly painful, carries appreciable risk, will terminate a bodily function, is a surgical or invasive investigative procedure, or will lead to significant changes in consciousness. If a patient provides written consent, a copy of the consent document must be included in the patient's medical record[4].

Exceptions

Consent is not required in a medical emergency where there is severe suffering or an immediate threat to the life of the patient if treatment is delayed to obtain consent. Under such circumstances, treatments must be limited to those that are necessary to prevent prolonged suffering or to deal with imminent threats to life, limb, or health.

Consent is also not required for patients admitted to a healthcare facility on an involuntary basis as detailed in the *Mental Health Care and Treatment Act*. Physicians who provide treatment to patients under the authority granted through this *Act* must be aware of and act in accordance with all legal requirements, including those relating to consultation with the patient and their representative.

[3] CPSNL Standard of Practice: Medical Records Documentation and Management
[4] CPSNL Standard of Practice: Medical Records Documentation and Management

Acknowledgements

CPSBC (2023) Consent to Treatment

CMPA (2023) Family Disputes and the Patient: Staying Focused on Safe Patient Care

CMPA (2022) Informed Consent

CPSS (2022) Informed Consent and Determining Capacity to Consent

CMPA (2021) Can a Child Provide Consent?

CPSNS (2016) Informed Patient Consent to Treatment

CMPA (2016) Consent: A Guide for Canadian Physicians

CPSO (2001) Consent to Treatment

Related Documents

Advance Health Care Directives Act, SNL 1995, Chapter A-4.1

Mental Health Care and Treatment Act, SNL 2006 Chapter M-9.1

CMA (2018) Code of Ethics and Professionalism

CPSNL (2023) Medical Records Documentation & Management

Document History

Approved by Council	June 15, 2019
Reviewed & Updated	Approved for Consultation June 8, 2024
Expected Review Date	TBD
Publication Date	TBD