Physicians, dentists, podiatrists and nurses have both legal and ethical obligations regarding consent for proposed care and treatment. In British Columbia the legal obligations are imposed by legislation, which limits and directs practice, in relation to consent. The Health Care (Consent) and Care Facility (Admission) Act and the Infants Act are key statutes. Other legislation may also apply.

**Principles of Consent**

**General principles**

1. Valid consent is obtained before a health-care treatment, procedure or operation is provided to a patient at a non-hospital medical/surgical facility. Consent to treatment may be implied or specifically expressed (e.g. in writing). The clinical situation determines the approach required.

2. The valid consent process for major health care includes:
   a. consent discussion with the patient
   b. documentation of the consent discussion in the patient’s medical record
   c. completion of a consent form

3. A written consent form is required for surgical operations, invasive procedures and whenever analgesic, narcotic or anesthetic agents will significantly affect the patient’s level of consciousness during the treatment. This includes blocks performed for chronic pain.

4. For anesthesia associated with surgery/procedures, the written consent form is not required to contain acknowledgement by the patient that explanations have been given about the proposed/planned anesthesia. However, the anesthesiologist should include documentation of the anesthesia consent discussion with the patient on the anesthetic record.

5. Responsibility for obtaining a valid consent rests with the most responsible medical staff member (physician, dentist, podiatrist) performing or proposing the care. The patient’s signature may be witnessed by the most responsible medical staff member or delegate (resident or fellow), by another member of the health-care team (nurse), by unregulated staff (e.g. office assistant) or by a family member. If signing of the consent is witnessed by another member of the health-care team, the witness will ascertain that the patient is satisfied with the information they have been given by the medical staff member or delegate and that all of their questions have been answered prior to having the patient sign the consent form. If this is not the case, the witness will notify the medical staff member or delegate.
6. The consent form should be completed in the physician’s office and sent to the non-hospital booking office prior to the patient’s admission to the non-hospital medical/surgical facility. If this is not possible, then the consent form should be completed and signed as soon as possible during patient admission. The regulated health-care provider admitting the patient must ensure a signed consent form is on the patient’s medical record before the patient is transferred to the OR.

Minors

1. In accordance with the BC *Infants Act*, section 17, minors (anyone under 19 years of age) can consent (or agree) to their own medical care if they are capable and the health care is in the minor’s best interest. The law considers minors capable if they understand the need for medical treatment, what the treatment involves, and the consequences (benefits and risks) if they receive or do not receive the treatment.

2. There is no set age when a minor becomes capable. It depends on the maturity of the minor and the seriousness of the proposed treatment. Capable minors can consent to medical care only if it is in their best interest.

3. Health-care providers use their judgment in each case to determine if a minor is capable. If the health care provider determines that the minor is capable and that the healthcare is in the minor’s best interest, they can treat a minor who consents without the consent of the parents or guardians.

4. Where it is clear that the minor is competent and the treatment is in his/her best interest, as outlined in the *Infants Act*, the medical staff member should give the minor the opportunity to provide consent to the treatment.

5. If the minor provides consent, it is not necessary to obtain consent from the minor’s parent or legal guardian. In some cases, with the minor’s consent, the medical staff member may also wish to obtain agreement and understanding from the parent or legal guardian. In these cases the parent or legal guardian is not giving consent as consent has been provided by the minor.

6. If the medical staff member determines that the minor does not meet the requirements to provide valid consent, the medical staff member must obtain consent from the minor’s parent/guardian.

Scope of consent

1. Consent is specific to the procedure or treatment being proposed.

2. Additional or alternative health care may be provided to a patient without obtaining valid consent if all three of the following conditions are met:
   - the health care that was consented to is in progress, and
   - the adult is unconscious or semi-conscious, and
   - it is medically necessary to provide the additional or alternative health care to deal with conditions unforeseen when consent was given

Portability of consent

1. There may be times when patients undergo a procedure or treatment at a facility different from the one to which they originally sought health-care from. If care, for which the patient has consented to, is transferred to a non-hospital medical/surgical facility (e.g. consent for surgery,
health authority contracted case) a new consent form is not required provided that all four of the following conditions are met:

- there has been no change in the health care being proposed, and
- the medical staff member performing or proposing the care has not changed, and
- the consent discussion is documented in the patient’s medical record, and
- a copy of the signed consent form accompanies the patient

**Definitions**

**adult**
A person of the age 19 years or older.

**best interest**
Means that the health care must be given in the expectation that it will improve (or prevent deterioration or impairment of) physical or psychological health. In accordance with the *Infants Act*, minors may only consent to treatment that is in their best interest.

**emergency health care**
Treatment required to preserve life or prevent serious physical or mental harm or to alleviate severe pain.

**guardian**
A person who has legal authority to make decisions on behalf of a minor and includes a parent of a minor.

**implied consent**
Consent that is indirectly communicated to the health-care provider by the patient through his/her conduct such as nodding the head, presenting one’s arm for taking a blood pressure, cooperating with examination, etc. Also known as “knowledgeable cooperation.”

**major health care**
All surgical procedures, any treatment involving a general anesthetic, major diagnostic or investigative procedures, any health-care designated by regulation as major (electroconvulsive therapy, laser surgery) and any other treatment or procedure that presents appreciable risk to the patient as determined by the medical staff member.

**medical staff member**
Means physician, dentist or podiatrist.

**minor**
A person under the age of 19 years.

**minor health care**
Any health care that is not considered to be major including preliminary examinations and routine tests to determine the need for health care, blood tests and routine clinical procedures such as starting an intravenous.

**representative**
A person who has legal authority under the *Representation Agreement Act* to make health-care decisions on behalf of an incapable adult.
valid consent

Consent that has been voluntarily given by a patient (or authorized decision maker) who is legally capable of giving consent, who has been fully informed about the nature of the proposed care (including how it relates to the patient’s condition), the risks, benefits and any available alternatives of the proposed care (including the option of no care), and who has been given an opportunity to ask questions and receive answers about the proposed care.

**Facility processes ensure valid consent is obtained prior to providing any health care**

**INDICATORS:**

- Valid consent policy and procedures are in place and outline:
  - procedures and treatments requiring consent and the type of consent required (e.g. written consent is required for all major health care)
  - person responsible for obtaining valid consent (e.g. most responsible medical staff member)
  - process for obtaining valid consent from an adult
  - process for obtaining valid consent from a minor
  - process for obtaining valid consent from a substitute decision-maker, guardian or representative
  - process for obtaining valid consent from a patient about the involvement of trainees in their care (e.g. medical students, residents)
  - process for obtaining valid consent to take photographs, video or audio recordings of the patient to assist in the assessment, investigation and treatment of the patient or for secondary purposes such as teaching, training or research [https://www.cpsbc.ca/files/pdf/PSG-Photographic-Video-Audio-Recording.pdf](https://www.cpsbc.ca/files/pdf/PSG-Photographic-Video-Audio-Recording.pdf)
  - the information to be disclosed and discussed with the patient during the consent discussion, including referring patients to the Ministry of Health surgical wait time website for procedures also performed in public hospitals [https://swt.hlth.gov.bc.ca/](https://swt.hlth.gov.bc.ca/)
  - required documentation of the consent discussion in the patient’s medical record
  - procedures for completing the consent form
  - exceptions from obtaining valid consent (e.g. emergency health care)
  - process to follow if concerns regarding consent are identified

- Valid consent policy and procedures are congruent with and reference current legislation and regulations and standards of professional practice (e.g. *Health Care (Consent) and Care Facility (Admission) Act*, *Infants Act*, *Family Relations Act*)

- Responsibility for obtaining valid consent rests with the health professional most responsible for providing the care or treatment (e.g. medical staff member)

- Consent for student involvement in care (observation or providing direct care) is obtained by the preceptor of the student (medical staff member with privileges at the non-hospital medical/surgical facility) and without the student present
Valid consent is obtained for all major health care performed in a non-hospital medical/surgical facility

INDICATORS:

○ Valid consent is obtained prior to providing any health care

○ The health-care provider (e.g. most responsible medical staff member) explains the proposed treatment or course of treatment (consent discussion)

○ The consent discussion explains:
  • the proposed treatment or course of treatment
  • the condition for which the health care is proposed
  • the nature of the proposed health care
  • the risks and benefits of the proposed health care that a reasonable person would expect to be told about
  • alternative courses of health care (and when indicated the likely consequences of no treatment)
  • any specific additional issues or concerns that arose through the discussion and how they were addressed

○ The health-care provider (e.g. most responsible medical staff member) documents in the patient’s medical record the consent discussion(s) that takes place as part of the valid consent process

○ Documentation of the consent discussion(s) in the patient’s health-care record includes
  • the nature of the health care proposed,
  • the risks, benefits and alternative discussed with the patient, and
  • any specific additional issues or concerns that arose through the discussion and how they were addressed

○ A written consent form is completed for surgical operations, invasive procedures and whenever analgesic, narcotic or anesthetic agents will significantly affect the patient’s level of consciousness during the treatment

○ The consent form contains all of the required information (see Appendix A)

○ Abbreviations are not used in the consent form (e.g. procedure name and side are written out in full)

○ The consent form is signed by the patient/legal guardian or authorized decision maker

○ The consent form is completed in the medical staff member’s office and sent to the non-hospital booking office prior to admission (preferred)

○ The consent form is completed and signed as soon as possible after admission (if not completed in medical staff member’s office)

○ The consent form is filed on the patient’s medical record
Valid consent is confirmed prior to and throughout the delivery of care

INDICATORS:

○ During admission, prior to the patient entering the operating/procedure room, a regulated health care professional:
  • confirms the identity of the patient, using two identifiers
  • verifies that consent has been given for the proposed care, treatment or procedure
  • notifies the medical staff member if the patient does not appear to fully understand the nature of the procedure or if other concerns with the consent process are identified

○ During admission, prior to the patient entering the operating/procedure room, the anesthesiologist discusses the proposed/planned anesthesia and documents the anesthetic consent discussion with the patient on the anesthetic record

○ The signed consent form is on the patient’s medical record before the patient is transferred to the OR

○ Prior to surgery as part of the surgical safety checklist briefing, consent is verbally confirmed

Appendix A: Basic elements of a consent form

The consent form shall include the following:

• name of the patient
• procedure to be performed
• name of the physician who will be performing the care, treatment or procedure
• acknowledgement by the patient that explanations have been given about the nature of the treatment, its anticipated effect and about any material risks and special or unusual risks
• acknowledgement by the patient that alternative forms of treatment or investigation have been discussed
• acknowledgement by the patient that he or she is satisfied with the explanations and has understood them
• patient signature
• name of the witness and signature
• date (that the consent form was signed)

The consent form may also include:

• acknowledgement that additional or different procedures than those described by the medical staff member may be immediately necessary
• acknowledgement that other regulated health professionals and facility staff may be involved in the procedure
• consent to laboratory investigations in the case of injury to facility staff during the procedure

References


