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COLLEGE OF PHYSICIANS & SURGEONS OF ALBERTA

ADVICE TO THE PROFESSION

Informed Consent for Adults

The College of Physicians & Surgeons of Alberta (CPSA) provides advice to the profession to support physicians in implementing the CPSA Standards of Practice. This advice does not define a standard of practice, nor should it be interpreted as legal advice.

Advice to the Profession documents are dynamic and may be edited or updated for clarity at any time. Please refer back to these articles regularly to ensure you are aware of the most recent advice. Major changes will be communicated to our members; however, minor edits may only be noted within the documents.

Contents

This document addresses consent for adults. Adults are defined in legislation as individuals 18 years of age and older. For younger patients (including mature minors), refer to the advice document **Informed Consent for Minors**.

General principles of consent

CPSA recognizes the primacy of consent in any physician-patient relationship. Further, CPSA accepts and recommends the Canadian Medical Protective Association (CMPA) publication Consent: A Guide for Canadian Physicians.

All patient interactions require consent. In some situations, such as obtaining a patient history, consent is implicit given the willingness of the patient to proceed. Other situations require written or explicit oral consent (refer to "Documenting Consent" below).

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Adult patients are presumed to have the capacity to make decisions until the contrary is determined. Specific decision-making provisions cover situations where a health professional believes an adult cannot provide informed consent on a decision related to heath care. Regulated members can approach an alternate decision maker in accordance with legislation (*Mental Health Act*, *Personal Directives Act*, and *Adult Guardianship and Trusteeship Act*).

Informed consent is a process, not an event. Developing a sense of common purpose and shared responsibility early in the course of any physician-patient relationship is the best way to ensure valid informed consent. Such a relationship creates an environment where the risks and benefits of a proposed intervention can be shared in a meaningful way.

The voluntariness of consent, capacity to consent, scope of information sharing and context must all be considered in the consent discussion.

Voluntary consent

Patients must be free of compulsion, duress or coercion when consenting to or refusing treatment. In circumstances where a patient is under the influence of a third party, care must be taken to ensure the patient is in full agreement with the healthcare decision. Voluntary consent also means consent can be withdrawn by the patient during a course of treatment, providing s/he has capacity to do so.

Capacity to consent

Capacity is a continuum ranging from a comatose (incapacitated) patient to a patient who may be confused intermittently, to one who is fully capable. Capacity can vary over time. Beyond basic capacity, the regulated member needs to consider whether an individual truly understands the material presented to them.

In legislation, capacity is the ability to understand information that is relevant to the decision and the ability to appreciate the reasonably foreseeable consequences of both the decision and the failure to make a decision. If there is concern about the capacity of the decision maker, an assessment must be undertaken.

A capacity assessment determines a person's ability to make personal and/or financial decisions. The capacity assessor provides a clinical opinion after meeting with an individual

and asking questions to determine the degree to which s/he makes decisions in different areas of life. Physicians have authority to assess an adult's capacity to make specific health care-related decisions under Part 3 of the *Adult Guardianship and Trustee Act (AGTA)*, as for example when required for informed consent or enacting a personal directive.

Often the best way to assess understanding is to have the patient repeat back what s/he understood had been said and the reasoning behind the decision made.

The ability to provide capacity assessment will evolve, mirroring maturation of the patient-physician relationship, progression of underlying illness, and the progression of care. Emotional and social stresses often heighten the complexity of a capacity assessment. To help alleviate undue stress, the regulated member should ensure capacity assessment is performed in a timely and empathetic manner.

From time to time, a regulated member may be engaged to conduct a formal capacity assessment and prepare a report. A formal capacity assessment is **not** formation of a medical diagnosis but rather a determination of the Court based on the input of a capacity assessor, in accordance with the principles outlined in Part 1 of the *AGTA*. The process is to be respectful of an adult's rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. The regulated member should be aware of the responsibilities and expectations of conducting a formal capacity assessment; refer to the Office of the Public Guardian and Trustee (OPGT) for online resources.

Scope of information sharing

A regulated member must establish the patient has a reasonable understanding of the information provided in the process of obtaining consent. The amount of information must be contextually appropriate for the patient. It is often impossible and usually unreasonable to outline every possible risk. Relevant risks can be identified to:

- a professional standard (what other physicians would disclose);
- a subjective standard (what the patient would want to know); or
- an objective standard (what a reasonable person in similar circumstances would want to know).

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The legal environment applies an objective ("reasonable person") standard for consent (i.e., to disclose what a reasonable person in the patient's context would expect) as per *Reibl v. Hughes*. The "reasonable person" standard also applies to the efforts a physician must take to ensure patient understanding; the Courts have said not to the point of "vigorous and inappropriate cross-examination."

Information must be shared to both an objective standard for disclosure and a subjective standard for understanding.

Context of consent

Consider individual contexts when obtaining consent, including but not limited to:

- **Emergency situation.** A regulated member has a duty to provide care to an incapacitated adult patient without consent where no alternate decision maker is available, as necessary to preserve the patient's life, prevent serious physical or mental harm or to alleviate severe pain.
- **Capacity of the patient.** For an incapacitated patient, consider:
  - the timeliness and availability of alternate decision makers
  - information about the patient's known wishes (such as a Personal Directive)
- **Treatment decision**, including:
  - expected consequences of proposed treatment
  - alternative treatments and their expected outcomes
  - consequences of no treatment (i.e., the natural course of the condition if untreated)
- **Individual patient's specific concerns**.

Documenting consent

Implicit Consent: For much of medical care patient consent is implicit in the interaction. Even with Implicit consent, it is always good practice to have a conversation with the

patient. It is important to consider risks not only from a medical perspective, but also from a holistic view of the patient's health, including spiritual, emotional, and social risks.

In some instances, even an implicit consent should be carefully documented in the patient record. This is contextual to the nature of the interaction. For example, consider documenting an implied or oral consent when care is provided in a semi-urgent fashion for a procedure that written consent would have been the standard. In such an instance, the regulated member should document their understanding of the need to move forward without obtaining written consent.

Explicit Consent: While the patient's consent may be implied, explicit consent is necessary when the assessment involves an intimate exam (i.e., an examination including the breasts, rectum, or genitalia), when an examination or procedure is likely to be more than mildly painful, when injecting vaccines or other drugs, taking blood, or when exposing a patient to radiation. Explicit consent (e.g., written or oral acknowledgement) should be documented in the patient record when provided by the patient.

Best practice involves using appropriate examination techniques when touching a patient, offering a running commentary of the exam, and explaining why each step is necessary.

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Written Consent: To ensure the patient fully understands and agrees to the examination or procedures, written consent is recommended when an examination or procedure:

- carries appreciable risk;
- involves the use of an agent that significantly affects the patients level of consciousness; or
- is expected to result in ablation of a bodily function.

Written consent is much more than a signed piece of paper and requires sufficient documentation to confirm that the patient was informed of the benefits and risks of the examination or procedure. Certain instances require particularly rigorous and detailed documentation, including patient participation in research or any type of medical or surgical work which might be regarded as less than entirely necessary to the physical

health of the patient, but presents significant and life-altering consequences (e.g., cosmetic surgical procedures and gender alteration treatments).

Physicians are encouraged to review the advice on informed consent in the CMPA's Good Practices Guide.

RELATED STANDARDS OF PRACTICE

- *Boundary Violations: Personal*
- *Boundary Violations: Sexual*
- *Informed Consent*
- *Patient Record Content*

COMPANION RESOURCES

- Advice to the Profession documents:
  - Boundary Violations: Personal
  - Boundary Violations: Sexual
  - Informed Consent for Minors
  - Medical Assistance in Dying
  - Legislated Reporting & Release of Medical Information
- AH's Resources for Capacity Assessors
- AHS's Advance Care Planning
- Office of the Public Guardian's Guide to Capacity Assessment under the Personal Directives Act
- CMPA:
  - Consent: A Guide for Canadian Physicians
  - Informed Consent: overview and objectives
  - Informed consent: why and when do we need consent?