



COLLEGE OF NURSES  
OF ONTARIO  
ORDRE DES INFIRMIÈRES  
ET INFIRMIERS DE L'ONTARIO

THE STANDARD OF CARE.

## Consent Practice Guideline

### An Overview of the Legislation

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The College of Nurses of Ontario presents the Consent practice guideline: An Overview of the Legislation.

## Consent legislation

*Health Care Consent Act*

*Substitute Decisions Act*



Nurses have professional and legal obligations for obtaining consent. To understand their obligations, nurses need to know the relevant legislation; specifically, the Health Care Consent Act and Substitute Decisions Act.

The Health Care Consent Act sets out explicit rules about when consent is required, who can give consent when a client can't, and when a health care professional can obtain consent from a substitute decision-maker.

The Substitute Decisions Act covers decision-making for individuals incapable of making decisions about personal care or property.

Let's look first at the Health Care Consent Act.

## ***The Health Care Consent Act:***

- promotes individual authority and autonomy;
- facilitates communication between health practitioners and clients; and
- ensures a significant role for family members if a client is incapable of giving consent.



The Health Care Consent Act promotes individual authority and autonomy, facilitates communication between health care practitioners and their clients, and ensures a significant role for family members if a client is incapable of giving consent.

## The Act also:

- ensures that that health care practitioners have no authority to make treatment decisions on behalf of clients; and
- provides a hierarchy of substitute decision-makers.



The Act also ensures that health care practitioners have no authority to make treatment decisions on behalf of clients. In addition, it provides a hierarchy of substitute decision-makers who can give or refuse consent on behalf of a client.

## Client consent can be:

- written, oral or implied; and
- withdrawn at any time.



Client consent can be written, oral or implied. With implied consent, the client indirectly accepts or refuses a proposed treatment through his actions. Consent can be withdrawn at any time.

## Age of consent

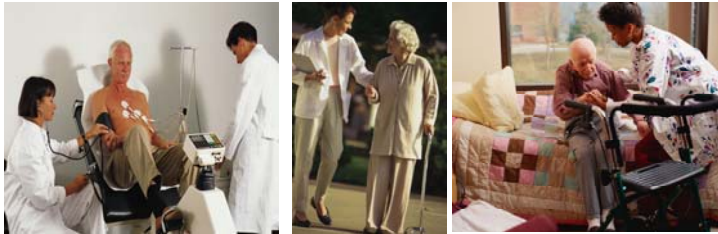
- There is no minimum age for giving consent.
- To determine if a young client has the capacity to understand the information relevant to making a decision, use your professional judgment.



There is no minimum age for giving consent. To determine if a young client has the capacity to understand and appreciate the information relevant to making a decision, use your professional judgment, taking into account the circumstances and the client's condition.

## Health care professionals are accountable for obtaining consent

- treatment;
- admission to a care facility; and
- personal assistance services.



The Health Care Consent Act states that health care professionals are accountable for obtaining consent for treatment and admission to a care facility. The College extends a nurse's accountability further – to obtaining consent for the provision of personal assistance services.

## Treatment

*Health Care Consent Act, 1996*

Anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose. It includes a course of treatment, plan of treatment or community treatment plan.



Nurses are accountable for obtaining consent for treatment. The Health Care Consent Act defines treatment as anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose. It includes a course of treatment, plan of treatment or community treatment plan.

## Care facility

- an approved charitable home for the aged;
- home or joint home;
- nursing home; or
- care facility prescribed by regulations.



Nurses are accountable for obtaining consent for admission to a care facility. The Health Care Consent Act defines a care facility as an approved charitable home for the aged as defined in the Charitable Institutions Act; a home or joint home as defined in the Homes for the Aged and Rest Homes Act; a nursing home as defined in the Nursing Homes Act; or a care facility prescribed by regulations as a care facility.

## Personal assistance services

The *Health Care Consent Act* defines personal assistance services as assistance with, or supervision of, hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulating, positioning or any other routine activity of living.



Nurses are accountable for obtaining consent for providing personal assistance services. The *Health Care Consent Act* defines personal assistance services as assistance with, or supervision of, hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulating, positioning or any other routine activity of living.

## Test for capacity

The Act states that a client is capable of giving consent if the client:

- understands the information that's relevant; and
- appreciates the possible consequences of a decision or lack of decision.



The Health Care Consent Act states that a client is capable of giving consent if the client understands the information that's relevant to making the decision; and appreciates the possible consequences of a decision or lack of a decision. If doubt exists about the client being capable of making decisions, the health care practitioner proposing the treatment, care or service must ensure that the client is assessed by an approved evaluator.

## An evaluator:

- is qualified to determine a client's capacity to make decisions; and
- can be an RN or RPN who has additional education and meets specific requirements.



An evaluator is a health care practitioner identified under legislation who is qualified to determine a client's capacity to make a decision. An evaluator can be an RN or RPN who has additional education and meets specific requirements.

## ***Substitute Decisions Act***

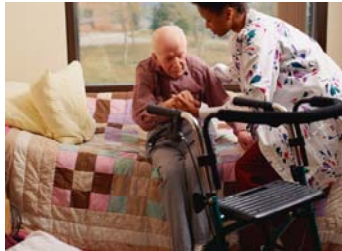
- provides the rules on substitute decision-making for property and personal care; and
- provides direction for the substitute decision-maker who through a formal appointment, is the power of attorney, guardian or trustee.



Once an evaluator has determined that a client is incapable, the Substitute Decisions Act provides the rules on substitute decision-making for property and personal care. The Act provides direction for the substitute decision-maker who, through a formal appointment, is the power of attorney, guardian or trustee.

## Defining incapable

The *Substitute Decisions Act* defines a client as incapable of making decisions about personal care if the client is unable to understand information that's relevant to making decisions on the client's own health care, nutrition, shelter, clothing, hygiene or safety, or is unable to appreciate the consequences of a decision or lack of decision.



The Substitute Decisions Act defines a client as incapable of making decisions about personal care if the client is unable to understand information that's relevant to making decisions on the client's own health care, nutrition, shelter, clothing, hygiene or safety, or is unable to appreciate the consequences of a decision or lack of decision.

The substitute decision-maker is only responsible for giving consent for the activities that the client has been deemed incapable of.

## Hierarchy of substitute decision-makers

1. Guardian
2. The individual named as an attorney for personal care.
3. The individual appointed as a representative by the Consent and Capacity Board.



Under the Substitute Decisions Act, a person who is at least 16 years old can choose a substitute decision-maker in the event that the person becomes incapable.

According to the Health Care Consent Act, if a person is incapable, consent must be obtained from the highest-ranking available substitute decision-maker in the person's life. In the hierarchy of substitute decision-makers, the first choice is the court-appointed guardian of the client. Second is the individual named as an attorney for personal care; and the third is the individual who the Consent and Capacity Board appointed as a representative. When a family member refuses to be the substitute decision-maker, the Consent and Capacity Board appoints a substitute decision-maker.

## Hierarchy of substitute decision-makers

### 4. Spouse, partner or relative in the following order:

- a) Spouse or partner;
- b) Child if 16 or older, custodial parent, or Children's Aid Society;
- c) Parent who has only a right of access;
- d) Brother or sister; and
- e) Other relative.



Fourth in the hierarchy is a spouse, partner or relative in the following order:

Spouse or partner;

Child if age 16 or older, the parent or custodial parent of the client, or the Children's Aid Society;

Parent who has only a right of access;

Brother or sister; and

Other relative.

## Hierarchy of substitute decision-makers

5. A public guardian or trustee is the substitute decision-maker of last resort.



In the absence of these people or if two equally ranked substitutes can't agree, a public guardian or trustee is appointed as the substitute decision-maker.

Health care practitioners can rely on assurances from the person who states that he is the substitute decision-maker. A formal statement is not necessary.

A person under statutory guardianship may apply to the Consent and Capacity Board for a review of a finding of incapacity.

## Test your knowledge



Test your knowledge on the Health Care Consent Act and Substitute Decisions Act. Click on the correct answers in the following quizzes.

**Under the *Health Care Consent Act*, one of the following is not included in the rules for when consent is required.**

- a) Treatment
- b) Admission to a care facility
- c) Personal assistance services
- d) Property

Substitute decision-makers are identified in the *Health Care Consent Act* as those who can make treatment decisions for clients incapable of making own their decisions.

- a) True
- b) False

**Consent can be written, oral or implied.**

- a) True
- b) False

Is there a minimum age for consent under the *Health Care Consent Act*?

- a) Yes
- b) No

## Scenario 1

Edith, 89, lives in a long-term care home. She is able to make decisions about her nutrition and other activities of living but unable to make decisions about her health care treatments.

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**Can Edith appoint someone to make decisions only about her health care treatments?**

- a) Yes
- b) No

## Discussion

The correct answer is yes, Edith can appoint a substitute decision-maker only for health care. Under the *Substitute Decisions Act*, a person can be deemed capable of making decisions about one aspect of their care and incapable of making decisions about another aspect.

The correct answer is yes, Edith can appoint a substitute decision-maker only for health care. Under the *Substitute Decisions Act*, a person can be deemed capable of making decisions about one aspect of their care and incapable of making decisions about another aspect.

## Consent learning module

1. Guiding Principles
2. An Overview of the Legislation
3. Obtaining Consent



You have now completed Chapter 2. To work through another chapter this module, close this presentation and return to the Learning Centre.

To ask a College Practice Consultant a question, click on the “Contact” button in the top right-hand corner of your screen.

Click on the links to read the College’s Consent practice guideline, the Health Care Consent Act and the Substitute Decisions Act.