



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

THE STANDARD OF CARE.

Consent Practice Guideline

Obtaining Consent

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The College of Nurses of Ontario presents the Consent practice guideline:
Obtaining Consent.

Nurses are accountable for obtaining consent for:

Treatment



Admission to a care facility



Personal assistance services

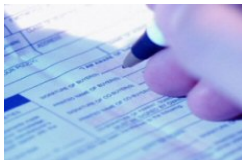


Nurses are accountable for obtaining consent for treatment, admission to a care facility and the provision of personal assistance services.

The health care professional who proposes the treatment or care is responsible for obtaining informed consent.

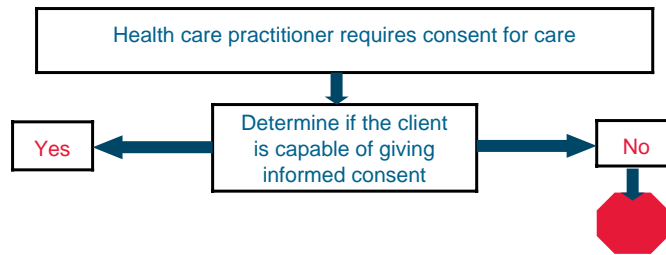
Elements of consent

- no minimum age;
- written, oral or implied;
- can be withdrawn at any time;
- not obtained through misrepresentation or fraud; and
- informed and voluntary.



There is no minimum age for providing or refusing consent. Consent can be written, oral or implied. With implied consent, clients indirectly accept or refuse the proposed treatment based on their actions. For example, a nurse explains to a client that blood must be drawn for specific tests, and the client holds out her arm. The client's action implies her consent. Consent can be withdrawn at anytime, must not be obtained through misrepresentation or fraud, and must be informed and voluntary.

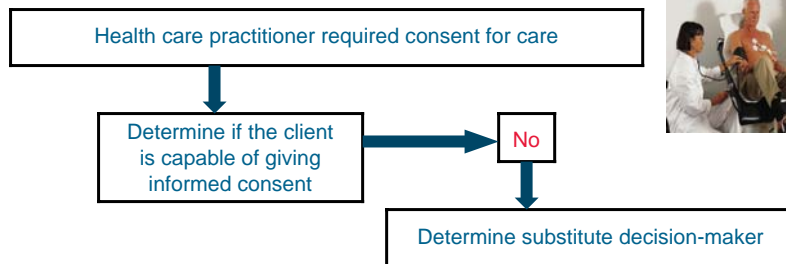
Obtaining consent



Prior to obtaining consent, the nurse proposing the treatment, care or personal assistance service must determine if the client is capable of giving informed consent. Use professional judgement when determining if a client is capable, and consider the circumstances and the client's condition. The nurse must also determine if the client has the capacity to understand and appreciate the information that's relevant to making the decision.

Nurses should not provide treatment if there is any doubt about whether the client understands the information and is capable of consenting. This rule applies whether or not there is an order, or even if the client has already consented to treatment. If you question whether a client is capable of giving consent, document your actions, notify the prescriber if applicable and consult with other members of the health care team to determine if a capacity assessment is needed.

Obtaining consent



If the client is deemed incapable with respect to a specific treatment, the nurse proposing the care should identify the substitute decision-maker and confirm that individual's role. The substitute decision-maker is only responsible for consent regarding activities that the client has been deemed incapable of doing. For example, the client may be incapable of making decisions about health care but capable of making decisions about hygiene. The substitute decision-maker would then only give consent for issues related to health care, and the client would provide consent for hygiene activities such as bathing.

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.



If a health care practitioner or evaluator finds a person incapable with respect to a specific treatment, consent must be obtained from the highest-ranking available substitute decision-maker in the person's life, according to the Health Care Consent Act hierarchy. 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 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;

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. 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 a person who states that he is the substitute decision-maker; a formal statement is not necessary.

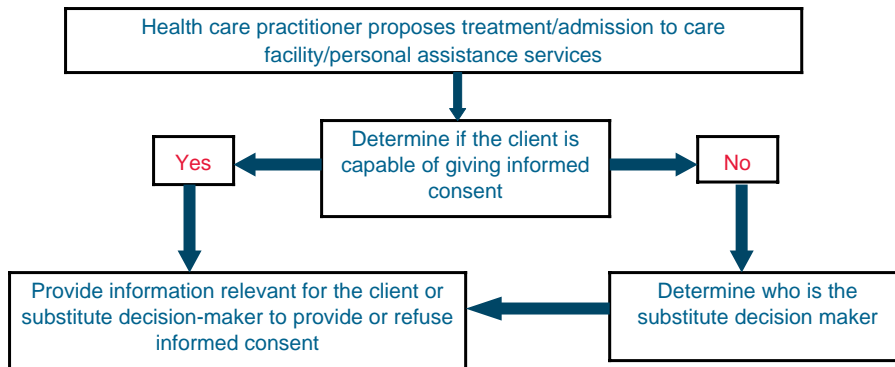
Advocating for incapable clients

A nurse advocating for an incapable client:

- informs the client that a substitute decision-maker will be asked to make the decision;
- communicates in a way that takes into account the circumstances, the client's condition and the nurse-client relationship;
- explores and clarifies, the nature of the client's discomfort with the arrangement; and
- informs the client of the right to apply to the Consent and Capacity Board.

If the nurse proposing the care or evaluating capacity determines that the client is incapable of making decisions, the nurse informs the client that a substitute decision-maker will be asked to make the final decision. The nurse communicates in a way that takes into account the circumstances, the client's condition and the nurse-client relationship. If there is an indication that the client is uncomfortable with the substitute decision-maker, the nurse should explore and clarify the nature of the client's discomfort with the arrangement. If the discomfort relates to the finding of incapacity or the choice of substitute decision-maker, then the nurse should inform the client of the right to apply to the Consent and Capacity Board for a review. The Board could review the incapacity finding and appoint a substitute decision-maker of the client's choice.

Obtaining consent



When consent is needed from the client or substitute decision-maker, specific information must be provided to enable the person to make an informed decision.

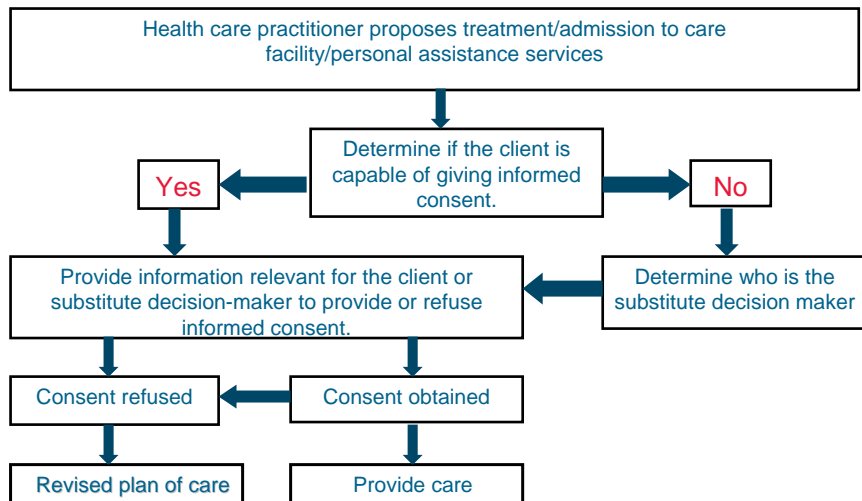
Consent information must include the:

- nature of the treatment or care;
- expected benefits;
- the material risks and side effects;
- alternative courses of action; and
- likely consequences of not receiving the treatment.



For the client or substitute decision-maker to provide informed consent, the nurse proposing the treatment or care must explain the nature of the treatment or care; the expected benefits; the material risks and side effects; the alternative courses of action; and the likely consequences of not receiving the treatment or care.

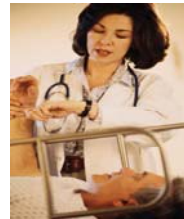
Obtaining consent



After consent has been obtained from the client or substitute decision-maker, the treatment can be provided. However, the client has the right to withdraw consent at any time. When consent is not obtained, the multidisciplinary health care team should work with the client or substitute decision-maker to determine and revise the plan of care.

In an emergency situation:

- consent may not be needed if the person is experiencing severe suffering or is at risk of sustaining serious bodily harm;
- each client and situation must be assessed and evaluated individually; and
- the ethical decision to treat or provide care without consent must be made as a group.



In an emergency situation, an examination, diagnostic procedure or treatment may be conducted without consent if the person is experiencing severe suffering or is at risk of sustaining serious bodily harm if treatment is not administered promptly. Each client and situation must be assessed and evaluated individually, and the ethical decision to treat or provide care without consent must be made as a group within the multidisciplinary health care team.

Reasonable efforts to find a substitute decision-maker must continue so that consent to the treatment or admission can be obtained or refused.

Providing emergency treatment

Treatment in an emergency situation can be provided immediately if:

- the client is capable and provides consent;
- the client is apparently capable of giving consent but unable to communicate due to a language barrier or disability;
- reasonable efforts to overcome the barrier or disability have been made; and
- there is no reason to believe that the client does not want the treatment.

Treatment in an emergency situation can be provided immediately if: the client is capable of giving consent and provides consent; the client is apparently capable of giving consent but is unable to communicate the decision due to a language barrier or disability; reasonable efforts to overcome the barrier or disability have been made; and if there is no reason to believe that the client does not want the treatment, such as it could breach the client's cultural or religious beliefs.

Crisis admission

Admission to a care facility without consent may be authorized if:

- the incapable person requires immediate admission as a result of a crisis; and
- it is not reasonably possible to obtain immediate consent or refusal on behalf of the incapable person.



Admission to a care facility without consent may be authorized if: the incapable person requires immediate admission as a result of a crisis; and it is not possible to obtain immediate consent or refusal on behalf of the incapable person.

However, reasonable efforts to find a substitute decision-maker must continue so that consent to the treatment or admission can be obtained or refused.

Test your knowledge



Test your knowledge on consent. Click on the correct answers in the following quizzes.

Scenario 1

After a car accident, Claire, 40, is rushed by ambulance to the emergency room. She is unconscious and bleeding, and needs an immediate blood transfusion. Claire's husband, Franco, arrives in the ER. The nurse approaches Franco and explains the need for immediate treatment. He refuses, saying that Claire is a Jehovah's Witness and would not want a blood transfusion. The nurse explains the consequences of refusing treatment, and Franco says that his wife would not want this type of treatment even if it would save her life.

After a car accident, Claire, 40, is rushed by ambulance to the emergency room. She is unconscious and bleeding, and needs an immediate blood transfusion. Claire's husband, Franco, arrives in the ER. The nurse approaches Franco and explains the need for immediate treatment. He refuses, saying that Claire is a Jehovah's Witness and would not want a blood transfusion. The nurse explains the consequences of refusing treatment, and Franco says that his wife would not want this type of treatment even if it would save her life.

Should the nurse find another substitute decision-maker for Claire?

- a) Yes
- b) No

Discussion

The correct answer is no. Claire is not able to make a decision, and the *Substitute Decisions Act* defines her substitute decision-maker as her spouse. The nurse must respect Franco's decision, and the blood transfusion must not be administered. Franco is capable, informed and following Claire's most recent wishes. A client's wishes may be in written form, such as in a living will or advanced directive, or may have been spoken to the substitute decision-maker.

The correct answer is no. Claire is not able to make a decision, and the Substitute Decisions Act defines her substitute decision-maker as her spouse. The nurse must respect Franco's decision, and the blood transfusion must not be administered. Franco is capable, informed and following Claire's most recent wishes. A client's wishes may be in written form, such as in a living will or advanced directive, or may have been spoken to the substitute decision-maker.

Scenario 2

Kai has a few questions about an upcoming procedure that a physician will perform. The nurse has been asked to obtain written consent.

Kai has a few questions about an upcoming procedure that a physician will perform. The nurse has been asked to obtain written consent.

Should the nurse obtain consent before the physician answers Kai's questions?

- a) Yes
- b) No

Discussion

The correct answer is no. The health care professional proposing the treatment is required to obtain consent from the client. The nurse is accountable for advocating on Kai's behalf to ensure that he receives the information that's relevant in making an informed choice. The nurse should inform the physician that Kai requires additional information before he can provide consent.

The correct answer is no. The health care professional proposing the treatment is required to obtain consent from the client. The nurse is accountable for advocating on Kai's behalf to ensure that he receives the information that's relevant in making an informed choice. The nurse should inform the physician that Kai requires additional information before he can provide consent.

You must be 16 years of age to give consent.

- a) True
- b) False

What information must be provided to a client to obtain informed consent?

- a) Nature of the treatment
- b) Expected benefits
- c) Possible side effects
- d) Alternative courses of action
- e) Likely consequences of not having the treatment

Once clients consent, they cannot change their minds.

- a) True
- b) False

A substitute decision-maker has the right to access the information necessary to make an informed decision.

- a) True
- b) False

If a client disagrees with the appointment or decision made by the substitute decision-maker, the client has a right to apply to the:

- a) Consent and Capacity Board
- b) Substitute Decision Board of Appeals
- c) Consent and Substitute Board

Consent learning module

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

Click here to access the College's [Restraints](#) practice standard.



You have now completed Chapter 3. To work through another chapter in 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 link to read the College’s Consent practice guideline.