



## POLICY

ISSUED: April 2002

REPLACES: October 1998

TOPIC: Informed Consent

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### Consent Rights:

1. Every person who is capable of giving or refusing consent to physiotherapy has:
  - 1.1 the right to give or refuse consent on any grounds, including moral or religious grounds, even if the refusal will result in death.
  - 1.2 the right to revoke consent.
  - 1.3 the right to expect that the decision to give, refuse or revoke consent will be respected, and
  - 1.4 the right to be involved in case planning and decision-making.
2. Physiotherapists must obtain the consent of a client, or where that client is incapable, from their substitute decision-maker (*see below*), prior to initiating treatment or changing the type of treatment.

### **Elements of Consent**

1. The consent must be specific to the proposed physiotherapy services.
2. The consent must be given voluntarily.  
*The client must not be forced to consent, must not be under pressure to consent.*
3. The client must be told the nature, purpose, benefits, and risks of the treatment, alternative treatments, and the consequences of refusing treatment.  
*It is not necessary to give the client a long and detailed medical lecture nor does the client have to be informed of every conceivable or remote risk\*. However, the client must be given all such facts as are necessary to make an informed decision as to whether or not he /she will undergo treatment. Physiotherapist must advise clients of **any** risk of significant harm (i.e. death). This means any material risk, regardless of however slight, if its occurrence carries significant consequences. Physiotherapists should also discuss risks of a minor nature that is **fairly likely** to occur. Good client communication is of utmost importance.*
4. The client must be informed of any personal commitment and/or financial costs associated with the proposed treatment. Anticipated frequency and duration of services must be discussed whenever possible.

5. The Physiotherapist has an ethical duty to document the receipt of consent.  
*Requiring the client to sign a general consent form prior to meeting with the Physiotherapist is not obtaining informed consent to treatment. The best practice is to document in the client's chart the receipt of consent including all requisite elements (client is competent to give consent, advised the client of the proposed treatment and its purpose, risks, etc)*

#### Assessing Mental Capacity to Acquire Consent

6. If someone is of the age of majority there is the presumption that they have the capacity to consent. However, prior to the initiation of treatment the physiotherapist must make an assessment of whether that presumption is correct.

*If the physiotherapist, in the course of their contact with the client, (getting the client's history, explaining proposed treatment, etc) determines that the client has a mental disability or impairment that interferes with their ability to appreciate the nature of the information being discussed that client does not have the capacity to give consent.*

*The client must understand the risks and benefits of the proposed treatment and have the judgment to appreciate the consequences of their choice. A client's refusal to consent based on their legitimate assessment of the risks, benefits, and consequences is valid and must be respected. Their capacity should not be questioned simply because of their failure to agree to the proposed course of treatment.*

7. If the client does not have the capacity to give informed consent then it must be received from a substitute decision maker. Substitute decision maker means the person responsible for making decisions on behalf of the client.

For the purposes of this policy the order of priority of substitute decision-maker is as follows\*:

1. legally appointed guardian
2. a person who the client, when competent, appointed as his/her proxy in accordance with the terms and conditions set out in the *Medical Consent Act*, R.S.N.S. 1989, c. 279.
3. spouse
4. next of kin: adult children
5. next of kin: parent,
6. next of kin: brother or sister
7. public trustee

\* There is **no** statutory guidance with regard to the priority of substitutes, however, guidance may be taken from practice and from the guidelines of *Hospitals Act*, R.S.N.S. 1989, c. 208, s.54(4).

### **Duration of Consent**

1. Provided there are no significant changes in the expected benefits, material risks, or material side effects of a treatment, the physiotherapist may presume that consent to treatment includes consent to minor variations or adjustments in the treatment.

The consent is valid until:

- a. the treatment consented to is performed;
- b. the client's condition changes;
- c. The client withdraws consent; or
- d. further risks become known.

### **Absence of Informed Consent from Client**

1. In the absence of 'informed consent' from a client whom the physiotherapist considers is unable to make an informed decision, the physiotherapist may proceed with treatment where:

- 1.1 the substitute decision-maker who has the authority and is capable of giving informed consent does so, or
- 1.2 emergency care is required.

2. Emergency means a situation in which a person/patient/client:

1. is apparently experiencing severe suffering; or
2. is at risk of sustaining serious bodily harm if the treatment is not administered promptly, and
3. a delay in providing treatment will put the person at risk of suffering significant bodily harm or death.

3. In an emergency, the treating physiotherapist should:

- a. document the circumstances in the progress notes, including the medical condition of the patient as well as all attempts made to contact the patient's substitute decision maker;
- b. proceed with the treatment to which a reasonable, prudent individual in the patient's circumstances would be expected to consent; and
- c. obtain consent from the patient or substitute decision-maker as soon as it is practical.

### **Form of Consent**

1. Consent to treatment may be expressed orally, in writing, or may be implied from the client's words, writing or actions or from the circumstances. The least likely evidence to be contradicted is a written record of the discussion between the physiotherapist and client signed and dated by both.

*It would be in the physiotherapist's best interest to record the information provided to the client, and the client's response.*

2. Refusal to consent to treatment must be recorded along with the fact that the consequences of the refusal have been explained to the client.