

WHAT ARE THE PRE-REQUISITES TO INFORMED CONSENT?

A person must be capable of providing informed consent. Unless one has reasonable grounds to believe that an individual is incapable, there is a presumption of capacity.

According to the Health Care Consent Act 1996, a person is capable with respect to a treatment if the person is:

- a) Able to understand the information that is relevant to making a decision about the treatment; and
- b) Able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Decision-making capacity may vary according to the complexity and seriousness of the proposed treatment. Capacity can also come and go depending on an individual's underlying physical and psychological condition (e.g., dementia, depression) or treatment that they are receiving (e.g., sedation).

There is no minimum age of consent in Ontario. If the individual is capable as described above, they are able to consent (or refuse to consent) to a treatment or plan of care.

WHEN MUST CONSENT BE OBTAINED?

According to the Health Care Consent Act 1996, consent is required for anything that is done for

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

ONLINE RESOURCES INCLUDE

Consent and Capacity Board
www.ccboard.on.ca/

Health Care Consent Act
www.ontario.ca/laws/statute/96h02

To speak to St. Joseph's Health System's Bioethicist, please call 905-522-1155 ext. 33866. If it is after business hours or on weekends, please speak to your healthcare team to have the Bioethicist on-call paged.

© Providence Healthcare, St. Joseph's Health System and St. Michael's Hospital, 2018

St. Joseph's Health System is a member of the Centre for Clinical Ethics at St. Michael's Hospital in Toronto.

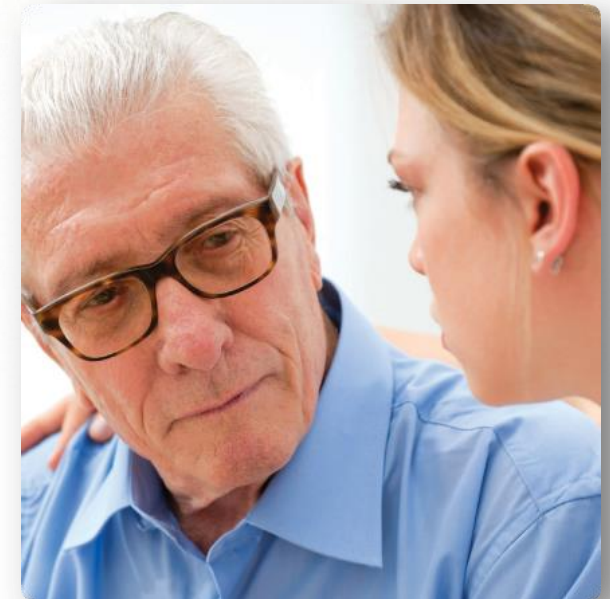


*This guide provides general information about the current law in this subject area. However, legal information is not the same as legal advice, where legal advice is the application of law to an individual's specific circumstances. Although we have tried to make sure that the information in this guide is accurate and useful, we recommend that you consult a lawyer if you want professional legal advice in this subject area that is appropriate to your particular situation.



Informed Consent

*Making sure that you get all the information you need to make healthcare informed decisions**



INFORMED CONSENT

John's kidneys are failing and a decision about whether or not to begin dialysis needs to be made soon.

Breast reduction surgery has been offered to Alice as a treatment option for her chronic back pain and discomfort

Although twice daily dressing changes have been ordered for Peter, they consistently refuse an evening dressing change.

In each of the situations described above before a treatment has begun the informed consent or permission of the individual is needed in order to carry out the prescribed or recommended treatment or plan of care.

But what does “informed consent” really mean? When is informed consent necessary? What kind of information must be provided?

The purpose of this document is to provide some information for patients, families and healthcare team members by addressing these questions and providing suggestions for additional resources.

The Health Care Consent Act 1996 outlines the legal requirements related to consent to treatment and these have been included where appropriate.

WHAT IS INFORMED CONSENT?

Providing consent means that an individual is agreeing with the proposed treatment or plan of care. According to the Health Care Consent Act 1996, consent to treatment is informed if before giving it,

- a) the person received the information... that a reasonable person in the same circumstances would require in order to make a decision about the treatment; and
- b) the person received responses to his or her requests for additional information about those matters.

WHAT ARE THE ELEMENTS OF CONSENT TO TREATMENT?

According to the Health Care Consent Act 1996, the following elements are required for consent to treatment:

1. The consent must relate to the treatment (consent for one particular treatment does not mean the individual has consented to other treatments);
2. The consent must be informed (required information is described in the next section);
3. The consent must be given voluntarily (an individual should not feel coerced or pressured into making a particular decision); and
4. The consent must not be obtained through misrepresentation or fraud (information given should be accurate and unbiased).

WHAT INFORMATION NEEDS TO BE PROVIDED?

The Health Care Consent Act 1996, outlines the type of information that needs to be provided as follows:

1. The nature of the treatment;
2. The expected benefits of the treatment;
3. The material risks of the treatment;
4. The material side effects of the treatment;
5. Alternative courses of action; and
6. The likely consequences of not having the treatment.

WHEN IS CONSENT NOT REQUIRED?

The Health Care Consent Act 1996 indicates that consent may be waived in case of an emergency (defined as a situation in which the person is experiencing severe suffering, or is at risk of sustaining serious bodily harm).

CAN AN INDIVIDUAL REFUSE TO CONSENT TO TREATMENT?

An individual may refuse to consent to a proposed treatment or plan of care even if this decision does not appear to be in their best interests. If a capable individual refuses to consent to treatment even if it is life-sustaining, it should not be provided. Prior to withholding the treatment every effort should be made to ensure that the individual understands the nature of the treatment decision, and appreciates the consequences of the decision.