South Georgian Bay Community Health Centre

Every One Matters.

Consent to Medical Care

South Georgian Bay Community Health Centre Policies & Procedures			
Section:	**Privacy & Consent**	**Approved by:**	Executive Director
Title:	**Consent to Medical Care**	**Date:**	11/23/2011
Effective Date:	04/06/2026	**Applies to:**	All Employees
Next Review Date:	04/06/2030	**Revised Date:**	**04/06/2026**

The Health Care Consent Act (HCCA), 1996, places strict parameters on Health Care Practitioners (HCP) regarding consent to medical treatment. Every practitioner must abide by this act and within the regulations of their respective governing body standards of practice.
According to the HCCA, the following elements are required for consent to treatment:

1. The consent must relate to the treatment.

2. The consent must be informed.

3. The consent must be given voluntarily.

4. The consent must not be obtained through misrepresentation or fraud. (HCCA, 1996, c. 2, Sched. A, s. 11 (1).

POLICY:

All health care providers must obtain an informed consent from clients before performing any procedure/treatment on a client using the guidelines outlined in this policy. The SGBCHC is committed to encourage persons served to include family members and other informal support persons (friends, family-of-choice), to whatever extent they wish, in their circle of care or support.
Certain circumstances, as outlined below, may preclude consent from being obtained.

PROCEDURE

The HCCA makes it clear that consent is an ongoing, continuous process that can change at any time. A person's wish about treatment can be expressed orally, in writing, or in any other form.

Capacity under the Act is treatment specific. A person may be capable with respect to one treatment, but not capable with respect to another. If a health care provider (HCP) proposing a treatment finds that the client is incapable of consenting to the treatment, the client must be informed of the finding of incapacity and that a substitute decision-maker will assist. HCP should refer to the Determining Capacity for Consent to Treatment or if a minor refer to the Determining Capacity of a Minor policy.

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Health Care Providers have no authority to make treatment decisions on behalf of clients except in limited circumstances in an emergency when no one else authorized to make the decision is available. Substitute Decision Makers must make decisions that follow any relevant wishes or directives that the client expressed when he or she was capable (Substitute Decisions Act, 1992).

A client may appeal the finding of incapacity to the Consent and Capacity Review Board.

If capacity is being questioned, the HCP must refer to the professional bodies and SGBCHC's policy Determining Capacity for Consent to Treatment or if a minor refer to Determining Capacity of a Minor

General Principle - Capacity and Consent

To be capable implies that the person is able to understand information that is relevant to making decisions and is also able to appreciate the reasonably foreseeable consequences of either making or not making a decision (CSPO, 2022).

Consent is informed if, before giving it, a client is able to obtain relevant information as to the nature of the treatment, its benefits, the material risks and side effects, alternatives, and the likely consequences of not having treatment.

Current Health Care Consent Act legislation allows practitioners to presume that consent to treatment also includes consent to variations and adjustments to it or continuation of treatment in a different setting if the risks and benefits do not change significantly.

In case of emergency, where the client is unable to consent, and a substitute decision maker is not readily available, a health care provider has the duty to do what is immediately necessary without consent.

For a HCP to declare any clinical situation an emergency for which consent is not required there must be demonstrable imminent threat to the life or health of the client. As soon as the client is able to make decisions and regains the ability to give consent, consent must be obtained from the client for additional treatment. If the health practitioner is of the opinion the person is incapable of consent appropriate steps need to be taken.

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Practice Guidelines

The obligation of disclosing appropriate information to a client rests with the health care professional that is carrying out the treatment or investigative procedure. While this duty may be delegated, the treating professional must be confident that the delegate has appropriate knowledge and experience to provide adequate explanation to the client.

The HCP must be able to provide the information that a reasonable person needs to give informed consent, and must be able to answer questions about the information. The Health Care Consent Act also clarifies the ability of one practitioner to, on behalf of other practitioners involved, propose, determine capacity for, and obtain consent for treatment.

Treatment and Exclusions

Treatment means anything that is done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of treatment or a plan of treatment, but does not include:

a) The assessment for the purposes of this Act of a person's capacity with respect to a treatment, admission to a care facility or personal assistance service, the assessment for the purpose of the Substitute Decisions Act, 1992, of a person's capacity to manage property or a person's capacity for any other
b) The assessment or examination of a person to determine the general nature of the person's condition;
c) The taking of a person's health history;
d) The communication of an assessment or diagnosis;
e) The admission of a person to a hospital or other facility;
f) A personal assistance service;
g) A treatment that in the circumstances poses little or no risk of harm to the person; and
h) Anything prescribed by the regulations as not constituting treatment (CNO, 2017).

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If a health practitioner decides to proceed as if an act excluded from the definition of treatment actually were a treatment, the Act and the regulations apply as if the excluded act were a treatment within the meaning of this Act. In this context, excluded acts that may be considered to be treatments for the purposes of this Act are anything described in clauses (b) and (g).
The Act also permits further exclusions to be prescribed in regulations; however, as of yet, there are no further regulated exclusions to treatment.

Types of Consent

Consent to treatment may be implied, or it may be specifically expressed either orally or in writing. Informed consent implies that the client or substitute decision-maker has received information that a reasonable person in the same circumstances would require in order to decide about: treatment, alternative courses of action, the materials effects, risks, side effects of the treatment and the alternative courses of action, and the consequences of not having the treatment.

1. **Implied Consent**
   a) Much of the treatment, tests, or examinations at SGBCHC are done on the basis of consent which is implied either by the words, or the behaviour, or by the circumstances under which treatment is given.
      i.e. where a client arranges an appointment with a health care provider volunteers a history and submits without objection to physical examination; consent for examination is clearly implied. For most of the care rendered at SGBCHC, this implied consent is all that will be required.
   b) Staff must be sure that the actions of the client do, in fact, unequivocally imply and would be interpreted by others to have implied permission for whatever the staff member has proposed.
   c) When there is doubt, it is preferable to obtain expressed consent.

2. **Expressed Consent**
   To be valid, expressed consent must be specific:
   - Expressed consent may be in an oral or written form and should be sought before anything out of the routine, or anything unusual is done.

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- Written consent should be sought when the investigation or treatment is likely to be more than mildly painful, when it carries appreciable risk or when it will result in the ablation of a bodily function.
- Written consent should be obtained whenever analgesic, narcotic or anesthetic agents will significantly affect the client's level of consciousness during the treatment. The written form itself is not the consent, but merely serves as evidence that the appropriate explanations were given and that the client agreed to what was proposed (informed consent).

3. Basic Requirements for Valid Consent, Implied or Expressed

To be valid, consent must meet the following criteria:

- voluntarily given, in the absence of any coercion or duress
- the client must have the capacity to consent
- the client must have been properly informed
- not have been obtained through misrepresentation or fraud

To ensure informed consent, the following criteria should be met:

- The HCP must disclose to the client the nature of the proposed treatment, its gravity, any material risks, and any special risks relating to the treatment in question.
- Even if a certain risk is mere possibility that ordinarily need not be disclosed, if its occurrence carries serious consequences, as for example paralysis or death, it must be regarded as a material risk requiring disclosure.
- The HCP must answer any specific questions posed by the client as to the risks and side effects involved in the proposed treatment. The client must always be given the opportunity to ask questions.
- The client must be told of the consequences of leaving the ailment untreated as well as about alternative forms of treatment and their risks.
- The HCP must be alert to a client's individual concerns and deal with them.
- The HCP should note on the client record (progress notes) when consent explanations have been made, as this can confirm that a client was properly informed.

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Where there is a language barrier, interpretation should be provided by someone of the client's choice or an interpreter provided by the Health Centre. Children under the age of 16 should not be used as interpreters, if possible.

Documentation of the Consent

The centre may designate specific procedures for which it is required that a written consent form be signed and witnessed.

- NOTE: The form itself is not the consent, but merely serves as evidence that the appropriate explanations were given and that the client agreed to what was proposed.

In all cases where express consent, oral or written, is required under this policy, the attending HCP should concurrently note in the client's file that the appropriate disclosure has been given, and that consent has been given.

Emergencies

Treatment can be provided immediately if the person is:

- Capable of giving consent and provides consent
- Incapable with respect to treatment but there is a substitute decision-maker available who gives consent.
- Incapable with respect to treatment and it is not reasonably possible to obtain consent or refusal from the substitute in time to assess the emergency.

To be an emergency under the act, the health practitioner must be of the opinion that:

a) A person is expecting severe suffering or is at risk of suffering serious bodily harm if the treatment is not administered promptly; and
b) a delay in providing treatment will either:
   - prolong suffering that the person is experiencing, or
   - will put the person at risk of suffering serious bodily harm.

If it is impractical to obtain consent, health care providers may take reasonable and medically sound action without consent in situations where delay will endanger the client's life, limb, or vital organs,

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unless the client has refused such treatment. It is important to document the reasons for providing emergency treatment in the client's chart (CSPO, 2022).

Special Circumstances

Physicians may have difficulty knowing how to seek consent to treatment in special situations, for example,

- those involving the mentally ill or
- people who refuse certain forms of treatment for religious reasons.

In such circumstances, the physician should seek legal advice from the Canadian Medical Protective Association (CMPA) or other insurance carrier, or contact the Physician Advisory Service of the College.

Relevant Policies

- Determining Capacity for Consent to Treatment
- Determining Capacity of a Minor
- Privacy Policy

REFERENCES:

- College of Nurses of Ontario (2017). Consent. Consent. Compendium of Standards of Practice for Nurses
- College of Physicians and Surgeons of Ontario (2001, February, updated 2022). Consent to Medical Treatment.
- Government of Ontario (1996). Health Care Consent Act 1996 (HCCA) c.2, Sched
- Government of Ontario (2004). Personal Health Information Protection Act, 2004, S.O. 2004, c. 3,Sched. A
- Government of Ontario (1992). Substitute Decisions Act 1992, S.O. 1992, c. 30