

Consent to Treatment

All Registrants are required to comply with the Health Care Consent Act and its regulations. In an effort to clarify compliance with consent/informed consent as specified in the Health Care Consent Act, Bill 19 which revises Bill 109: An Act Respecting Consent to Treatment, 1992, repeals the Advocacy Act and amends the Substitute Decisions Act, 1992 and related acts; the Board has prepared the following information:

1. A summary of the key issues relating to the definition of consent/informed consent; and how it is to be obtained and recorded (p.2)
2. A summary of the determination of capacity/incapacity as it relates to obtaining consent/informed consent (p.3)
3. Recommended forms to be used for:
 - a. diagnostic consent (p.4)
 - b. treatment consent (p.5)
4. A list of controlled acts (p.6)

HEALTH CARE CONSENT ACT 1996
How it applies to Naturopathic Practice

CONSENT Protects the right of informed choice and must be obtained for diagnostic procedures and/or treatments which are controlled acts in the RHPA. Anything that is done for therapeutic, preventative, palliative, diagnostic, cosmetic, or health related purpose including course of treatment or plan of treatment.

- Exceptions:**
1. taking a health history
 2. routine physical exam excluding controlled act procedures (see list)
 3. communication of an assessment for diagnosis
 4. emergency care - including restraint or confining persons to prevent injury to self or others
 5. routine vital signs including blood pressure, heart rate, temperature
 6. first aid or temporary assistance such as stoppage of bleeding, immobilization of fracture or cryotherapy for injury
 7. a treatment that in the circumstances poses little or no risk of harm

CONSENT Must be obtained from patients who are deemed capable, 14 years of age or over or by a substitute decision maker who is 16 years of age or older as noted in the Substitute Decision Act:

1. Court appointed guardian
2. Attorney with continuing power of attorney (POA)
3. Attorney for personal care without POA
4. Board appointed representative (Consent and Capacity Review Board)
5. Family member:
 - (a) spouse or partner (have co-habited for 1 yr. or more)
 - (b) child
 - (c) parent (who has right of access)
 - (d) brother or sister
 - (e) other relative; relative defined by blood, marriage or adoption
6. Public Guardian or Trustee if no relatives, etc. are available or if there is a disagreement between relatives.

CONSENT

1. No diagnosis or treatment is to occur without consent.
2. No consent is considered given unless it is INFORMED CONSENT.
3. No diagnosis or treatment unless you are of the opinion that the person is capable of understanding and has given consent or you are of the opinion that the person is incapable of giving consent and someone else has given consent in accordance with the Act.

VALID CONSENT

1. Must relate to specific diagnosis or procedure, treatment or plan of treatment
2. Must be informed
3. Must be given voluntarily
4. Must not be obtained through misrepresentation or fraud.

INFORMED CONSENT

1. Patient has received information about diagnosis and/or treatment, alternative courses of action, the material effects (costs), expected benefits, risks and side effects in each case, the consequences of not having the diagnosis and/or treatment and alternative courses of action available in each case.
2. Practitioner has responded to person's request to their satisfaction for other information about diagnosis and/or treatment, alternative courses of action, the material effects (costs), expected benefits, risks and side effects in each case, the consequences of not having the diagnosis and/or treatment, and alternative courses of action available in each case.

INFORMED CONSENT

1. May be expressed or implied as long as it complies with the above.
2. Written or verbal
3. Recommendation is to get written consent in all cases (see forms) and especially for any act or treatment which may be a controlled act.
4. Covers a course of treatments or plan of treatment, and once given, is not required for each subsequent time, provided that any variations in the treatment, or the same treatment provided in a different setting does not change the terms of the original consent

WITHDRAWAL OF CONSENT

The patient or substitute decision maker/guardian has the right to withdraw consent at any time.

DETERMINATION OF CAPACITY

1. A health practitioner may presume that a person is capable with respect to treatment unless the health practitioner has reason to believe that the person may be incapable with respect to treatment.
A health practitioner may have reason to believe a person may be incapable with respect to treatment based on the following observations:
 - (a) The person shows evidence of non-rational, confused or delusional thinking.
 - (b) The person's behaviour, action or means of communication suggest that he or she does not understand the information presented by the health practitioner.
 - (c) The person appears unable to decide about the treatment proposed.
 - (d) The person is experiencing shock or severe pain, fear or anxiety.
 - (e) The person appears to be impaired by alcohol or drugs.
 - (f) Any other observations which give rise to a concern about the person's capacity.

2. If a health practitioner believes that a person may be incapable with respect to the treatment, he or she shall apply the criteria set out in this section in order to form an opinion respecting the person's capacity. The health practitioner shall first apply the following criteria in order to determine whether, in his or her opinion the person is able to understand the information that is relevant to making a decision concerning treatment:
 - (a) The person must demonstrate an understanding of:
 - (i) the condition for which treatment is being proposed,
 - (ii) the nature of the proposed treatment,
 - (iii) the risks, side-effects and benefits of the treatment, and
 - (iv) the alternatives to the treatment presented by the health practitioner, including the alternative of not having treatment.
 - (b) If the health practitioner is of the opinion that the person is able to understand the information that is relevant to making a decision concerning treatment, the health practitioner shall apply the following criteria in order to determine whether, in his or her opinion, the person is able to appreciate the reasonably foreseeable consequences of a decision:
 - (i) The person must be able to acknowledge the fact that the condition for which treatment is recommended may affect him or her.
 - (ii) The person must be able to assess how the proposed treatment and alternatives to the treatment presented by the health practitioner, including the alternative of not having treatment, could affect the person's life or quality of life.
 - (iii) The person's choice of treatment must not be substantially based on a delusional belief.
 - (iv) In applying the criteria set out in this section, the health practitioner shall exercise his or her professional judgement.

3. In forming an opinion as to a person's capacity, the health practitioner shall take into consideration:
 - (a) the risk of harm to the person resulting from the proposed treatment or the treatment choice; and
 - (b) the degree of intrusiveness of the proposed treatment of the treatment choice.

4. A health practitioner shall not determine that person is, in the health practitioner's opinion, incapable with respect to treatment based solely on:
 - (a) the existence of a psychiatric or neurological diagnosis;
 - (b) the existence of a physical disability, including a speech or hearing impairment;
 - (c) a refusal of a proposed treatment that is contrary to the advice of the health practitioner of another person; or
 - (d) the person's age.

5. When giving a person information about a treatment, the health practitioner shall use, to the best of his or her ability, a means of communication which takes the person's education, age, language, culture and special needs into account.

INCAPACITY

If a patient is deemed incapable, you must inform them verbally and in writing, and inform them that they are entitled to meet with a rights adviser. If a patient says they want to meet with a rights adviser, the practitioner will ensure this is done. Forms for this purpose are available from the Ministry of Health. No treatment may be administered until consent is given by a substitute decision maker or rights adviser. The Board may review an incapacity decision and rule on it.

INFORMED CONSENT TO NATUROPATHIC DIAGNOSTIC PROCEDURES

Patient Name _____
Address _____
City/Town _____
Province _____

File No. _____
Phone No. _____
Attending N.D. _____
Assistant _____

RECOMMENDED DIAGNOSTIC PROCEDURE(S)
(including those by referral to another practitioner)

I, the undersigned, do hereby acknowledge that I have been informed of and understand the recommended diagnostic procedure(s) and have discussed to my satisfaction this and any requests for related information with the naturopathic doctor named above and/or with his/her office or clinical assistant(s). I further acknowledge and confirm that I have been informed of, and understand the diagnostic procedure(s) with respect to the financial costs, expected benefits, potential risks and side effects; the likely consequences of not having the procedure(s), and what alternative course(s) of action are available to me.

As a result, I do hereby voluntarily consent/withhold/ my informed consent for the recommended diagnostic procedure(s) as specified above. I also understand that I may change the status of my voluntary informed consent at any time.

Patient or Lawful Representative Signature

Witness Signature*
Address _____
Town/City _____
Province _____
Postal Code _____

Date Signed

Witness Relation to Patient

Phone no.

Attending N.D./Assistant

***Witness signature is advised but not necessary**

CHANGE TO INFORMED CONSENT

I do hereby voluntarily consent/withhold/withdraw my informed consent for the recommended diagnostic procedure(s) as specified above. I also understand that I may change the status of my voluntary informed consent at any time.

Patient or Lawful Representative Signature

Witness Signature*
Address _____
Town/City _____
Province _____
Postal Code _____

Date Signed

Witness Relation to Patient

Phone no.

Attending N.D./Assistant

***Witness signature is advised but not necessary**

INFORMED CONSENT TO NATUROPATHIC THERAPEUTIC PROCEDURES

Patient Name _____
Address _____
City/Town _____
Province _____

File No. _____
Phone No. _____
Attending N.D. _____
Assistant _____

RECOMMENDED THERAPEUTIC PROCEDURE(S)/PLAN
(including those by referral to another practitioner)

I, the undersigned, do hereby acknowledge that I have been informed of and understand the recommended therapeutic procedure(s)/plan and have discussed to my satisfaction this and any requests for related information with the naturopathic doctor named above and/or with his/her office or clinical assistant(s). I further acknowledge and confirm that I have been informed of and understand the therapeutic procedure(s)/plan with respect to the financial costs, expected benefits, potential risks and side effects; the likely consequences of not having/following the procedure(s)/plan, and what alternative course(s) of action are available to me.

As a result, I do hereby voluntarily consent/withhold/ my informed consent for the recommended therapeutic procedure(s)/plan as specified above. I also understand that I may change the status of my voluntary informed consent at any time.

Patient or Lawful Representative Signature

Date Signed

Witness Signature*

Address

Town/City

Province

Postal Code

Witness Relation to Patient

Phone no.

Attending N.D./Assistant

***Witness signature is advised but not necessary**

CHANGE TO INFORMED CONSENT

I do hereby voluntarily consent/withhold/withdraw my informed consent for the recommended therapeutic procedure(s)/plan as specified above. I also understand that I may change the status of my voluntary informed consent at any time.

Patient or Lawful Representative Signature

Date Signed

Witness Signature*

Address

Town/City

Province

Postal Code

Witness Relation to Patient

Phone no.

Attending N.D./Assistant

***Witness signature is advised but not necessary**

CONTROLLED ACTS

27. -(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) the person is a member authorized by a health profession Act perform the controlled act; or
- (b) the performance of the controlled act has been delegated in accordance with section 28 to the person by a member described in clause (a).

(2) A "controlled act" is any one of the following done with respect to an individual:

1. Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.
2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of the teeth.
3. Setting or casting a fracture of a bone or a dislocation of a joint.
4. Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger,
 - i. beyond the external ear canal,
 - ii. beyond the point in the nasal passages where they normally narrow,
 - iii. beyond the larynx,
 - iv. beyond the opening of the urethra,
 - v. beyond the labia majora
 - vi. beyond the anal verge, or
 - vii. into an artificial opening into the body.
7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.
8. Prescribing, dispensing, selling or compounding a drug as defined in subsection 117(1) of the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.
9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.
10. Prescribing a hearing aid for a hearing impaired person.
11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.
12. Managing a labour or conducting the delivery of a baby.
13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.

(3) An act by a person not a contravention of subsection (1) if a person is exempted by the regulations under this Act or if the act is done in the course of an activity exempted by the regulations under this Act. 1991, c. 18, s. 27.

28. -(1) The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.

(2) The delegation of a controlled act to a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession. 1991, c. 18, s. 28.

29. -(1) An act by a person is not a contravention of this subsection if it is done in the course of,

- (a) rendering first aid or temporary assistance in an emergency;
- (b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;
- (c) treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment;
- (d) treating a member of the person's household and the act is a controlled act set out in paragraph 1, 5 or 6 of subsection 27(2); or
- (e) assisting a person with his or her routine activities of living and the act is a controlled act set out in paragraph 5 or 6 of subsection 27(2).

(2) Subsection 27(1) does not apply with respect to a communication made in the course of counselling about emotional, social, educational or spiritual matters as long as it is not a communication that a health profession Act authorizes members to make. 1991, c. 18, s. 29.