

## Fact Sheet-Consent

Nurses<sup>1</sup> are responsible for their practice and must always act in the best interest of the client; in doing so, nurses must recognize that clients retain the right to make decisions about the management of their own healthcare. This fact sheet will focus on the nurse's legal and ethical obligations regarding consent. Consent is the voluntary agreement to some act or purpose by a capable individual (Canadian Nurses Association [CNA], 2017). Clients and their substitute decision-makers<sup>2</sup> have the legal right to agree to, refuse, or revoke permission for proposed care, service, treatment, and/or research provided by a healthcare professional at any time (British Columbia College of Nurses & Midwives, 2020).

### Implied Consent

Nurses frequently receive implied consent for the care they provide inferred from signs and/or actions, or by inaction and/or silence. For example, the client holding out an arm to have their blood pressure taken or opening their mouth to have their temperature taken (Canadian Nurses Protective Society [CNPS], 2018).

### Informed Consent

Informed consent is the process of giving permission or making choices about care. It is based on both a legal doctrine and an ethical principle of respect for an individual's right to sufficient information to make decisions about care, treatment, and involvement in research (CNA, 2017).

Informed consent requires a process of communication between a client and/or substitute decision maker and a member of the healthcare team to ensure the client's authorization, agreement, or refusal to undergo a specific intervention/procedure. It is more than simply getting a client to sign a consent form. Consent is informed if, before giving it, the person received the information about the treatment that any reasonable person in the same circumstances would require to make a decision, and the person received responses to their requests for additional information about the treatment.

The information must include the:

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

---

<sup>1</sup> For the purpose of this document, the term "nurses" refers to all NANB members, including graduate nurses, registered nurses, and nurse practitioners.

<sup>2</sup> Substitute decision-maker: in relation to an individual, means, unless the context requires otherwise, a person who is authorized under this Act to give, withhold or to withdraw consent on behalf and in the place of the individual with respect to the collection, use or disclosure of the individual's personal health information (Government of New Brunswick [GNB], 2009).

## **Consent for Intervention Performed by Others**

While nurses are integral in the informed consent process, they are not responsible for obtaining informed consent for interventions provided by other healthcare providers (CNPS, 1994). If a nurse is unable to answer a client's questions, or the questions are not within the nurse's scope of practice, the nurse must communicate these questions to the responsible healthcare provider. It is important for nurses to document the client's gaps in understanding, including what they did to inform the client or advocate on their behalf.

## **Witnessing a Signature**

Nurses may be asked to witness a signature. It is important to clarify that the purpose of witnessing a signature is to verify the identity of the person signing the consent form and not to verify that the information shared with the client regarding the intervention is accurate.

## **Legal Capacity**

Legal capacity is the ability to understand and appreciate the nature and consequences of decision making. Generally, the law assumes that everyone who is 19 years of age or older has the capacity to consent to medical treatment unless it is proven otherwise. In New Brunswick, the [Medical Consent of Minors Act](#) gives a person who is 16 years of age or older the same right to consent to medical treatment as a person who is 19 or older.

In some cases, a child under 16 year of age may be able to consent to treatment where the attending healthcare provider (including a nurse or nurse practitioner) is of the opinion that the child is capable of understanding the nature and consequences of the treatment, and that the treatment is in the best interests of the child and his/her continuing health and well-being. In circumstances when a minor does not have legal capacity, a parent, guardian, or substitute decision maker may be empowered to make the decision (CNPS, 2018).

## **Mental Competence**

Mental competence is the ability of an individual to understand and process information in order to make decisions, as well as the ability to appreciate the reasonably foreseeable consequences of his/her decisions.

The [Supported Decision-Making and Representation Act](#) allows adults 19 years of age or older in New Brunswick with an intellectual disability to retain the presumption of capacity and make decisions with the assistance<sup>3</sup> and support required. A person is considered to have the capacity to make a decision if able to understand the information that is relevant to the decision, and to appreciate the reasonably foreseeable consequences of the decision (Supported Decision Making and Representation Act, 2022). This must be determined by a

---

<sup>3</sup> In the Act, "assistance" in relation to decision-making, means any measure that helps a person have the capacity to make a decision, including explanations of relevant information and reasonably foreseeable consequences of the available options (Supported Decision Making and Representation Act, 2022).

capacity assessment conducted by an authorized assessor<sup>4</sup>. The decision-making assistance authorization may authorize a decision-making assistant to obtain information relevant to the decision of the assisted person (e.g., the client), or to help the assisted person in obtaining that information; and to communicate the decision of the assisted person to other persons or to help the assisted person in communicating their decision. A decision-making assistance authorization is a legal document, and not a verbal agreement; refer to the [Supported Decision Making and Representation Act](#) for details on the related requirements.

In New Brunswick, the [Mental Health Act](#) regulates the involuntary custody, detention, restraint, observation, examination, assessment, care, and treatment of persons suffering from serious mental illnesses. The involuntary admission process may not be initiated by a nurse or nurse practitioner.

### **Documentation**

Nurses must document the consent process, including a refusal or withdrawal of consent. Depending on the context, documentation may include:

- an explanation provided to the client about the intervention, its benefits or the anticipated outcomes;
- an explanation of the consequences if intervention is not taken;
- the potential options;
- the potential risks;
- the client's response to and understanding of the explanation.

Please refer to the [Standards for Documentation](#) regarding the nurse's responsibility and accountability when documenting.

### **Employer Policy**

Nurses need to know which legislation and employer policies applies to their practice and follow legislated and policy requirements (e.g., the [Medical Consent of Minors Act](#)). Employer policy should provide clarity in regard to the nurse's role and responsibilities related to the informed consent process.

### **Resources**

[Medical Consent of Minors Act](#) (GNB)

[Mental Health Act](#) (GNB)

---

<sup>4</sup> The assessors that are authorized to conduct a capacity assessment for the purpose of the Act are:

- (a) a medical practitioner lawfully entitled to practise in the Province,
- (b) a nurse practitioner lawfully entitled to practise in the Province,
- (c) a psychologist lawfully entitled to practise in the Province, or
- (d) a member of a class of persons prescribed by regulation.

[Consent to Treatment: The Role of the Nurse](#) (CNPS)

[Consent for the Incapable Adult](#) (CNPS)

[Supported Decision Making and Representation Act](#) (GNB)

[Template Form: Consent to Use Electronic Communications](#) (CNPS)

[Consent for CPR](#) (CNPS)

## Case study

### Witnessing vs. Obtaining Consent: What's the Difference?

*This case study is a fictional educational resource. Any resemblance to actual people or events is coincidental. Thank you to the British Columbia College of Nurses & Midwives for granting permission to adapt their case study.*

In the course of admitting Mr. Smith for his procedure, the nurse notices the procedure consent form—typically completed at the physician's office or the pre-admission clinic— is not signed. After speaking with Mr. Smith, the nurse learns that he did speak to the physician performing the procedure. He states that he knows he needs the procedure and agreed to have it at this time. He remembers little else about the conversation.

#### *What are the nurse's professional responsibilities?*

The nurse knows when she is involved in care or treatment provided by another health professional, she has a professional responsibility and ethical obligation (as per the [Standards of Practice](#)) to respect and promote the client's right to be informed and make informed choices. Regardless of whether Mr. Smith has signed the consent form, the nurse knows she must:

- confirm Mr. Smith's identity and verify that he has consented to the procedure;
- check to see if he has sufficient information and understanding about the procedure, and if not, help him understand the information provided by the physician; and
- advocate for him to get more information as needed.

#### *Can the nurse witness Mr. Smith's signature?*

Employer policy may allow the nurse to witness Mr. Smith's signature, but this does not mean she is obtaining consent. The act of witnessing a signature on a consent form is different than the process of obtaining consent. The nurse knows it's not appropriate for her to take responsibility for obtaining consent for care treatment provided by another health professional. In this situation, it's the surgeon's responsibility to obtain informed consent from Mr. Smith.

#### *What does the nurse do?*

Because Mr. Smith has additional questions about his surgery, she calls the surgeon, letting him know he'll need to speak with Mr. Smith before the procedure. The nurse documents the conversations with Mr. Smith and the surgeon in Mr. Smith's record and follows her employer policy for completing the consent form.

## References

British Columbia College of Nurses & Midwives. (2020). *Consent*. Practice Standard for Registered Nurses. <https://www.bccnm.ca/RN/PracticeStandards/Pages/consent.aspx>

Canadian Nurses Association. (2017). *Code of ethics for registered nurses*. <https://www.cna-aiic.ca/en/nursing/regulated-nursing-in-canada/nursing-ethics>

Canadian Nurses Protective Society. (2018). *Consent to treatment: The role of the nurse*.  
<https://cnps.ca/article/consent-to-treatment/>

Government of New Brunswick. (2009). *Personal health information privacy and access act*.  
<http://laws.gnb.ca/en/showdoc/cs/P-7.05>

Supported Decision-Making and Representation Act, S.N.B.c.60 (2022).  
<https://laws.gnb.ca/en/document/cs/2022,%20c.60>