

4.3 Informed Consent

Purpose:

The College of Physiotherapists of Manitoba (CPM) requires that all members practice within their individual knowledge, skills, and abilities. Physiotherapists are expected to show judgment in their practice which protects public safety and professional standards.

This Practice Direction provides direction to physiotherapists about requirements and methods for seeking ongoing informed consent from their patients, both orally and in writing, for all physiotherapy interventions.¹

In all cases, the physiotherapist obtaining informed consent must be the physiotherapist who is providing the physiotherapy intervention.²

Definitions and concepts:

Informed consent: Informed consent is an *ongoing process* of communication between physiotherapists and their patients (or their patients' legally authorized representative/substitute decision maker).

Obtaining informed consent requires information sharing and discussion, an assessment of the patient's understanding, a decision on the course of treatment, and documentation of the process.

Capacity: Capacity refers to a patient's ability to understand information about the consequences of accepting or refusing a physiotherapy intervention.

Capacity to consent to treatment can vary over time or because of the complexity of the treatment.³ Physiotherapists must continuously re-evaluate the patient's capacity and their ability to participate in decision making about physiotherapy interventions.

Intervention: This Practice Direction uses the term "intervention" to encompass the discrete components of assessments and treatments provided by physiotherapists.

Physiotherapist Assistant: Trained personnel who assist in the provision of physiotherapy services under the direction and supervision of a registered/licensed physiotherapist. ⁴

Legally authorized representative/Substitute decision maker: Person designated to make a decision on behalf of a patient who does not have the capacity to consent.⁵

Professionalism:

The physiotherapist must:

- Recognize and appreciate their patients' autonomy, uniqueness, care goals, and self-worth at all times.
- Maintain professional boundaries that honour and respect the therapeutic relationship with patients.⁶
- Actively engage patients in their care as a way to enhance the therapeutic relationship, improve communication, and ensure patient safety, comfort, and understanding.
- Involve patients in decision-making regarding their care, respecting their independence and their right to question, decline options, refuse, and/or withdraw from treatment at any time.
- Communicate clearly and appropriately with patients to facilitate their understanding of the care plan, outline the risks and benefits of interventions, and obtain ongoing informed consent.
- Monitor patients' responses throughout an intervention, adjusting and modifying interventions/approaches as required, and obtaining ongoing informed consent.⁷
- Determine the patient's capacity to make decisions regarding physiotherapy interventions. The physiotherapist must obtain informed consent from the appropriate individual, according to applicable legislation and regulatory requirements, in cases when patients are incompetent, incapacitated, and/or unable to provide informed consent for themselves.⁸
- Provide care in cases of emergency even when the patient (or substitute decision maker) is unable to consent. In urgent situations, it may be necessary or appropriate to initiate emergency treatment while steps are taken to obtain the informed consent of the patient or the substitute decision-maker, or to quickly determine the availability of advance directions.
- Provide the patient with an opportunity to consider their options. Physiotherapists must not rush or coerce the patient into agreeing to any aspect of care.

Communication:

The physiotherapist must:

- Provide appropriate information about the proposed physiotherapy intervention, in a way that the patient can understand (for example – verbal explanation, diagrams, models). The information should include the patient's role in decision making, any possible side effects/adverse events,

possible alternatives, and the potential consequences of refusing the suggested intervention/treatment plan.

- Consider language or other communication barriers and arrange appropriate assistance to ensure proposed interventions are properly explained and understood (i.e. written instructions, interpreter, etc.).⁹
- Explain to patients beforehand any procedures that have the potential to be misinterpreted (e.g. removal of clothing, touching, physical closeness).¹⁰
- Obtain a patient's consent to involve others in the patient's care, such as physiotherapist assistants, students, and volunteers. None of these individuals should be present during the initial discussion with the patient. Consent must be obtained after a private conversation with the patient about the roles and responsibilities of the physiotherapist and the physiotherapist assistant, student, or volunteer so that your patient can feel comfortable asking questions and/or declining to have observers or additional care givers present.¹¹
- Discuss fees (where applicable) related to the intervention.
- Obtain ongoing consent with each visit, reviewing the treatment plan, and confirming that the patient remains in agreement with the plan.¹²
- Monitor and respond to the patient's verbal and non-verbal communication to assess the patient's ongoing consent.

Documentation:

Obtaining informed consent and documenting informed consent are two different matters. The physiotherapist must respect the ongoing process of obtaining informed consent and the patient record must contain documentation of informed consent.

The physiotherapist must:

- Follow the requirements in the CPM Practice Direction 4.17 Recording Keeping. (CPM Reference Guide Section 4 Practice Directions PD 4.17 Record Keeping)
- Recognize that a written consent form signed by the patient is not the "consent." The explanation given by the physiotherapist and the dialogue between physiotherapist and patient about the proposed treatment are the key elements in the consent process.
- Document how and when informed consent was obtained. While it will be of little value later if the patient can make the claim that explanations about the physiotherapy intervention were inadequate, a signed consent form is evidentiary, written confirmation that explanations were given and the patient agreed to what was proposed. In their documentation, physiotherapists must also include a description of the detailed discussion of the relevant information with particular notes on any special points which may have been raised in the discussion.¹³
- Update the written consent form or patient record if there is a significant change in the nature, expected benefits, or anatomic area of the treatment plan.
- Document the following situations should they occur:

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- Use of interpreter or alternate communication methods.
 - Communication with substitute decision maker.
 - Refusal of, or withdrawal from, physiotherapy interventions including the reasons why.
 - Any other situation that may have an impact on the ability of a patient to give ongoing informed consent.
- Respect the confidentiality, privacy, and security of patient information in all forms of communication and documentation.¹⁴

Other situations where informed consent is required:

- Physiotherapy research: the physiotherapist must obtain approval from the appropriate research ethics authority and informed consent from the patients prior to their participation in studies.¹⁵
- Interprofessional learning or job shadowing: the physiotherapist must obtain and document the patient's informed consent for each encounter that the observer has with them. The observer should not be present during the initial contact with the patient or when the physiotherapist is obtaining consent for the observation. (CPM Guideline Interprofessional Learning or Job Shadowing Experience Nov 2019).

Informed Consent FAQ'S

My patient isn't an adult. Are they able to give informed consent to treatment?

In Manitoba, the age of majority is 18 but your patient may not need to have reached the age of majority to consent to treatment. Under The Health Care Directives Act, in the absence of evidence to the contrary, it is accepted that a person who is 16 years of age or more has the capacity to make health care decisions and that a person who is under 16 years of age does not have the capacity to make health care decisions.¹⁶

However, for children under the age of 16 the common law has developed the “mature minor rule” which provides that a minor who has a full appreciation of the nature and consequences of medical treatment may give consent. While there is no specific legal test to determine this, courts would consider the physical, emotional, and intellectual maturity of the child, the nature of the parent-child relationship, the lifestyle of the minor, and the nature of the condition for which treatment is being sought. Those are the same considerations you should apply in your practice. Typically, very young children will not have the capacity to consent, and their parents or legal guardians must do so on their behalf.¹⁷

After discussing your planned physiotherapy intervention with a minor, you should be reasonably confident in your assessment of whether they understand the nature of the proposed treatment and its anticipated effect. The child should also understand the consequences of refusing treatment. One way to gauge this capacity is to use the teach-back technique: ask the child to re-phrase what they have just been told and invite the child to ask questions. This is a good idea generally. It is important that no matter how old your patient is, they must be able to understand treatment information and reasonably foresee and understand the consequences of making treatment decisions in order to provide their informed consent.

What is “Implied consent” and does it meet the requirements of informed consent?

The legal description of “implied consent” refers to situations in which it is assumed a person consented to something by his or her actions. This means that, although the person has not given verbal or written consent, circumstances exist that would cause a reasonable person to believe the patient had consented.¹⁸ Consent can be given verbally, in writing, or it can be implied through behaviour. For example, you can presume that your patient has implied their consent if he or she rolls up their sleeve for their arm to be examined.¹⁹ You must document consent regardless of how it is given. You should always be working to ensure that your patients are providing their informed consent to an intervention – it is a matter of professional ethics and it also ensures that your patients are fully involved and engaged in their care plan.

Do I really need to get written consent every time I treat my patient?

Obtaining consent is an ongoing communication process, not a one-time event.

Provided there is no significant changes in the nature, expected benefits or risks of treatment, a physiotherapist may presume that consent to treatment continues while the treatment is ongoing, however, informed consent should be obtained any time there is a change of treatment and considered if the patient's diagnosis, symptoms, or circumstances change.²⁰

Physiotherapists need to remember is that a signed consent form itself is not enough to ensure that you have the informed consent of your patient. Your explanation of the intervention and the dialogue between you and your patient is the most important element of the consent process. The form is simply written confirmation that the dialogue happened and the patient agreed to what was proposed. A signed

consent form will be of little value later if your patient claims later that your explanations were inadequate or, worse, were not given at all.²¹

What are my patients' rights concerning consent?

Patients have the right to receive all the information about their treatment options in a way that they can understand (for example, verbally, in writing, or models/diagrams). They have the right to ask questions about physiotherapy interventions and make decisions about receiving all or part of a recommended physiotherapy service. They also have the right to withdraw consent and discontinue treatment at any time and for any reason.

As a physiotherapist, you have the right to ask your patient to give their consent by signing a consent form prior to beginning assessment and treatment. This will help you document your communications with your patients and provides the basis for physiotherapy interventions.

My patient has asked me to make a decision for them regarding their care. Is this acceptable as a form of consent?

Patient participation in healthcare decision making not only empowers patients, it improves services and health outcomes. You cannot keep a diagnosis from a patient or make decisions for them.

Treatment cannot be given without your patient's informed consent. An exception to this is if the physiotherapy intervention is provided in an emergency situation where patients are unable to give consent.

If a patient is unable to communicate their consent but there is an urgent need for care, what do I do?

Manitoba law protects a person or health care provider who voluntarily provides emergency medical services, aid, or advice to the victim of an accident or medical emergency at the immediate scene of the accident or emergency. In these cases, a physiotherapist would not be liable for injury or death to the victim unless they are grossly negligent. When the patient or substitute decision maker is unable to consent and there is demonstrable severe suffering or an imminent threat to the life or health of the patient, you have a duty to provide the care that is immediately necessary without consent. Emergency treatments should be limited to those necessary to prevent prolonged suffering or to deal with imminent threats to life, limb or health. However, even when the patient is unable to communicate, their known wishes must be respected.²²

Someone else on the health care team talked to the patient, and there is a signed consent form on file. Do I need to go through the process again?

Consent is part of your relationship with your patient. In a team environment, if there is any doubt about whether the patient provided consent to another health professional involved in the treatment plan or if there is a question about whether the patient is fully informed about the physiotherapy intervention you are about to provide, the physiotherapist must confirm that consent was provided or get it again.²³

In any team situation where you feel that the patient does not have a full understanding of the proposed treatment overall, you should act as a patient advocate to make sure the patient receives and understands the necessary information.

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6. College of Physiotherapists of Manitoba, Code of Ethical Conduct Responsibilities to the Client. (2017)
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Legislative References:

College of Physiotherapists of Manitoba, Practice Direction 4.3 Informed Consent to Treatment (Sept 2019)

Manitoba Institute of Patient Safety. http://mips.ca/assets/patient_rights_and_responsibilities.pdf

References:

Guidance Document – Obtaining Meaningful Consent – Office of the Privacy Commissioner of Canada 2018. <https://www.oipc.bc.ca/guidance-documents/2255>