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Professional Standard and Guidelines Regarding Informed Patient Consent to Treatment

This document is a physician **standard** and **guidelines** approved by the Council of the College of Physicians and Surgeons of Nova Scotia.

A **standard** reflects the minimum professional and ethical behaviour, conduct or practice expected by the College of Physicians and Surgeons of Nova Scotia. Physicians licensed with the College are required to be familiar with and comply with the College **standards**.

Guidelines contain recommendations endorsed by the College of Physicians and Surgeons of Nova Scotia. The College encourages its members to be familiar with and to follow its **guidelines** whenever possible and appropriate. Note that **guidelines** may contain references to College **standards**.

Professional Standard

Fundamental requirements for valid consent include:

a) It must be voluntary;
b) It must be given by a patient who has capacity;
c) It must be specific as to the treatment; and
d) It must be informed.

1) Physicians must ensure that consent is obtained from patients before performing an examination or treatment, except where specifically permitted by law.[1]

   The College recognizes that further aspects of consent are dynamic and subject to change. It is the responsibility of physicians to keep current with the state of the law on consent.

2) Guidance from the Canadian Medical Protective Association (CMPA)

   Physicians must be aware of authoritative advice on consent, such as that of the Canadian Medical

Protective Association (CMPA). The College endorses the CMPA's document: Consent – A Guide for Canadian Physicians, updated June, 2016.

The College further refers physicians to the following guidelines regarding informed patient consent to treatment. Note that these guidelines contain reference to relevant provincial legislation.

Guidelines

1) A physician should:

   a) be aware of authoritative advice on informed consent, such as that of the Canadian Medical Protective Association, before establishing a policy on consent procedures in his or her medical practice[2];

   b) consider the risks to the patient, the potential for pain and discomfort, and the invasiveness of the procedure when deciding on the type of consent required;

   c) if relying on implied consent, be certain that the actions of the patient would be interpreted by others as having implied permission for the physician's actions;

   d) ensure that written consent is obtained before performing a surgical operation;

   e) consider the knowledge and expertise of trainees and staff if delegating the consent procedure; and

   f) exercise professional discretion regarding appropriate timing and circumstances for obtaining the consent.

2) A physician should determine a patient's capacity to give consent. A physician conducting an assessment of a patient's mental capacity should:

   a) attempt to obtain the patient's agreement to participate;

   b) assess the patient's capacity to understand information relevant to the topic at hand;

   c) assess the patient's capacity to understand the decisions to be made;

   d) assess the patient's capacity to understand the risks and benefits of actions that may be undertaken;

   e) assess the patient's ability to understand his or her choices; and

   f) use accepted capacity assessment procedures to determine mental capacity.

3) A physician who obtains consent from a substitute decision maker on behalf of a patient must comply with applicable laws[3].
4) A physician must respect the right of a patient to withdraw consent at any time.

5) In obtaining full and informed consent for procedures requiring consent, a physician should discuss, at a minimum:

   a) the exact nature and the anticipated benefits of the proposed examination or treatment;

   b) reasonable and accepted alternative examinations or treatments that are generally available;

   c) the natural history of the medical condition at issue;

   d) consequences of not undertaking the examination or treatment;

   e) the material risks of the examination or treatment and alternatives, which include:

      i. common risks,
      ii. serious risks, even if unlikely, and
      iii. risks, that although uncommon, may have particular relevance to the patient[4], and

   f) any questions the patient may have;

6) Exception to the above: A physician is permitted by law to act without the consent of a patient (or substitute decision-maker) when:

   a) authorized to do so by legislation (see examples in footnote [i]); or

   b) an emergency situation exists and certain criteria set out by the courts are met (e.g. the patient would suffer loss of life or irreparable substantial harm [e.g. loss of limb] if not treated expeditiously; the patient is unable to give consent and the substitute decision-maker cannot be contacted in the required timeframe needed to treat; and it can be reasonably presumed that the patient would want to be treated in these circumstances and in this manner [i.e. no wishes expressed to the contrary previously and no other reasons known why patient would refuse treatment]).

[1] Examples are contained in the "Emergency Health Care" section of the Personal Directives Act (S.N.S. 2008, c8. s. 19). A physician is also permitted by law to act without the patient's consent if ordered by the Supreme Court as stipulated in section 9 of the Nova Scotia Hospitals Act R.S.N.S. 1989, c.208, or when the physician determines that an involuntary psychiatric assessment is warranted as authorized in the Nova Scotia Involuntary Psychiatric Treatment Act, S.N.S 2005, c.42. Physicians should be familiar with any revisions to this provincial legislation.

[2] See Canadian Medical Protective Association, Consent: A Guide for Canadian Physicians, updated June, 2016.

[3] Physicians should be familiar with the Nova Scotia Personal Directives Act, S.N.S. 2008, c.8 which establishes who has the decision making authority on personal-care issues when the patient is incapable of providing consent. Physicians should be familiar with any revisions to this provincial legislation.

[4] Material risk is determined by considering the circumstances of each patient and the potential seriousness of the risk to a reasonable person in the circumstances of the patient.

Resources

Canadian Medical Protective Association

- Consent a guide for Canadian physicians
- Can a child provide consent?
- Good Practices: Informed Consent
- Is this patient capable of consenting?

Acknowledgements

The College of Physicians and Surgeons of Nova Scotia gratefully acknowledges the Province of Alberta and the College of Physicians and Surgeons of Alberta for permitting sections of the *Alberta Health Professions Act: Standards of Practice* to be adapted in the preparation of this document.

Document History

Approved by the Council of College of Physicians and Surgeons of Nova Scotia: **December 9, 2016**

Re-approved by Council with minor revisions (addition of endnote re. material risk and endnote re. instances in which patient consent is not required.): **December 14, 2012**

First Approved by the Council of College of Physicians and Surgeons of Nova Scotia: **December 9, 2011**

Approximate date of next review: **2019**