The College of
Physicians and Surgeons
of Newfoundland and Labrador

CONSENT TO TREATMENT – NEW STANDARD OF PRACTICE

Notice to College Members

June 21, 2019

Council of the College recently approved a new Standard of Practice on "Consent to Treatment." This document sets out the College's expectations for physicians in obtaining consent for the management and care of patients.

This document outlines the College's standard on topics relating to consent, including: capacity (minors and substitute decisions makers), types of consent (implied and express), the patient's right of refusal, and the expected standard on documentation of the consent process.

A copy of this document is attached below and can also be found on the College's website on the "Standards of Practice and Practice Guidelines" page. **Physicians are expected to be familiar with the documents which apply to their individual practices.**

The College of Physicians and Surgeons of Newfoundland and Labrador

Standard of Practice:

Consent to Treatment

A **Standard of Practice** is the minimum standard of professional behavior and ethical conduct on a specific issue expected by the College.

Consent to Treatment

Preamble

A physician has an ethical obligation and a legal obligation to ensure that his/her patient understands a proposed treatment and provides consent. This standard sets out the College's expectations for obtaining consent.

The College recognizes that the legal principles surrounding consent are dynamic and subject to change. Physicians are responsible to keep current on this topic and seek legal advice when required.

Definitions

Treatment – the management and care of a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related purpose. Examples include but are not limited to: physical examinations, investigations, surgical interventions.

Standard of Practice

A physician must obtain consent from a patient prior to a proposed treatment except where specifically permitted by law.

The requirements of consent include:

1. It must be voluntary;
2. It must be obtained from a patient who has capacity to provide consent;
3. It must relate to the proposed treatment; and
4. It must be informed.

Capacity to Provide Consent

A patient is generally capable of providing consent to treatment if he/she is able to understand the information that is relevant to making a decision about treatment and is able to appreciate the reasonable foreseeable consequences of providing or withholding consent.

Capacity must be considered in relation to the point in time and specific treatment being offered. A patient may be capable with respect to a specific treatment at one time and incapable at another.

Minors

Physicians must make a determination of capacity to consent to treatment for a minor just as they would for an adult. In most circumstances, if a minor is capable with respect to treatment, the physician must obtain consent from the minor directly.

Substitute Decision Makers

If a physician determines that a patient is incapable of providing consent to a treatment, consent must be obtained from the patient's substitute decision maker. In some cases, a patient may have appointed a substitute decision maker to act on their behalf in the event of incapacity. If a patient has not appointed a substitute decision maker, a physician should obtain consent from the applicable person outlined in the *Advance Health Care Directives Act.*

Informed Consent

Prior to obtaining consent, a physician must provide the patient with adequate information regarding the treatment to allow him/her to make an informed decision. The adequacy of consent explanations is judged by the "reasonable patient" standard, that is, what a reasonable patient in the particular patient's position would have expected to hear before consenting. Generally speaking, the more frequent the risk, the greater the obligation to inform the patient about it. In addition, serious risks should be disclosed in most circumstances.

Physicians must consider the specific circumstances of the patient, and use their clinical judgement to determine what information must be provided. Examples of information which may need to be disclosed to the patient include:

i) the nature of the treatment;
ii) the anticipated outcome of the treatment;
iii) the material risks involved in the treatment, including common risks, serious risks, and those that have particular relevance to the patient;
iv) the consequences of not undertaking the treatment; and
v) the alternatives available.

In order to obtain informed consent, physicians should be satisfied that the patient demonstrates a reasonable understanding of the information being provided regarding treatment.

Types of Consent

Implied Consent

Consent is often implied either by the words or the behaviour of the patient. Examples include lifting a shirt sleeve to allow a physician to apply a blood pressure cuff or opening a mouth for an oral examination. Where a reasonable person would believe that consent has been given, implied consent may be inferred.

If relying on implied consent, physicians should be confident the actions of the patient imply consent. When there is doubt, it is preferable that the consent be expressed verbally or in writing.

Express (Verbal or Written) Consent

When treatment may cause more than a little pain or carry significant risk, the patient should be asked to specifically express his/her consent, either verbally or in writing. Express consent is required for an examination of the breast, genital, or anal area.

Right of Refusal

Patients have the legal right to refuse or withdraw consent. Physicians must respect the wishes of a patient who chooses to refuse or withdraw his/her consent but should ensure that the patient understands the consequences of not undertaking the treatment and any available alternative treatment.

Documentation

A contemporaneous note in the patient's record regarding consent to treatment is the best evidence a physician has to demonstrate that informed consent has been obtained.

In circumstances where the patient has refused or withdrawn consent, the physician should document the treatment offered, the discussion with the patient regarding the treatment, including consequences and alternatives, and the patient's refusal.

Acknowledgements

CMPA (2016) Consent: A guide for Canadian physicians
CPSO (2015) Consent to Treatment (Policy)
CPSNS (2016) Professional Standard and Guidelines Regarding Informed Patient Consent to Treatment.
CPSA (2016) Informed Consent (Standard of Practice)

References

Advance Health Care Directives Act, SNL 1995, Chapter A-4.1

Document History

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