College of Chiropodists of Ontario

CONSENT

Guideline for Registrants of the College of Chiropodists of Ontario

Approved by Council: January 29, 2026

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A. Purpose

Obtaining informed consent is more than just having the patient sign a form. Registrants must make sure patients understand what they are consenting to.

This Guideline explains what registrants are required to do when obtaining and documenting informed consent and consent to treatment, in addition to meeting the requirements of the *Health Care Consent Act, 1996* ("HCCA" or the "Act").[1]

B. Definitions

Treatment: Anything that is done for a therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related purpose. This can include a course of treatment, a treatment plan, or community care plan. It **does not include** things like checking a person's capacity, taking health history, doing an assessment or exam to find out about a patient's general nature or condition, communicating an assessment or diagnosis, admitting someone to a hospital or other facility, providing personal help, or very low-risk treatments.[2]

Capacity: A person is considered capable of making a treatment decision if they:

- Understand the information they need to make a decision, and
- Realize what could happen if they agree or don't agree to treatment.
- Capacity can change over time, and a patient might be capable with respect to some treatments but not others.

Substitute decision-maker (SDM): A person who can agree to or refuse treatment for a patient who cannot make the decision themselves.

Health practitioner: Includes regulated health professionals, and anyone else listed in the regulations.

Express consent: Clear and direct agreement, either spoken or written.

Implied consent: Agreement that is understood from what the patients says, does, or the situation.

Informed consent: Consent (express or implied) given after a patient understands:

- the nature of the treatment,
- its expected benefits,
- its material risks relevant to their specific circumstances that a reasonable person would want to know,
- other options, and
- what happens if they don't have the treatment.

[1] This Guideline replaces the Guide to the Health Care Consent Act for Chiropodists and Podiatrists and the Members Treating Incapable Patients Guideline

[2] See section 2(1) of the Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A. and sections 1(1) and 33.7 of the Mental Health Act, R.S.O. 1990, c. M.7 for further information.

Valid Consent: Consent that meets all the legal requirements under the HCCA. It must be:

- Informed,
- Given by someone capable (or their SDM),
- Voluntarily (not forced).

C. Consent

The College considers consent to be implied when a patient attends for an assessment for treatment.

However, the treatment plan must be explained and discussed with the patient after the assessment and before starting any treatment.

What is the difference between implied consent, express consent, and written consent?

Implied consent means consent is understood from the patient's words, actions, or the circumstances (for example, holding out a foot to be examined). Express consent means consent is given directly and explicitly. This can be oral or written, and written consent is one form of express consent.

D. Consent to Treatment

The HCCA requires registrants to obtain valid, informed consent before providing any treatment.

- Before starting treatment, registrants must believe the patient can make the decision and has given consent.
- If a patient is not capable of making decisions about their treatment, consent must be obtained from the SDM. Patients and SDMs have the legal right to refuse, withhold, or withdraw consent to treatment at any time, and registrants must respect that decision, even if they disagree.[3]

Elements of Valid Consent

Consent is valid when:

- It relates to the proposed treatment,
- It is informed,
- It is given voluntarily; and
- It was not obtained through misrepresentation or fraud.

What is Informed Consent?

Consent is considered *informed* when the registrant:

- Provides information about the nature of the treatment, including:
    - the expected benefits,

[3] If a registrant thinks a SDM has not complied with the HCCA, they can apply to the Consent and Capacity Board.

    - the material risks and side effects,
    - alternative courses of action; and
    - the likely consequences of not having the treatment.
- Responds to requests for additional information; and,
- Is satisfied that the patient or their SDM understood the information, which includes taking reasonable steps to facilitate that understanding.

The information provided to the patient or their SDM must include information that a reasonable person in the same circumstances would need to make a decision about treatment. This must include information about material risks that are relevant for both a broad range of patients and the specific patient.

Scope of Valid, Informed Consent

Unless the circumstances make it unreasonable, registrants can assume that consent to treatment also includes:

- Consent to minor variations or adjustments to the treatment, as long as the nature, expected benefits, and material risks and side effects are not significantly different from the original treatment.
- Consent to continue the same treatment in a different setting, provided the change in setting does not significantly change the expected benefits or material risks or side effects of the treatment.

Does a signed consent form constitute informed consent?

No. The requirement for informed consent is not met where the patient simply signs a consent form or receives written education materials or pamphlets without a discussion. The discussion must include the nature of the treatment, the expected benefits and material risks, alternative treatments (including the benefits and material risks of the alternatives), and likely consequences of not having treatment. The patient must also have a chance to ask questions.

Registrants must consider the patient's particular circumstances when determining whether a risk is material. The information discussed needs to relate to the specific patient. The conversation about informed consent must be documented in the patient's chart.

E. Capacity, Incapacity and Minors

A person can give consent to treatment if they:

- understand the information needed to decide about the treatment, and
- appreciate the reasonably possible consequences of giving or refusing consent to the treatment.

Capacity to consent to treatment can change over time. A patient might be capable of making some treatment decisions but not others. Registrants must consider the patient's capacity at different points and for each specific treatment.

Patients are presumed capable unless there is a reason to believe otherwise. For example, something in their history or behaviour raises questions about their capacity to consent to the treatment.

Minors and Capacity

In Ontario, everyone is presumed capable of giving consent, including minors. If a minor can make decisions about their treatment, registrants must obtain consent directly from the minor, even if a parent or guardian is present.

Identifying a Substitute Decision Maker (SDM)

The HCCA sets out a hierarchy of individuals and agencies who can give or refuse consent on behalf of an incapable patient:

- The patient's guardian – appointed by the court.
- Someone who has been named an attorney for personal care.
- Someone appointed as a representative by the Consent and Capacity Board (CCB).
- Spouse, partner or relative in the following order:
    - Spouse or partner,
    - Child if 16 or older; custodial parent (who can be younger than 16 years old if the decision is being made for the substitute's child); or Children's Aid Society;
    - Parent who has only a right of access;
    - Brother or sister;
    - Other relative.
- The Public Guardian and Trustee.

The SDM Hierarchy

If a patient cannot consent to treatment, registrants must obtain consent from a SDM according to the hierarchy in the HCCA. The SDM must be:

- Capable of consenting to the treatment (the same test for capacity applies to patients and SDMs);
- At least 16 years old, unless they are the patient's parent;
- Not prohibited by a court order or separation agreement from making decisions or having access to the patient;
- Available to give or refuse consent within a reasonable time; and
- Willing to take responsibility for giving or refusing consent.

If a higher-ranking person in the hierarchy does not meet these requirements, the registrant must move to the next person in the hierarchy who does.

F. Steps to Obtaining Consent

1. Assess capacity.
2. If the patient is capable, obtain informed consent or refusal from the patient.

3. If the patient is incapable, determine if the situation is an emergency.
4. Identify the SDM.
5. Obtain consent from the SDM.

G. Emergency Treatment

Treatment can be given without consent only if:

- there is an emergency[4]
- waiting for consent, or refusing consent, would prolong the suffering or put the person at risk of serious harm.

An emergency is defined in the HCCA as a situation where the person is apparently experiencing severe suffering or is at risk of sustaining serious bodily harm if treatment is not administered right away.

Emergency treatment can only continue until:

- the patient can give or refuse consent, or
- A SDM is found.

No emergency treatment can be given if the practitioner has reasonable grounds to believe the patient, while capable and at least 16 years old, previously said they did not want that treatment.

H. Documenting Consent

The College does not require patients to sign a written consent form in every situation. However, registrants must always document informed consent in the patient's record. This includes:

- Any conversation about consent.
- Ongoing consent for assessment, treatment and involvement of other care providers.
- A copy of every written consent form, if one is used. [5]

While written (or explicit) consent is not required in every case, registrants should consider using detailed consent forms for procedures with more complex risks. For example, nail surgery, orthotics or shockwave therapy.

Registrants must keep a record of all consent discussions. This includes:

- the date consent was given, refused, or withdrawn.
- The options, risks and benefits that were discussed.
- How consent was indicated (for example verbally or in writing, etc.).

Registrants must record clear details when a patient refuses or withdraws consent to treatment. This includes the reason(s) given for the refusal or withdrawal. [6]

[4] Section 25(2) of the HCCA.
[5] Regulation 203/94: General under the *Chiropody Act, 1991*.
[6] Records standard

References

- Health Care Consent Act, 1996
- Ontario Regulation 203/94: General
- Chiropody Act, 1991
- Records
- Patient Relations
- Assessment and Management
- Code of Ethics

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