Informed Consent and Capacity

A Practice Resource for Saskatchewan Physiotherapists

August 2022

Physiotherapists are required by the Standards of Practice for Physiotherapists in Saskatchewan and by Canadian law to obtain informed consent prior to conducting an assessment or providing treatment. The purpose of this Practice Resource is to ensure understanding of consent requirements and to clarify the expectations for Saskatchewan Physiotherapists.

SCPT
Saskatchewan College of Physical Therapists

Contents

Summary

Valid Informed Consent Must Be: [2,4,19]

- Given voluntarily by a patient who is informed.
- Given by a patient who has capacity, or their **substitute decision maker** (SDM).
- Specific to both the physiotherapy intervention and the person administering the intervention.
- Documented including the consent process and the outcome.

Components of Informed Consent

A relationship based on trust and mutual communication of relevant information is vital to ensure consent is truly informed. The consent process is a discussion or series of interactions between the PT and the patient or SDM.[19] During the consent process, the Physiotherapist must verify the patient's understanding of the information presented.

To provide informed consent, the patient or their SDM must be informed of:[2,4]

- the nature/purpose of the intervention.
- the benefits, potential side effects and what the patient may experience during the course of the intervention.
- both the **material and special risks** of the intervention and confirm understanding of the consequences of these risks.[5]
- **other material information** which may impact the patient's decision.
- alternatives to treatment including their risks and benefits if known.
- the opportunity to ask questions and be given reasonable and understandable answers to any questions asked about the intervention, its risks, benefits, or alternatives.

When determining whether informed consent was established, the law asks what the average, reasonable person in the patient's position, would expect to know prior to providing consent (both material and special risks).[2]

Capacity Considerations

- Consent is only valid when the person providing consent has the **capacity** to do so.
- Capacity comes in "degrees" with one's capacity to make decisions being impacted by the nature of the decision and risks related to the decision.[6]
- A patient may lack capacity to consent to some components of an assessment or treatment but not others due to the nature and risks of the intervention in question.[10]
- Adults over the age of 18 are presumed to have capacity until proven otherwise.[8]
- In Saskatchewan there is no fixed age for consent of minors within legislation and a mature minor may make health care decisions independent of their parent or guardian.
- It is the physiotherapist's responsibility to assess and make the determination of whether a patient under 18 is a mature minor and, therefore, able to provide consent.

Relevant Legislation, Bylaws, Standards, & Ethical Considerations

The Saskatchewan College of Physical Therapists (SCPT) developed this practice resource to provide a framework to support members in obtaining informed consent. This document is a resource only and information may not apply to individual circumstances. Members are expected to be familiar with all regulatory requirements to ensure Saskatchewan residents receive safe, competent, ethical, quality physiotherapy care.

The Physical Therapists Act, 1998

SCPT Regulatory Bylaws

- SCPT Bylaw 23 – Multidisciplinary Practices
- SCPT Bylaw 26 – Use of Instruments or Devices

National Core Standards of Practice for Physiotherapists in Canada

- Standard 8 Consent

Related Standards:

- Standard 2 Client Assessment, Diagnosis, Interventions
- Standard 3 Client Centered Care
- Standard 5 Communication
- Standard 9 Documentation
- Standard 19 Supervision

Code of Ethical Conduct for Canadian Physiotherapists

Health Care Directive and Substitute Decision Makers Act

Saskatchewan Children's Law Act 2020

Introduction

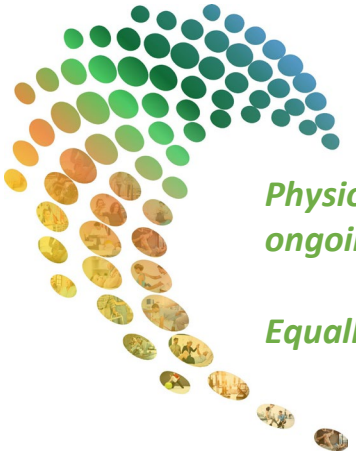
To give consent is to provide approval for something to happen or agreement to do something.[1] In the world of health care, consent is the cornerstone of all therapeutic interactions. The requirement to obtain informed consent for an **intervention** (assessment and/or treatment) is established in Canadian law[2] and reflected in the Standards of Practice for Physiotherapists in Saskatchewan.[3] Questions often arise regarding aspects of consent, including the components of valid informed consent, documentation requirements, the frequency with which consent should be sought, and how to navigate challenging situations particularly with minors and adults who may lack capacity for consent.

The purpose of this Practice Resource is to provide information around consent, to clarify the expectations for Saskatchewan physiotherapists and to discuss frequently asked questions related to consent. Physiotherapists are strongly advised to review the Consent Standard of Practice and all other applicable standards and legislation in conjunction with this document.

Patients cannot provide valid consent if they do not fully understand what they are consenting to and the implications of that consent. Therefore, clear communication is required, the purpose of which is to provide information to enable patients to make informed decisions about accepting or refusing the proposed intervention.

Consent discussions must occur prior to assessment and at multiple points throughout the PT services.

Effective consent conversations are enabled by communicating with patients in easy-to-understand language. Technical terms or the use of medical jargon is not recommended and is contrary to the purpose of gaining informed consent.



Physiotherapists must understand that consent is an ongoing process, not a one-time event.

Equally for consent to be valid, it must be informed.

The Underlying Principles of Consent

1. Autonomous

The ethical principle of autonomy or self-determination underpins the obligation to obtain informed consent. Physiotherapists are ethically and legally bound to provide detailed communication within the **consent process** to enable patients to make informed choices regarding their own care.

2. Voluntary

Consent is only valid if obtained without coercion, undue influence, or intentional misrepresentation. Consent should be given in an environment free of fear or compulsion from others, including family members and health-care providers.

3. Informed

Consent is only valid if it is based on the patient's understanding of the complete and accurate information provided. Consent for physiotherapy interventions must be based on a careful discussion of all relevant information. Strategies should be used to ensure patient understanding and may include verbal explanations, handouts, visual aids, consent forms, asking a patient whether they understand the information presented, and having them explain it back to confirm understanding.

4. Capacity

Consent is only valid when the person providing consent has the **capacity** to do so. The patient must have the ability to appreciate the nature and consequences of the consent decision.

5. Intervention Specific

The patient provides consent to a specific PT service, after being informed of the risks and benefits of the intervention proposed. Information provided to the patient should include: the nature and purpose of the intervention, the PT diagnosis, details of therapy involved including frequency and duration of intervention, expected course and what the patient may experience during or after the intervention, **material** and **special risks** and consequences of those risks, other **material information** that may impact the decision, reasonable alternatives if any exist including the risk and benefits of these alternatives, any impact on lifestyle and financial considerations.

The patient must be given the opportunity to ask questions and receive understandable answers.

A patient can consent to receive PT services and still decline certain aspects or components of the proposed intervention.

6. Ongoing

Informed consent involves ongoing communication before and during the delivery of PT services. Consent must occur prior to the intervention and at appropriate intervals throughout the assessment and care plan such as when a change occurs in the patient's condition or when considering the deletion or addition of treatments. Documentation of consent must occur at each of these points.

7. Provider Specific

Informed consent is personal and normally authorizes a specific person to carry out a specific intervention. Informed consent must be obtained for assignment of PT interventions to other care providers such as Student PTs or Physiotherapy Assistants. The physiotherapist providing the intervention is responsible to obtain the consent and this task may not be delegated to another person.

8. Format

Informed consent can be written or verbal but must be specific to the proposed PT service. While the law does not generally require a "written consent", a consent form signed by the patient provides evidence that consent has been obtained.[2]

PTs are encouraged to use professional judgement to determine when verbal consent is appropriate.[2] Considerations may include: the complexity of the intervention, potential risks and benefits, potential consequences in terms of outcomes, intervention side effects and the characteristics of the person giving consent.[20]

If necessary, verbal consent may be acquired over the telephone when the person providing the consent has been clearly identified and a consent discussion has occurred.

9. Documented

Whether the physiotherapist accepts verbal consent or has the patient sign a consent form, the physiotherapist is advised to document the consent process including the information discussed with the patient, and when/how consent was obtained. A signed consent form provides evidence that consent was obtained but does not necessarily indicate that the consent was informed and cannot replace a detailed informed consent discussion.[2]

Signed consent forms must become part of the patient's chart and verbal consent must be documented by the physiotherapist in the treatment record.[3]

10. Right to Refuse

Patients have the right to refuse PT services &/or interventions delegated to others, regardless of the consequences or how beneficial or necessary an intervention is considered to be. Patients also have the right to change their mind and withdraw previous consent at any time during care.[3]

Just as consent must be informed, it is important that a patient's refusal of consent/treatment be informed. "When patients decide against recommended treatment..., discussions about their decision must be conducted with some sensitivity. While recognizing an individual's right to refuse..., [physiotherapists] must at the same time explain the consequences of the refusal without creating a perception of coercion in seeking consent. Refusal of the recommended service does not necessarily constitute refusal for all interventions. Reasonable alternatives should be explained and offered to the patient."[2]

The practitioner must be reasonably sure the patient understands the repercussions of withdrawing consent.

Physiotherapists are advised to document a patient's refusal, the information provided to the patient regarding risks or consequences of refusal, and the patient's rationale for refusing, if one is provided.

Capacity and Competence

Health-care providers often use the terms capacity and competence interchangeably. Both refer to the ability "to understand information relevant to an intervention decision, and to appreciate the reasonably foreseeable consequences of a decision or lack of a decision."

Competence is determined by the courts. A person either is or is not competent.

Capacity comes in "degrees" with one's capacity to make decisions being impacted by the nature of the decision and risks related to the decision.[6] For example, a young child has the capacity to make some decisions, but not others. As the child ages, the types of decisions they can make independently changes. A person's capacity factors into the assessment of their competence, but they are not the same thing.[6]

Physiotherapists do not make legal determinations of a patient's competence; therefore, within physiotherapy practice, the correct term to use is capacity.

When questioning someone's capacity, the key question is "the capacity to do what?" A patient may lack capacity to consent to some components of an assessment or treatment but not others due to the nature and risks of the intervention in question.[10] A physiotherapist should, therefore, consider the nature of the intervention for which the consent is being sought when determining whether the patient has the capacity to provide consent.

Determining capacity prior to the consent process is important and the College of Physicians and Surgeons of Saskatchewan have a resource available that may assist physiotherapists to make decisions around capacity found here - Informed Consent and Determining Capacity to Consent. [12]

Other considerations when determining capacity may relate to substances that may alter the individual's thought process including ingestion of alcohol, pain-killing medications &/or other drugs.[8.] Severe pain may also affect a patient's capacity to appreciate the information presented and provide informed consent. It is important that PTs have access to and understanding of formal policies and procedures related to these situations particularly as it relates to informed consent and participation in PT services.

It is important to remember, as some authors have noted, concerns about capacity often disappear if the patient is making decisions consistent with the physiotherapist's recommendations. However, "if you worry about a patient's capacity to refuse some treatment, you should also worry about his capacity to accept it."[7]

Capacity and Adults

Adults over the age of 18 are presumed to have capacity until proven otherwise.[8]

As already stated, the key question about capacity is "capacity to do what?" When treating adults with diminished capacity, the physiotherapist should consider if the patient has sufficient capacity to consent to some aspects of the intervention and act accordingly.

If a physiotherapist has concerns about a patient's capacity to provide informed consent for an intervention, the physiotherapist should enquire if an **Advanced Health Care Directive** exists and/or if a **Substitute Decision Maker** (SDM) has been identified to make legal medical decisions for the patient. If no legal arrangement is in place, the physiotherapist's duty of care extends to raising his/her concerns with others within the patient's circle of care and advocating for a formal capacity assessment as appropriate to obtain appropriate supports for the patient.

If an adult who lacks capacity to make a health care decision has a valid health care directive that clearly gives direction to the specific circumstances in question, that direction must be followed.

If the directive does not provide clear guidelines for the specific circumstances, and the directive identifies a SDM who may legally provide health care decision on their behalf, that person accepts or declines consent on behalf of the patient.

If the patient lacks capacity to give informed consent and does not have a health care directive or named SDM, there is a hierarchy of individuals who may decide consent on behalf of the patient listed in the Health Care Directive and Substitute Decision Makers Act.[8]

The Saskatchewan Health Authority's Informed Consent Policy has a Decision Tree to assist with making decisions around health care directives and proxies. [19]

Capacity and Minors

Minors

In Saskatchewan there is no fixed age for consent of minors within legislation. If a patient is under 18, consent may generally be obtained from the parent/ guardian, and **assent** obtained from the minor.

According to the *Children's Law Act 2020*, both birth parents have equal responsibilities and powers as guardians of their minor children and may provide informed consent, unless otherwise ordered by the courts or other agreement.

It is important to gain consent from the correct individual and there may be other considerations in the event of parental separation or divorce including:

- Where one of the parents has sole legal custody of the child, the parent who has sole legal custody, regardless of the residence of the child, is authorized to give consent.
- Where there is joint custody either parent is authorized to give consent.
- Where there is no parent or guardian, the person having physical custody may in exceptional circumstances sign a consent on behalf of the patient.[8,14]

Children who are not yet capable should, to the extent that is reasonable, be included in decision making and informed about decisions that have been made for them. Discussions should be at an age-appropriate level.[8]

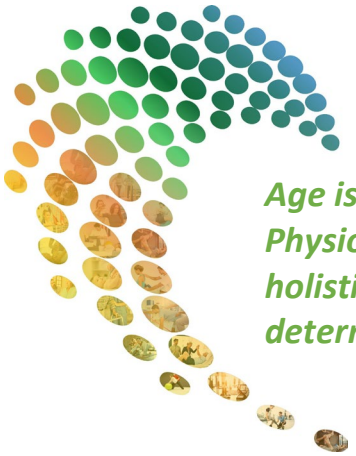
Mature Minor

A **mature minor** may give consent on their own behalf if they understand the nature and purpose of the proposed intervention and consequences of receiving/refusing it.[11]

It is the physiotherapist's responsibility to assess and make the determination of whether a patient under 18 is a mature minor and, therefore, able to provide consent. Some factors that may be considered in making the assessment of whether a minor is able to appreciate the nature and purpose of the intervention and the consequence of giving or refusing consent include:

- The age of the minor. Although there is no set age for a mature minor in Saskatchewan, the recognition of a minor under the age of fourteen would be rare.
- The maturity of the minor.
- The nature and extent of the minor's dependence on the parent(s). This relates to the ability of the minor to make an independent decision without relying on or being influenced by the parent or guardian.
- The nature/complexity of the PT service.

Physiotherapists are encouraged to seek the advice of legal council when determining minor consent when parental rights and guardianship is not clearly identified or for other challenging situations encountered in practice.



Age is not the sole, determining factor. Physiotherapists should be careful to engage in a holistic assessment of the minor patient to determine if he/she is a mature minor.

FAQs

Q: I had my patient sign a consent form when they completed their intake paperwork, so I'm covered, right?

A: Wrong! A consent signed before the patient has received information and had the opportunity to have questions answered about the assessment, their physiotherapy diagnosis, the proposed treatment, and the risks/benefits and consequences of receiving or not receiving treatment is clearly not informed consent.[2]

Q: Do I need to get written consent?

A: Documentation of verbal consent is considered valid and acceptable. Written consent provides concrete evidence that the patient signed a consent form but does not necessarily indicate that the consent was informed.[2] The best-case scenario is to obtain written consent, after having the informed consent discussion with the patient, and having documented the nature and content of that discussion.

When the intervention risks are more significant or common or when the treatment is complex, it is recommended that members obtain written consent following the informed consent discussion.[2]

Q: What about implied consent?

A: Historically, it was thought that if a patient made an appointment and attended a treatment session, their consent was implied by their actions.[2] However, the simple act of attending a physiotherapy appointment does not ensure that the physiotherapist has provided the patient with the necessary information to make decisions about the patient's care and that informed consent has been obtained. Attendance at a physiotherapy appointment cannot be considered "informed consent" in and of itself.

Relying on implied consent can lead to challenging situations in which the extent of consent implied becomes a matter of disagreement after the fact. It is, therefore, preferable to obtain express consent and to document the consent appropriately.[2]

However, a patient or their SDM, may provide consent for a "plan of care" expected to continue over a series of treatment visits. In this case, the patient's attendance and participation with the agreed plan of care may be considered implied consent. Provided there is no significant change in the health status of the patient, the nature, expected benefits or risks of treatment, a physiotherapist may presume that consent to treatment continues. The physiotherapist is expected to provide updates and reporting to the patient (or his/her SDM) throughout the course of treatment to support this ongoing consent.[4]

A new informed consent must be obtained whenever there is a significant change in the patient's capacity, condition, the treatment plan, expected outcomes or risks.[4]

Bear in mind that a patient may at any time withdraw consent, whether it be for the plan of care entirely or for a specific intervention, therefore providers are advised to informally reaffirm consent to treatment at the start of each visit.

Q: What does it mean to "informally reaffirm" consent at the start of each treatment visit?

A: Every time a patient comes for treatment, the physiotherapist should review the treatment plan for that visit and confirm that he/she has the patient's agreement to proceed. That does not mean that the physiotherapist should have a detailed consent discussion or obtain signed consent each time the patient visits the clinic. However, confirming the patient's ongoing agreement with the plan, and creating a space for the patient to decline or to ask questions about the treatment helps to avoid misunderstandings and disagreements.

Q: How do I decide if a minor has sufficient capacity to understand the nature and purpose of the proposed treatment and consequences of receiving/refusing treatment?

A: There is no clear test to determine if a minor is in fact "mature." However, the law has recognized a series of factors to be considered when making this decision. The physiotherapist should consider the patient's age, maturity and the nature and extent of the patient's dependence on his/her parents/guardians. The physiotherapist should also consider the seriousness of the condition, the complexity of the treatment, and the risks related to the treatment proposed.

This is not an exhaustive list. Overall, a physiotherapist should engage in a holistic analysis of the capacity of the minor before them.

Physiotherapists should document and be able to explain how they determined that the minor was "mature" and able to make their own health-care decisions. They should also reflect on whether a group of their peers would view the decision as reasonable.

If the physiotherapist has any doubts, he/she should consider having a second health-care provider within the circle of care offer an opinion.[13] Physiotherapists should also follow any employer-directed processes related to forming this determination.

Physiotherapists must also be aware that if a patient is deemed a mature minor his/her guardian has "no authority to override or veto the mature minor's decisions."[12]

Q: I have a patient who is a minor and does not qualify as a mature minor. They are from a different city and are in town attending a month-long sports camp. They have come to my clinic accompanied by their coach. Their guardian is not in town. What do I do?

A: In an emergency, health-care providers can act in the patient's best interest to provide care necessary to prevent prolonged suffering or address imminent threats to life, limb, or health.[2] However, physiotherapy would not typically be considered emergency care.

The best-case scenario would be to contact the patient's legal guardian by phone and obtain verbal consent. In doing so, the physiotherapist should have the person at the other end of the line verbally confirm the relationship to the patient and their authority to provide consent on the patient's behalf. This interaction should be documented on the patient's chart as informed consent.

Q: I have a patient who is a minor and does not qualify as a mature minor. The patient's parents are divorced, and both are remarried. Who can make health-care decisions for the patient?

A: The *Saskatchewan Children's Law Act 2020* provides details respecting who is the legal guardian entitled to make significant decisions about a child's well being including decisions with respect to health care. Consent for medical interventions is provided by a legal guardian of the child and must always be in the best interest of the child.[14]

Key points to be aware of:

- According to the *Children's Law Act 2020*, both birth parents have equal responsibilities and powers as guardians, unless otherwise ordered by the courts or other agreement.[14]
- Stepparents are not guardians of the child unless they have legally adopted the child.
- Where one of the parents has sole legal custody of the child, the parent who has sole legal custody, regardless of the residence of the child, is authorized to give consent.
- Where there is joint custody either parent is authorized to give consent.
- Where there is no parent or guardian, the person having physical custody may in exceptional circumstances sign a consent on behalf of the patient.[8,14]
- A live-in partner of the child's legal guardian is not a guardian of the child, unless they have legally adopted the child or have a court order granting guardianship.

It is reasonable to assume that a parent of a minor child is the lawful guardian of the child and can consent to intervention. However, if the physiotherapist does not know that the adult accompanying the child is the parent or legal guardian, the physiotherapist should confirm that is the case and document this in the patient file.

Further, if a physiotherapist becomes aware of circumstances that would suggest that an adult accompanying the child does not, or may not have guardianship of the child, the physiotherapist is required to ask further questions before providing non-emergency care.[12,14]

You may want to ask the adult the following:

- Are you this child's legal guardian?
- Are you aware of anything that prevents you from having the authority to provide consent for this child?

- Are there any other guardians who need to be consulted regarding decisions for this child?[4]

Complex or uncertain situations may require a request for copies of child custody documents and/or seeking legal advice prior to providing PT services.

Q: In the case where the birth parents of a child requiring physiotherapy are divorced, do I need to have consent from both legal guardians?

A: If one parent has sole custody of the child and is considered the custodial parent, they become the sole guardian of the child and are, therefore, the only parent responsible for providing consent for intervention. "If a custodial parent consents to treatment for a child which appears to be in the best interests of the child, the non-custodial parent cannot stop the treatment by advising that they do not consent to the treatment." [14] While the non-custodial parent retains the right to make inquiries and to be given information about the health, education, and welfare of the child, this does not mean that the custodial parent's decisions are subject to the consultation and approval of the non-custodial parent.

If the parents share custody, they also share guardianship, therefore, both have the right to consent to treatment. One parent does not have the "authority to prevent or override the other parent's consent for treatment that is in the best interests of the child."[12,14]

Cases of shared custody can create challenging situations for the treating physiotherapist if the guardians do not agree about treatment decisions. In such a situation, the physiotherapist will need to work with the guardians to build consensus about a plan of care and if consensus cannot be found, will need to consider other options for the child's care.

Not sure who has the right to give consent on behalf of the child? Ask about and document the terms of the custody order as described by the parent who brought the child for treatment. You may also request a copy of the court order declaring parental rights upon divorce, if you feel required.[12,14]

Q: I am seeing an elderly patient who appears to have limited mental capacity. How do I get consent?

A: If you have concerns about an adult patient's capacity to provide informed consent, the question becomes who has the authority to make decisions on the patient's behalf? If the patient has an enacted Advanced Health Care Directive the details of the Directive may stipulate actions to take based on the specific situation, or a Substitute Decision-Making arrangement may be in place and the appropriate individual should be approached for consent.[8]

If no such arrangement is in place, the physiotherapist may proceed with treatment that is in the patient's best interests with the approval of the patient's family as outlined in

The Health Care Directives and Substitute Decision Makers Act, and with the patient's assent.[8]

Involving family members may have the potential to create a challenging situation, particularly if different family members cannot agree about the treatment plan. In cases where the proposed treatment is risky or there is disagreement among family members, SCPT recommends that members take a cautious approach to any treatment provided, consider the need to discontinue treatment until concerns are addressed, or seek legal advice before proceeding if treatment cannot safely be discontinued.[2]

It would also be appropriate to discuss the issue with other health professionals within the circle of care, and to advocate for a formal health proxy for the patient if appropriate.

Q: I am seeing a patient who has limited English proficiency. Do I need a trained interpreter?

A: If practical, interpreters, including sign language interpreters, should be used if any doubt exists about a patient's capacity to understand the English language and provide informed consent.

It is best practice to use professional interpreters when obtaining consent from individuals with limited English proficiency. Using a family member, friend, or other health-care provider may not be ideal as it creates risk that the information will not be conveyed accurately, and that consent will not be valid. In areas where formal interpreters are unavailable, alternatives to interpreters may need to be considered as best available options.

When employing an interpreter, the health professional should clearly indicate that an interpreter was used to obtain consent. It is also a best practice to have the interpreter sign a declaration stating "I, (interpreter name), interpreted the information faithfully and accurately." It is not the interpreter's role to determine or even indicate whether the patient understands the information provided. Their role is to faithfully and accurately interpret the communication exchanged.[15]

Q: My patient told me they use medical marijuana. Can I accept consent from them?

A: Marijuana is one of several substances that may impact a patient's capacity to provide consent. The issue is not what substance is in use, but rather whether the substance impairs the patient's capacity to provide consent. Physiotherapists should employ the same policies and processes as when faced with a patient who is impaired from any other substance.[16]

Some treatments come with more risk than others. If a physiotherapist has concerns that the patient does not appreciate the nature and consequences of the consent decision, regardless of the reason, the physiotherapists should neither seek nor accept consent for that treatment. This will impact the treatment plan and the approach the physiotherapist will take.

Again, the physiotherapist should ask themself, "capacity to consent to what?" Depending on the specific situation, it is possible that the patient may have sufficient capacity to consent to lower-risk treatment options. Physiotherapist will need to use their own professional judgment when making this determination.

Q: My patient is making a decision that is dangerous and puts their own safety at risk. What can I do?

A: If the patient has capacity, they have the right to make their own decisions and to have those decisions respected by their health-care providers.[3] Physiotherapists should explain their recommendations and concerns to the patient,[2] seek to understand the patient's values and rationale for their decision and seek a solution that mitigates the situation.

Refusal of the recommended intervention does not necessarily constitute refusal for all interventions and reasonable alternatives should be explained and offered to the patient.

However, if the patient ultimately decides to follow a different course of action from that which their health-care providers recommend, the physiotherapist must abide by the patient's decision.[3] The physiotherapist's duty of care to the patient requires that the physiotherapist take steps to help the patient be as safe as possible within their chosen course of action.

As with all discussions involving consent, conversations around declined consent should be documented including information provided to the patient regarding risks or consequences of refusal, and the patient's rationale for refusing, if one is provided.

Glossary

Advanced Health Care Directive: a legal document that expresses a person's wishes for their own health care should a situation arise where they are no longer capable of making decisions for themselves due to illness or disability.

Assent: an expression of approval or agreement.[17] In cases where a patient cannot provide consent for intervention, their assent to receive an intervention should be sought, in addition to consent from the patient's legal guardian.

Capacity: the degree to which an individual can understand information relevant to an assessment or treatment decision, and to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.[6]

Consent: permission for something to happen or agreement to do something.[1]

Consent Process: a discussion between the physiotherapist and patient or substitute decision maker that provides the detail required for a patient or his proxy to consider consenting or declining a proposed intervention.

Competence: the condition of being able to understand information relevant to an intervention decision, and to appreciate the reasonably foreseeable consequences of a decision or lack of a decision. Competence is a dichotomous, legal construct. The level of capacity that a person has factors into the determination of legal competence.[6]

Physiotherapists don't make a legal determination of competence, therefore the correct term to use in practice is capacity.

Intervention: within this document this term is used to encompass the discrete components of assessments and treatments provided by physiotherapists.

Material Risks: those risks that are known to be associated with the treatment or can commonly occur.[5]

Mature Minor: under the common law "mature minor" doctrine – a minor allowed to make their own health care decisions based on the complexity of the medical intervention and their assessed maturity level.

Other Material Information: information relevant to the patient's decision to accept or decline treatment. This includes but is not limited to possible alternative treatments, the consequences of undertaking no treatment, economic considerations, and the impact the intervention will have on the patient's lifestyle.

Special risks: those risks that may be highly unlikely but have severe consequences or may have special relevance to that particular patient.[5]

Substitute Decision Maker (SDM): a person who, pursuant to The Health Care Directives and Substitute Decision Makers Act, is legally entitled to make health care decisions on behalf of the patient[19]

References

1. Merriam-Webster. Definition of consent. Available at https://www.merriam-webster.com/dictionary/consent Accessed July 3, 2018.
2. Evans KG. Consent: A guide for Canadian physicians. Available at https://www.cmpa-acpm.ca/en/advice-publications/handbooks/consent-a-guide-for-canadian-physicians#types%20of%20consent Accessed July 3, 2018.
3. Saskatchewan College of Physical Therapists. Standards of Practice for Physiotherapists in Saskatchewan. November 2020. Available at Core Standards of Practice - Updated Nov 2020.pdf Accessed April 20, 2022.
4. Covenant Health. Implementing the Consent Policy: A toolkit for health practitioners & managers. Available at http://extcontent.covenanthealth.ca/PatientResident/Patient_Consent_Toolkit_July31_2012.pdf Accessed July 3, 2018.
5. Physiotherapy Alberta – College + Association. Disclosure of treatment risks. Available at https://www.physiotherapyalberta.ca/physiotherapists/resources_to_help_you_meet_practice_standards/disclosure_of_treatment_risks Accessed July 3, 2018.
6. The Canadian Bar Association. Capacity. Available at https://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/theChild/Competence,-Capacity-and-Consent Accessed July 3, 2018.
7. Latus A. Competence & Capacity. Lecture Nov 12, 2003. Available at https://www.google.com/search?q=latus+consent+and+competence+2002&rlz=1C1NHXL_enCA698CA698&oq=latus+consent+and+competence+2002&aqs=chrome.69i57.9631j0j7&sourceid=chrome&ie=UTF-8# Accessed July 3, 2018.
8. Government of Saskatchewan. Health Care Directive and Substitute Decision Makers Act. Available at H0-002.pdf Accessed April 20, 2022.
9. Review of Children's Participatory Rights in Canada. Available at III. Review of Children's Participatory Rights in Canada - Article 12 of the Convention on the Rights of the Child and Children's Participatory Rights in Canada Accessed April 26, 2022
10. Buchanan A. Mental capacity, legal competence, and consent to treatment. Journal of the Royal Society of Medicine 2004; 97:415-420.
11. Jackman M. Medical decision-making and mature minors. 2013
12. College of Physicians and Surgeons of Saskatchewan. Determining Capacity to Consent. Available at: Determining Capacity to Consent Accessed April 20, 2022
13. Health Professions Strategy and Practice. Professional Practice Notice: Mature minor determination for consent to treatment. Alberta Health Services, 2018.
14. Government of Saskatchewan. Children's Law Act 2020. Specific decision-making including health, who is the legal guardian of the minor child. Chap-2-2020-C-E.pdf Accessed April 20, 2022.

15. The Provincial Language Service. Interpreting and Informed Consent. Available at http://www.phsa.ca/provincial-language-service-site/Documents/interpreting-informed-consent.pdf Accessed July 3, 2018.
16. Littke N. Good Practice: Legalization of Cannabis. Available at https://www.physiotherapyalberta.ca/physiotherapists/news/good_practice_legalization_of_cannabis Accessed July 3, 2018.
17. Merriam-Webster. Definition of assent. Available at https://www.merriam-webster.com/dictionary/assent Accessed July 3, 2018.
18. College of Physical Therapists of Ontario: Did you get Consent? 2015. Available at https://www.youtube.com/watch?v=ok8HSg2Ndys Accessed April 20, 2022.
19. Saskatchewan Health Authority Informed Consent Policy 2015. Available at SHR Consent, Informed Consent 7311-50-002.pdf Accessed April 20, 2022.
20. Australian Commission on Safety and Quality in Health Care. Informed consent in Health Care 2020. Available at Informed Consent - Fact sheet for clinicians | Australian Commission on Safety and Quality in Health Care. Accessed April 20, 2022.
21. College of Physiotherapists of Alberta. Consent Guide for Alberta Physiotherapists 2018. Available at Consent Guide — College of Physiotherapists of Alberta. Accessed March 2022.

The SCPT gratefully acknowledges the College of Physiotherapists of Alberta for their contributions toward this resource.

Saskatchewan College of Physical Therapists
105A-701 Cynthia Street, Saskatoon Saskatchewan S7L 6B7
T 877.967-7278 F 306. 931-7333
practiceadvisor@scpt.org

Review date: 2025