

## INFORMED CONSENT

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### Preamble

The Nova Scotia College of Physiotherapists regulates the practice of physiotherapy<sup>1</sup> in Nova Scotia through the administration of the *Physiotherapy Act* and regulations.

The College acknowledges that this standard cannot deal with every aspect of consent because the law is constantly evolving in this area.

For the purposes of this Practice Standard:

### a) Informed Consent

Informed consent means the client receives information that a reasonable person in the same circumstances would require about treatment including: nature, purpose, benefits and material risks, side effects of the treatment, alternate treatment options and the consequences of refusing treatment. This means;

- The client shall be informed of any commitment and financial cost associated with the proposed treatment.
- Anticipation of frequency and duration of services must be discussed whenever possible.
- Communication is essential to achieve informed consent.
- Consent must be obtained before treatment is administered.
- The client must be given all facts that are necessary to make an informed decision respecting treatment.
- Physiotherapists shall advise clients of risks that carry significant consequences, even if they are not likely to occur.
- Physiotherapists shall advise clients of risks that carry minor consequences that are likely to occur.

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<sup>1</sup> The terms *physical therapist, physiotherapist, physiotherapy, physiotherapy, physiothérapie, physiothérapeute, PT and pht* are official marks used with permission. The terms *physical therapist and physical therapy* are synonyms for *physiotherapist and physiotherapy* respectively.

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### b) Capacity to Consent

Capacity is the ability to understand relevant information respecting diagnosis, proposed treatment and the consequences of treatment.

*The physiotherapist proposing treatment is responsible for formulating an opinion respecting the capacity of a client to consent to treatment.*

### ASSESSING CAPACITY TO CONSENT

If a physiotherapist has reasonable grounds to believe a client is incapable of consent then the physiotherapist shall determine capacity using professional judgment.

Indicators that a person may be incapable of consent include:

- Confused or delusional thinking
- Inability to make a settled choice about treatment
- Severe pain or acute fear or anxiety
- Appearance of severe depression
- Appears impaired by alcohol or drugs
- Other behaviors giving rise to a concern about behavior or communication

A presumption of incapacity should not be solely based on psychiatric or neurological diagnosis, disability, refusal of proposed treatment against advice, or a request for alternative treatment.

### c) Substitute Decision-Makers

Substitute decision-maker means the person responsible for making decisions on behalf of the client.

Where a client is incapable of consent a physiotherapist must obtain consent from the substitute decision-maker prior to initiating treatment or changing the type of treatment.

*Statutory Guidance: Nova Scotia Personal Directive Act 2008; and Medical Consent Act.*

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### Substitute Decision-Makers cont'd

Authorizations made under the Medical Consent Act prior to April 1, 2010 are valid pursuant to section 22(2) of the Nova Scotia Persona Directive Act.

The order of priority of substitute decision-maker is as follows:

1. Legally appointed guardian
2. A person who the client, when competent, appointed as his/her proxy in accordance with the terms and conditions set out in the Medical Consent Act
3. Spouse
4. Next of kin; adult children
5. Next of kin; parent
6. Next of kin; brother or sister
7. public trustee

### WHO OBTAINS CONSENT

The treating physiotherapists shall obtain consent from the client.

Consent shall not be delegated to physiotherapy assistants.

If a physiotherapist is in doubt about consent obtained by another health care provider the physiotherapist should not proceed.

### DOCUMENTING CONSENT

The physiotherapist who obtains consent shall document consent.

Physiotherapists shall document how and when consent is obtained.

Physiotherapists have an ethical duty to document the receipt of consent.

A client signature on a general consent form, obtained prior to consultation with a physiotherapist, does not meet the requirements for informed consent.

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### **AGE OF CONSENT**

There is no automatic presumption of incapacity solely because of a client's age.

The Age of Majority Act states that every person attains the age of majority, and ceases to be a minor, on attaining the age of nineteen years (section 2(1)).

There is no legislation in Nova Scotia governing age of consent to treatment for healthcare.

A client who has the capacity to consent, regardless of age, may consent.

In exceptional circumstances, where refusal to treatment exposes a client to serious illness or death, it would be prudent for the physiotherapist to consult with legal counsel.

### **CONSENT MAY BE EXPRESSED OR IMPLIED**

Expressed consent can be written or verbal.

Written consent is more precise, prudent and provides evidence of consent.

A consent form must be explained to be valid.

Implied consent is obtained from words or actions. For example, the client consents to treatment when s/he presents for the same treatment reviewed in the past.

For general, non-invasive, physiotherapy treatment physiotherapists may rely on implied consent. If in doubt, obtain verbal consent and document.

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**ISSUED: February 2014**

**REPLACES: April 2002 Informed Consent**

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