

Health Care Consent in BC: Your Rights & the Law

This fact sheet is about the rights of adults (19 and older) related to health care decision making in BC.

If the court appointed someone as your committee of person, you were determined mentally incompetent of health and personal care matters by a judge. This fact sheet is not about your rights. Aspects of this fact sheet might relate to health care decisions your committee will make on your behalf.

Health care consent is governed by the Health Care Consent and Care Facility Admission Act and the Health Care Consent Regulation. Legislation for health care consent came into effect in BC in February 2000. Since that time there have been some amendments (changes).

How is health care defined?

The law defines health care as “anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic, or other purpose related to health.”

This includes care at a clinic or doctor’s office, in a hospital, in a care facility, assisted living residence or hospice, in a group home or home share setting.

Health care can include individual treatments, longer-term courses of health care (like a series of immunizations or a course of chemotherapy), and participation in medical research.

The law describes two kinds of health care:

1. **Minor health care** includes things like regular checkups, routine tests, basic dental and eye care, immunizations, medications of any kind, and other care that is not major health care.
2. **Major health care** is currently defined as major surgery, major diagnostic or investigative procedures, any treatment involving a general anaesthetic, radiation therapy, chemotherapy, kidney dialysis, electro-convulsive therapy (ECT), laser surgery and any other health care that may be described in the future by Regulation.

Some treatments such as resuscitation may be a combination of minor health care and major health care. For example, mouth-to-mouth breathing and chest compressions seem to fall under minor health care. However, cutting open someone’s chest to massage their heart suggests major health care.

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What is informed consent?

Informed consent is an important concept in health care. It came about because of research done on people during war times — without their knowledge or consent. This was viewed as inhumane and a lot of effort has gone into defining and protecting the right to informed consent.

BC legislation sets out requirements for informed consent.

1. When a health care provider offers health care to you (the adult patient/client/resident), they must provide specific information:
 - What condition they are treating (your diagnosis);
 - What health care they are suggesting (the proposed treatment or health care being offered);
 - How it may help (the benefits to you);
 - How it may be harmful (possible risks to you); and
 - Other health care to try (alternatives you could choose instead).
2. The health care provider must also allow you to ask questions and get answers.

What else is important about consent?

Consent must be voluntary. No one can pressure you or force you to decide in a particular way, or deliberately give you wrong information or do anything else to influence your decision. Sometimes you might want more information or to double check the information by getting another medical opinion.

There are different actions for consent:

- Giving consent (yes);
- Refusing consent (no); and
- Revoking or withdrawing consent (stop/cancel).
Revoking consent can happen after you give consent to health care and then, over time, maybe you notice that there are no benefits or there are increased risks.

Who gives consent for health care?

A health care provider must first try to get consent for health care from you (the adult patient/client/resident). You are presumed capable.

What am I consenting to?

When you agree to health care, you are giving consent to that specific health care only. The health care provider must get informed consent for any new or different treatment. See exception on page 2 under urgent, unexpected condition that arises.

If you gave consent to health care being provided by a named health care provider, no one else can provide the health care without first getting consent. There are two exceptions: 1) if the health care is in progress; or 2) delay is likely to put your life or health at risk.

What ways can I give consent?

You can give or refuse consent in different ways—by speaking, by writing, or through your behaviour, such as moving your head or making a specific sign.

Although behaviour may appear as giving consent—for example, offering an arm for an injection when requested, or complying with a course of treatment—cooperating is not always the same thing as informed consent.

If the health care provider has not given you information about the specific treatment, or you do not understand it, the health care provider cannot assume you are consenting just because you cooperate.

How is capability to consent determined?

The law says you are capable of making health care decisions, unless and until you demonstrate that you are incapable of understanding: 1) the information provided to you; and 2) that it applies to you. The health care provider offering the care decides if you are incapable.

For more details on the requirements to determine capability for informed consent for health care decisions, read [How Health Care Decisions are Made if You are Incapable](#) (see page 3 More Information from Nidus).

If you are capable of informed consent to the specific health care offered, your decision to give or to refuse consent is not affected if you later become incapable of informed consent for that health care.

What about communication?

The health care provider can NOT decide you are incapable of consent to health care only because of how you communicate.

The health care provider must communicate with you in a way that fits with your skills and abilities. The law says a health care provider *may* allow your spouse, family or friends to help them understand your communication.

A representative named in your Representation Agreement (RA7 or RA9) has legal authority to help you to make your own decisions. If you are determined incapable by the health care provider, a representative continues to have legal authority to ensure you and your wishes are the priority in health care decision-making.

Do I have a right to refuse consent?

Yes, if you are capable of informed consent you have the right to refuse consent. You can refuse or withdraw (stop) consent to health care for any reason, including religious or moral reasons. You have this right even if your decision puts your health or life in danger. Your decision must be respected.

Who qualifies as a health care provider?

Under BC legislation a health care provider is someone who is licensed or registered to provide health care in BC. In BC, health care providers include:

- Audiologists and Hearing Instrument Practitioners
- Chiropractors
- Dentists, Denturists, and Dental Hygienists, Technicians, and Assistants
- Dietitians
- Massage Therapists
- Midwives
- Naturopaths and Traditional Chinese Medicine herbalists and practitioners, and Acupuncturists
- Nurses
- Occupational and Physical Therapists
- Opticians and Optometrists
- Osteopaths
- Pharmacists
- Physicians and Surgeons
- Podiatrists
- Psychologists
- Registered Social Workers
- Speech Language Pathologists

When is informed consent not required?

There are specific situations where a health care provider may provide certain health care without informed consent.

Preliminary examination

Informed consent is not required for a health care provider to take preliminary steps to figure out what health care is needed. One of the following must indicate that you want to receive some health care:

- You (the adult patient/client/resident); or
- Your spouse, or near relative or close friend.

Urgent, unexpected condition that arises after starting

Informed consent for additional or alternative health care is not required if you (the adult patient/ client/resident) gave consent to health care and then while it is in progress (perhaps during surgery) something new or unexpected arises and it is medically urgent to provide health care but you are unconscious or semi-conscious.

Emergency

Informed consent is not required in an emergency situation where the health care provider believes you are not capable (you may be unconscious or impaired by alcohol or drugs).

The law defines emergency as a need for immediate health care to:

- Save your life,
- Prevent serious mental or physical harm, or
- Relieve extreme pain.

If the court appointed someone as your committee of person, or, if not, you named a representative in a Representation Agreement that includes health care, the health care provider **must** ask them for consent. They must be capable of consent and available. Otherwise, the health care provider decides and the law says that, if possible, another health care provider should confirm that you are incapable and you need the proposed health care.

The law also says that if a health care provider is reasonably sure you expressed a wish to refuse the specific treatment offered in the emergency situation AND you were capable of informed consent when you expressed this wish (verbally or in writing) AND you were 19 years or older AND there is no evidence that you have changed your mind, the health care provider must not give you the health care.

On the other hand, a health care provider can override refusal in an emergency situation if the health care provider believes a committee of person or representative did not follow their duties. They also have the ability to override refusal in a stand-alone Advance Directive. Read [Advance Directives in BC](#)

Once the emergency is over, the health care provider must get consent from you before giving you any more health care, or if you are incapable of informed consent they must get consent from another authority. Read [How Health Care Decisions are Made in BC if You are Incapable](#)

What health care decisions are not covered by BC legislation for informed consent?

BC's legislation for health care consent excludes some specific health care matters.

When you are involuntarily committed or detained or on leave under the Mental Health Act

Informed consent does not apply to treatment of a mental disorder if you are an involuntary psychiatric patient under BC's Mental Health Act. This includes someone who is found not criminally responsible under the Criminal Code, someone who is detained in a

provincial mental health facility, and someone who is on leave and living in the community or who is transferred to an approved boarding home with conditions under the Mental Health Act.

The Mental Health Act also covers certain emergencies. If the police attend, they can apprehend you based on observations or information from others that you have a mental disorder or are a danger to yourself or to others. The police can take you to a physician for examination and the physician can arrange for you to be involuntarily committed for care.

Under the Mental Health Act, an involuntary psychiatric patient is 'deemed' to consent to treatments set out by a director of a designated facility who is appointed by the health authority responsible for operating the facility.

While informed consent does not apply to treatment decisions related to your mental disorder when you are an involuntary psychiatric patient, it does apply to treatment of other health conditions such as a broken leg or pneumonia.

Sterilization for birth control purposes

Sterilization for non-therapeutic purposes is not allowed under any legislation in BC.

Medical Assistance in Dying

Eligibility and procedures related to medical assistance in dying (MAiD) are governed by federal legislation. For more information, read the Nidus fact sheet on [MAiD](#)

More Information from Nidus

For other fact sheets and information related to health care consent, go to www.nidus.ca > Information (top menu bar) > [Health Care Consent](#)

- How Health Care Decisions are Made in BC if You are Incapable of Informed Consent
- Role and Scope of Authority of a TSDM for Health Care Consent in BC
- Duty for Notice When a TSDM is Selected for Major Health Care in BC
- Giving Consent to A Plan for Minor Health Care in BC
- Representation Agreements for Health Care in BC
- Advance Directives in BC
- Adult Guardianship/Committeeship in BC

To view legislation and regulation

Go to www.bclaws.ca > Laws of BC > Public Statutes and Regulations > H > Health Care Consent and Care Facility Admission Act (see link for Regulations, click for Health Care Consent Regulation).