

## PRACTICE STANDARD FOR BCCNM NURSES

# Consent

Practice Standards set out requirements related to specific aspects of nurses' practice. They link with other standards, policies and bylaws of the BC College of Nurses and Midwives, and all legislation relevant to nursing practice.

Consent is the voluntary agreement to some act or purpose made by a capable individual. Clients and their substitute decision makers have the legal right to agree to, refuse or revoke permission for proposed care, service, treatment or research provided by a health care professional, at any time.

Nurses<sup>1</sup> have both legal and ethical obligations regarding consent for proposed care, service, treatment or research. The specific legislation that applies to a nurse's practice depends on the work setting and the nature of the work. Some related legislation are listed in the *Resources* section at the end of this practice standard. The ethical obligations of nurses are to recognize, respect, and promote the client's right to be informed and make informed choices, including to refuse or revoke permission.

Valid informed consent<sup>2</sup> generally requires that:

- The consent is given voluntarily.
- There is no fraud or misrepresentation used to obtain consent.
- The client is capable of giving or refusing consent, or consent is obtained from a substitute decision maker (as allowed or required by law).
- The client or substitute decision maker has the information needed to make a decision about the proposed care, service, treatment or research, including:
  - the condition for which the health care is proposed,
  - the nature of the proposed health care,

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1 "Nurse" refers to all BCCNM nursing registrants, including: licensed practical nurses, nurse practitioners, registered nurses, registered psychiatric nurses, licensed graduate nurses, employed student nurses, and employed student psychiatric nurses.

2 Adapted from the Health Care (Consent) And Care Facility (Admission) Act, RSBC 1996, c. 181.

- the potential risks and benefits,
- alternative courses of health care, and
- the opportunity to ask questions and receive answers.

Informed consent is the formal consent sought by the health professional responsible for directing care. Nurses are responsible for obtaining consent when initiating care, and reviewing consent before providing the care ordered by another health care professional.

Employers provide the organizational supports and systems necessary for nurses to meet consent requirements and the standards of practice.

## Principles

1. Nurses recognize, respect, and promote a client's or substitute decision maker's right to be informed and to make decisions about care, including their right to give, refuse, or revoke consent.
2. If necessary, nurses identify the person who is authorized and able to make health care decisions on the client's behalf.
3. Nurses are knowledgeable about and follow the requirements of legislation that relate to consent, within their practice.
4. Nurses obtain or verify consent before providing care unless legislation allows an exception to obtaining or verifying it.
5. Nurses who are acting within autonomous scope of practice (including giving a client-specific order) are responsible for obtaining informed consent from the client or their substitute decision maker before providing care or issuing an order, and for documenting that consent in the client's record.
6. Nurses who participate in the delivery of care proposed or provided by other health professionals:
  - a. Assist the client and/or substitute decision maker to understand the information provided by others.
  - b. Take action when there are concerns about informed consent.
7. Nurses assess the client's capacity to give, refuse or revoke consent. Clients are seen as capable unless there is evidence that shows the client is not.
8. Nurses inform the client about any care before it is provided, even if a client has been deemed incapable of consenting.
9. Nurses provide information to clients and substitute decision makers appropriate to their needs, skills and abilities, to enable them to make informed decisions about care. This includes the use of qualified interpreters or translations, as appropriate. Nurses give clients and substitute decision makers an opportunity to ask questions and receive answers.

10. Nurses are aware that the ability of clients to make decisions about giving, refusing or revoking consent may vary. Nurses facilitate the client's decision-making when the client is able and re-evaluate the client's ability to consent on an ongoing basis.
11. Nurses identify and, when possible, take action to address barriers affecting a client's ability to consent to care.
12. Nurses respect both the right of clients to seek further information or other opinions, and to involve others in the decision-making and consent process.

## Applying the principles

- It is not appropriate for nurses to take responsibility for obtaining consent for care, treatment, or services outside of their scope of practice (e.g., the provision of surgical services or anesthesia outside the nurse's scope of practice).
- Be aware of the roles and responsibilities of substitute decision-makers, representatives, and advance directives.
- Health care services are governed by different legislation\*, depending on the circumstances, including some that create exceptions to consent. Organizations may establish policies to assist nurses in interpreting or applying the law regarding consent. Any issues or questions should be directed to your organization, or you should seek legal advice.

\*See "Resources" below, and the BCCNM publication, *Legislation Relevant to Nurses' Practice*.

- Consent may be given verbally, in writing, or through an alternative communication system (e.g., computer assisted). You should ensure the client or substitute decision maker has the information needed to make an informed decision.
- Consent can be implied through the behaviour of a client<sup>3</sup> (i.e., cooperating with your actions); however, you should also have a reasonable belief that the client is consenting<sup>4</sup>. Implied consent is not appropriate in all cases, and you should consider whether accepting implied consent is correct when you are providing care.
- In circumstances when the client's right to consent has been taken away (e.g., when a client is certified under the *Mental Health Act* and deemed incapable), clients have a right to know what care is being provided.
- The *Health Care (Consent) and Care Facility (Admission) Act* outlines the requirements for some of the limited circumstances when care may be provided without obtaining consent

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3 Health Care (Consent) and Care Facility (Admission) Act, R.S.B.C. 1996, c. 181, section 9(1).

4 Robertson, G.B. & Picard, E.I. (2017). *Legal liability of doctors and hospitals in Canada* (5th ed.). Toronto, Ontario: Thomson Reuters.

from the client or their substitute decision maker. See the BCCNM publication *Legislation Relevant to Nurses' Practice* for more information.

- The *Infants Act* deals with consent for clients under 19 years of age. This Act uses the term "infant" to describe all minors, and provides rules to determine when a minor qualifies as "mature" and is therefore entitled to give consent to their own health care.
  - Understand the legal requirements for determining if a minor can provide valid consent.
  - Know who may give consent if your minor client cannot. (This may be affected, for example, by an agreement or court order under the *Family Law Act*.)
  - Understand your obligation to report under the *Child, Family and Community Service Act* if a mature minor or the parent or guardian of an immature minor refuses to give consent to necessary health care.
  - In some specific circumstances, the usual requirements related to consent may not apply. In this case, identify legislation relevant to your practice setting. Legislation may include the *Human Tissue Gift Act*, the *Mental Health Act*, and the *Public Health Act*.
- Be aware of the power dynamic between health professionals and clients/substitute decision maker, and how it may influence their decisions regarding care.
- Effective communication helps to ensure a client's or substitute decision maker's health care decisions are understood, expressed, and respected by everyone involved. Some ways nurses can assist clients in communicating and understanding consent include:
  - Giving verbal explanations
  - Using visual aids and handouts
  - Asking clients for feedback about what they understand
  - Asking clients if they have any questions
  - Engaging any family or friends who are supporting the client to help the client understand
  - Helping the client obtain information from the most appropriate health professional
  - Using plain language, consistent terms, and age-appropriate terminology
  - Using the services of a qualified interpreter if a language barrier exists
  - Providing information through an alternate mode (e.g., using sign language).

## Resources

- [Scope of Practice for Licensed Practical Nurses: Standards, Limits and Conditions](#)
  - Scope of Practice Standards
    - Acting with an Order
    - Acting without an Order
- [Scope of Practice for Nurse Practitioners: Standards, Limits and Conditions](#)
- [Scope of Practice for Registered Nurses: Standards, Limits and Conditions](#)
  - Scope of Practice Standards
    - Acting Within Autonomous Scope of Practice
    - Acting with Client-Specific Orders
    - Giving Client-Specific Orders
- [Scope of Practice for Registered Psychiatric Nurses: Standards, Limits and Conditions](#)
  - Scope of Practice Standards
    - Acting Within Autonomous Scope of Practice
    - Acting with Client-Specific Orders
    - Giving Client-Specific Orders
- Information about legislation relevant to consent are found in the [Legislation Relevant to Nurses' Practice](#) document.
- Some examples of relevant legislation include:
  - *Adoption Act*
  - *Adult Guardianship Act*
  - *Child, Family and Community Service Act*
  - *Family Law Act*
  - *Health Care (Consent) and Care Facility (Admission) Act*
  - *Human Tissue Gift Act*
  - *Infants Act*
  - *Mental Health Act*
  - *Patients Property Act*
  - *Public Health Act and Vaccination Status Reporting Regulation*
  - *Representation Agreement Act*

*\* The list above is not intended to be exhaustive of all legislation that may have a bearing on the issue of consent in a particular situation. Consult your employer or seek legal advice as needed. \**

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900 – 200 Granville St  
Vancouver, BC V6C 1S4  
Canada

[www.bccnm.ca](http://www.bccnm.ca)

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