



Guide to Obtaining Informed Consent

(Including Minors & Incapacitated Persons)

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Introduction

Informed Consent is the process by which a treating health care provider, in our case, a kinesiologist discloses appropriate information to a competent person so the person may make a voluntary choice to accept or refuse treatment and disclose or share information related to treatment. Informed Consent is an ongoing process and not something that is simply agreed to prior to assessment or treatment.

Kinesiologists who make recommendations or decisions regarding a specific person's wellbeing, whether providing medical or non-medical based exercise prescription, disability management, workspace ergonomics, return to work planning, medical bracing/biomechanical supports, research, etc., must obtain ***Informed Consent*** prior to affecting the persons wellbeing.

Societal Standards

Current societal standards for *Informed Consent* in the provision of medical treatment are based on the ability of a reasonable person to comprehend the assessment and/or treatment information being provided to them along with the costs involved. The information provided must be accurate and correct based on best-practices in client care. Minors, who are legally referred to as "Infants" along with others who may not have the capacity to comprehend the ramifications of accepting or declining an assessment or treatment activity due to a lack of knowledge, language barrier, experience or an incapacity caused by illness or the actions of medications require special attention regarding this matter.

Principle of Informed Consent

The principle of Informed Consent dictates that a person must give it freely and knowingly. This means that a kinesiologist must, on an ongoing basis, ensure that a person (client) is;

1. Receiving accurate information regarding;
 - a. Any assessment or treatment, or changes in treatment, including any known or potential benefits, along with the material risks and potential or known side effects related to being assessed or treated,
 - b. Any reasonable alternatives to the assessment or treatment that are available and known (or should be known) by the kinesiologist, and
 - c. The consequences of receiving or not receiving the assessment or treatment that any reasonable person in the same circumstances would want to be aware of prior to making a decision for or against being assessed or treated.
2. Not making a decision under duress, or when they do not have the capacity to make an informed decision.

Capacity to Provide Informed Consent

Canadian laws and standards relating to the capacity to make decisions and provide *Informed Consent* are that "age" is only one of the factors which must be considered when determining a person's capacity

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to make decisions. Anyone who lacks the competency to make logical informed decisions in their own best interest, whether due to age (young or old) or mental impairment (temporary or permanent), is not likely to be considered capable of providing informed consent under the laws of BC and Canada.

A Minor (Legally referred to as an “Infant”) is any person younger than the age of majority, or 19 years in BC. Under the Infants Act of BC, medical treatment is broadly defined as “healthcare” under Part 2 of the Act and permits an infant to provide informed consent provided the terms indicated in the Act are met. These terms specify that the legality of minors making decisions affecting their health is dependent on their ability to comprehend and make informed decisions that are in the best interest of their health.

This permits for infants to provide *Informed Consent* in circumstances when the assessment or treatment being provided is simple and straightforward and comprehension is demonstrated but does not permit consent in circumstances which are complex or based on technical information that the minor is not likely to fully understand.

The Incapacitated Person; is any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, language barrier or other cause (except minority) to the extent of lacking enough understanding or capacity to make or communicate responsible decisions. Incapacity can be permanent or temporary and it is important to make the distinction between the two, as *Informed Consent* for a permanently incapacitated person must be obtained from the legal guardian or appropriate provincial government ministry personnel, while the temporarily incapacitated person may be able to make informed decisions regarding future assessment or treatment if the incapacity will end at some reasonably foreseeable time in the future, otherwise determination of who can legally act as guardian must be determined.

Guidelines

Determine Capacity or Incapacity

- Assess the client’s ability to provide informed consent on an ongoing basis and record consent for treatment and any changes when possible.
- Do not rush the process to obtain informed consent as this may be considered duress.
- Decline to assess or treat when the client is incapacitated due to drugs, alcohol or other factors and if possible, have the client return at a future date when they are not likely to be incapacitated.

Medically Appropriate Care

- If a minor and their guardian decline assessment or treatment which is deemed necessary by at least 2 medical doctors the case should be referred to the BC Ministry of Children and Family Services.
- If an adult who has capacity declines care after the benefits and risk have been appropriately explained and the benefits far outweigh the risks, you must respect the decision.
- If an adult is incapacitated and unable to provide informed consent but demands treatment, you must decline until the individual has the capacity to make informed decisions.

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Please visit the following web links for additional information on the topic of informed consent.

- [Royal College of Physicians and Surgeons of Canada, Bioethics; Section 1, Medical Decision-Making and Mature Minors](#)
- [Legal Services Society, Family Law in British Columbia- Do you need your parents' permission to see a doctor](#)
- [Canadian Medical Protective Association, Consent – A Guide for Physicians](#)

Privacy Considerations

Personal privacy Laws in BC and Canada must also be followed when working with clients regardless of age. This requires kinesiologists and other health care professionals who are asked to assess or treat those who are or may not be, “sufficiently competent” to provide informed consent, to implement policies and procedures to ensure that personal (medical) information is not revealed to others (including family members) without their consent. **Minors and adults who are found to be incompetent have the same right to privacy as competent persons.**