

Health Care Consent: Your Rights and the Law

This fact sheet is about your rights as an adult (age 19 or older) when making decisions about your health care in British Columbia. Health care consent is governed by the Health Care Consent and Care Facility Admission Act. Only the health care consent part of the Act came into effect in February 2000. For the purposes of this fact sheet, we will refer to the law as the 'HCC Act.'

The topics discussed here also generally apply if you have been determined incapable of consent and consent must be obtained from another authority. See the Nidus fact sheet [Health Care Consent: if you are incapable](#).

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 or group home, or in the community.

It includes individual treatments, longer-term courses of health care (like a series of immunizations or a course of chemotherapy), and participation in an approved medical research program.

The law also 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** includes surgery, risky or complex tests, any treatment involving a general anaesthetic, radiation, chemotherapy, and kidney dialysis.

If you are determined incapable of consent, and you did not make a Representation Agreement, and a health care provider has to select someone to act on your behalf there are special rules that must be followed if major health care is involved. See the Nidus fact sheet [Notice for Major Health Care if a TSDM is Selected](#)

What is informed consent?

The HCC Act sets out the legal requirements for consent. Except for the situations described on page 2, a health care provider must always get informed consent before giving you health care. The law says a provider must give you information about:

- What condition they want to treat (your diagnosis);
- What health care they want to give you (the proposed treatment);

- How it may help you (the benefits);
- How it may harm you (the risks); and
- Other health care you could choose instead (possible alternatives).

The health care provider must also allow you to ask questions and get answers.

You have the right to be involved as much as possible in plans and decisions about your health care.

When you agree to health care, you are giving consent to that specific health care only. The health care provider can only give the care you agreed to, and must get informed consent for a new or different treatment.

A physician's order (DNR/No-CPR form or Medical Order for Scope of Treatment [MOST] form) is **NOT** a consent—and can NOT be used in the future if you are incapable.

Do I have a right to refuse consent?

Yes, you have the right to refuse consent. As a rule, as long as you are capable of informed consent, you have the right to make your own decisions about health care. This means:

- 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, and
- Your decision must be respected.

Read the Nidus fact sheet [Refusing Health Care: What are My Rights?](#)

How do I give consent?

Your decisions about health care must be voluntary. No one can pressure you or force you to decide in a particular way, or deliberately give you wrong information to influence your decision.

You can give consent in different ways—by speaking, by writing, or through your behaviour, such as nodding or making a sign that you agree.

Although your behaviour may count as 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 giving informed consent.

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

How is incapability to consent determined?

The law says you are capable of making health care decisions, unless and until you demonstrate that you are incapable. Sometimes it is difficult to know the difference between 'capable' and 'incapable.' You may be capable of doing some things and not others, or your capability might be different from one time to another.

If your health care provider has concerns about whether you are capable of informed consent to health care, they will try to find out if you understand these two things:

1. What kind of health care is being offered – for example, its purpose, and the risks, and
2. The fact that the health care is meant for you and your situation.

The law says the provider must explain information in a way that takes into account your abilities.

If the provider is having trouble understanding how you communicate they should try to find someone, such as your representative, a family member, or a friend, who can understand your communication and help explain it. The provider cannot decide you are incapable of consent to health care only because of how you communicate.

If a provider determines that you are incapable of informed consent to health care, they must get consent from another authority. See the Nidus fact sheet [Health Care Consent: if you are incapable](#)

Who qualifies as a health care provider?

The HCC Act defines a health care provider as someone who is licensed or registered to provide health care in BC. The list includes:

- 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 my consent not required?

There are only three situations where a health care provider can give you health care without getting your consent first.

Preliminary examination

A provider does not need your informed consent to do a preliminary examination to figure out what health care you might need or how urgent it is.

Urgent, unexpected condition

A provider does not need your consent to treat a new, unexpected condition that they discover while they are in the middle of giving you other care that you already consented to, if you are unconscious or semi-conscious at the time they discover it (for example, if you are in surgery), and the unexpected condition is medically urgent.

Emergency

A provider can treat you without your consent if you are incapable of informed consent (that is, you are unconscious, semi-conscious, impaired by drugs or alcohol or are incapable for some other reason), and you need immediate treatment to save your life, to prevent serious mental or physical harm, or to relieve extreme pain.

If your representative (or a court-appointed guardian) is available, the health care provider **must** ask them for consent. Otherwise, the provider may treat you. The law says that if possible, another provider should confirm that you are incapable and you need the proposed health care.

The law also says that if a provider knows you expressed a wish to refuse the specific treatment being offered in the emergency situation, they must not treat you.

Once the emergency is over, the provider must get consent from you before giving you any more health care, or must ask someone who has the authority to make decisions for you. See [Health Care Consent: if you are incapable](#)

What health decisions are outside the HCC Act?

The HCC Act does not cover refusing treatment or placement related to *involuntary* admission to a psychiatric facility to treat your psychiatric illness. This is covered by the Mental Health Act. However, if you are an involuntary psychiatric patient and, for example, you break your leg or have pneumonia, consent and treatment of your broken leg or pneumonia is still covered under the HCC Act.

Sterilization for non-therapeutic purposes is not allowed under the HCC Act.

Medical assistance in dying is covered by federal legislation. Read the Nidus fact sheet on [MAiD](#)

Resources found at www.nidus.ca click on Information > Health Care Consent > [More HCC Resources](#)