Practice Standard for Consent to Treatment (Draft Version – Last Edited 2022-05-20)

Practice Standards of the College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia (the "College") set out minimum requirements for the professional conduct of TCM professionals practising in British Columbia. Together with the *Jurisprudence Handbook* and relevant legislation and case law, they will be used by the College and its Committees when considering practitioner practice or conduct.

Within the Practice Standard, the terms 'must' and 'advised' are used to articulate the College's requirements and recommendations. When the term 'advised' is used, it indicates that the practitioner can use reasonable discretion when applying this expectation to practice.

Definitions

Consent to treatment: The voluntary agreement to some act or purpose made by a capable individual. The patient has the right to agree, refuse, or withdraw permission at any time for treatment provided by the practitioner.

Implied consent: Consent communicated through actions.

Capacity: A person is capable to give consent with respect to a treatment if the person is able to understand the information that is relevant to making a decision and is able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. Capacity to consent to a treatment can change over time. The capacity varies according to the individual patient and the complexity of the specific treatment decision.

Minor: A person under the age of 19 is called a "minor."

Mature Minor Consent: When a practitioner determines and ensures a minor understands the need of the health care, details of the treatment, including risks and benefits, then the minor may give "mature minor consent" independent of their parents' or guardian's wishes.

Substitute decision-maker: A person who may give or refuse consent to a treatment on behalf of an incapable person.

Standard

The practitioner **must** practice in accordance with the following requirements:

General Principles

1. The practitioner is aware of, and in compliance with, all of the requirements in the *Health Care (Consent) and Care Facility (Admission) Act (HCCCFAA)* and the *Infants Act.*
2. Consent to health care can be given or refused in three ways: written, verbal, or implied.

3. The practitioner obtains a valid consent before a treatment is provided. That consent is specific and must not be assumed based on consents given either previously or broadly.

4. The patient has the right to refuse or withdraw treatment consent, and the practitioner respects the patient's decision to choose what to consent to and what to refuse.

5. As part of ongoing communication with a patient, the practitioner checks with the patient to reconfirm consent when there are any signs that the patient's understanding of or wish to receive a treatment has changed. The practitioner adjusts the communication approach for each patient to ensure that the information and explanations are clearly understood by the patient.

Determining Capacity to Give Consent

6. When obtaining consent for treatment, the practitioner ensures that the patient is capable of giving consent.

7. If the patient displays that they may not be capable of giving informed consent, the practitioner determines whether the patient demonstrates sufficient understanding of the information provided and decides whether the patient has the capacity to give consent or not.

Incapable Patients and Substitute Decision-Making

8. Where a patient is incapable of giving informed consent to treatment, the practitioner, where possible, informs the incapable patient that a substitute decision-maker will assist them in understanding the proposed treatment and that the substitute decision-maker will be responsible for the final decision. When appropriate, the practitioner needs to involve the incapable patient, to the extent possible, in discussions with the substitute decision-maker. A substitute decision-maker must be chosen according to the priority and qualification specified in section 16 of the *Health Care (Consent) and Care Facility (Admission) Act*.

9. The practitioner keeps the substitute decision-maker's name and contact information in the patient's medical file.

Minors

10. If a minor is capable of giving informed consent with respect to treatment, the practitioner accepts a mature minor consent from the minor directly without obtaining consent from the minor's parent or guardian.

11. The test for capacity to consent to a treatment is not age-dependent and, as such, the practitioner makes a determination of capacity for a minor just as the practitioner would for an adult when accepting a mature minor consent.

Obtaining and Documenting Consent

12. For consent to be valid, the practitioner ensures that:

a. The consent is directly obtained from the patient, if the patient is capable with respect to treatment; or consent is obtained from the patient's substitute decision-maker, if the patient is incapable to consent with respect to treatment.

b. The consent is informed and includes the following elements:

- Nature of the assessment or treatment
- Who will be performing the assessment, treatment, or procedure
- Rationale for the treatment
- Potential risks and benefits of the assessment, treatment, or procedure
- Alternatives to the assessment, treatment, or procedure
- Patient's right to refuse or withdraw consent
- Consequences of not having the assessment, treatment, or procedure
- Patient's right to ask questions and receive answers about the assessment, treatment, or procedure.

c. The consent is given voluntarily, without coercion, fraud, or misrepresentation.

d. The consent relates to the specific assessment, treatment, or procedure being proposed.

e. The practitioner discusses consent with the patient or the substitute decision-maker (as the case may be) when providing the information specified in section 12(b), ensures the information provided is understood, and takes reasonable steps to facilitate comprehension of the information provided.

13. The practitioner documents the receipt, refusal, or withdrawal of consent for treatment.

14. If there is a change to the treatment plan, or a new procedure is introduced that is not covered by the previous consent, the practitioner needs to obtain consent for the new treatment.

15. The practitioner documents any concerns raised during the consent process and actions taken to address them (e.g., a patient is determined to be incapable of providing consent and an authorized substitute decision-maker is identified).

16. The practitioner documents the rationale and decision when a mature minor consent is accepted.

Practice Advice

It is advised that the practitioner communicate in a manner appropriate to the patient's culture, language, and personal preferences. For example, the practitioner can use plain language, age-appropriate terminology, and qualified interpreters (if appropriate), so that the patient has an adequate understanding in order to make their own decision to give an informed consent.

If a written consent form is used, the patient's name, signature and date of signing can be included in the record, in addition to the elements of consent outlined in section 12(b).

Some professional liability insurance providers may require the practitioner to include specific provisions in the consent form outlining specific health risks to a patient in advance of providing the treatment. Some professional liability insurance providers may decline to indemnify the practitioner in the absence of such provisions. One such example for acupuncture is mentioning the risk of pneumothorax. The practitioner is advised to review the terms of the practitioner's professional liability insurance policy.

Adapted from and thanks to:

College of Physicians and Surgeons of BC

https://www.cpsbc.ca/files/pdf/NHMSFAP-AS-Consent.pdf

College of Physicians and Surgeons of Ontario

https://www.cpso.on.ca/Physicians/Policies-Guidance/Policies/Consent-to-Treatment

British Columbia Ministry of Health

https://www.health.gov.bc.ca/library/publications/year/2011/health-care-providers'-guide-to-consent-to-health-care.pdf

Resources

College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia (2016). *Jurisprudence course handbook.* Available from: https://www.ctcma.bc.ca/media/1063/jurisprudence-handbook-en-web.pdf

College of Traditional Chinese Medicine Practitioners & Acupuncturists of British Columbia (2016). *Clinical Record Keeping Sample Form.* Available from: https://www.ctcma.bc.ca/media/1639/clinical-record-keeping-practice-standard-sample-forms.docx

Government of British Columbia. *Health Care (Consent) and Care Facility (Admission) Act*, [RSBC 1996], Chapter 181. Available from: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96181_01

Government of British Columbia. *Infants Act*, [RSBC 1996], Chapter 223. Available from: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96223_01