

CHILDREN AND CONSENT TO TREATMENT

PLP and the Practice Advisory Service often receive enquiries about who can consent to dental treatment on behalf of a minor patient. The following information will assist members in ensuring that proper authorization is obtained before dental services are performed on a child.

General Principles

Except in an emergency, a health practitioner must obtain consent from a patient before providing treatment. According to Ontario's *Health Care Consent Act, 1996 (HCCA)*, in order to be valid, that consent must:

1. relate to the treatment in question;
2. be informed;
3. be given voluntarily;
4. not be obtained through misrepresentation or fraud.

The patient must also be capable of consenting to treatment. According to the *HCCA*, a person is capable of making a treatment decision if he or she understands:

1. the nature and purpose of the treatment;
2. the consequences of giving or refusing consent.

A health care professional is entitled to rely on a presumption of capacity, unless there are reasonable grounds to believe the patient is incapable with respect to the proposed treatment. Since capacity is not only specific to the patient but also to the treatment in question, the same patient may be capable of consenting to some services and not others.

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Age of Consent

Notably, though it does establish a presumption of capacity for persons age sixteen or older, the *HCCA* does not prescribe a minimum age for consenting to treatment. Therefore, as with all patients, a health practitioner must assess the decision-making capacity of a child before proceeding with treatment. Factors to consider in determining whether a child fulfills the criteria for capacity set out in the *HCCA* include the patient's age, level of maturity and the type of treatment in question. Very young children would not normally meet the test, while mature minors may be capable of consenting to minimally invasive, routine procedures and adolescents may be able to validly consent to more complex or elective treatment. However, since an agreement to pay by someone under the age of eighteen may not be enforceable, it is unwise to act on a minor patient's instructions alone, except in an emergency.

A capable child may also refuse treatment. If a young patient is able to understand why the treatment is required, what is involved and what is likely to happen if he or she declines, the health care provider is obliged to respect the child's wishes, even if the parents disagree. Indeed, failure to do so may give rise to allegations of civil battery or criminal assault.

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Separated or Divorced Parents

Generally speaking, custodial parents have full parental rights, while access parents have the right to receive health information about children of the relationship but not to give or withhold consent to treatment. Therefore, while health care providers should usually have the consent of both parents with joint custody before treating an incapable minor, they may be able to take instruction from an attending joint custodian or rely on the consent of a sole custodian alone.

However, these basic rules can be amended by agreement or court order, and health professionals are well-advised to ensure that the person providing consent has that authority and that no other person needs to be consulted or notified, particularly if the proposed treatment is complex or invasive. The safest way to achieve this is to obtain a written statement from the parents outlining who can make treatment decisions for the child, as well as what information the practitioner should convey to and receive from each parent and by what means. Where both parents must consent to treatment, the document should also describe how the agreement of the non-attending parent will be communicated to the health care provider. If the parents are unwilling or unable to provide joint instructions, it may be wise for the treating practitioner to request a copy of the custody agreement or court order before relying on the authorization of one parent.