



# POSITION STATEMENT

## INFORMED CONSENT - ADULTS WITH CAPACITY, ADULTS WITH IMPAIRED CAPACITY OR LACKING CAPACITY AND MINOR/MATURE MINORS

### Position

Alberta Health Services created and approved Consent to Treatment/Procedures October 31, 2010. There are 5 steps to the Consent Process; The Determination of Capacity, The Provision of Relevant Information, The Verification of Understanding, The Decision Making and Documentation of the Consent Process and Outcome.

There are levels of consent requirements based on the patient who is presenting for treatment; Adults with Capacity, Adults with Impaired Capacity or Lacking Capacity and Minor/Mature Minor.

MTAA members are required to adhere to this policy that is based upon consent requirements for Health Professionals in Alberta. All types of consent must be informed consent.

The MTAA strives to facilitate the delivery of a consistently fair and respectful informed consent process that reflects best practices and contributes to a patient's overall safety, empowerment and satisfaction.

MTAA members must determine the capacity of the patient, explain the benefits, risks, possible side effects or complications, any contraindications and nature of each massage procedure in addition to outlining the alternatives, the patient's right to stop or modify the procedure at any time and possible outcomes in terms that are verifiably understood by the patient.

The MTAA understands that a patient has the right to be informed about the benefits and risks of Massage Therapy treatment and that the patient has the right to make voluntary decisions about their receipt of health care that keep to their values and beliefs.

Capacity must be determined before consent can be addressed when a person presents for non-emergency treatment and is to all appearances a competent adult with the legal capacity to provide the necessary informed consent to the proposed Massage Therapy procedure.

### Guidelines

Massage Therapists determine capacity by:

1. At an initial interview, the Massage Therapist must provide information that a reasonable person would require in order to understand the proposed procedure: information about the condition, the assessment, the treatment, including the risks, benefits, alternatives, possible complications and any contraindications. The Massage Therapist must also give the patient an opportunity to ask questions and then provide answers about the proposed procedure and empower the patient by advising as to the right to stop or modify the procedure at any time. If the Massage Therapist is unable to communicate with the patient due to a

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language difference or physical disability, the Massage Therapist will have to make arrangements to facilitate effective communication before capacity can be determined.

2. If the Massage Therapist has determined that the patient understands all the elements of the procedure and voluntarily gives consent, then capacity of the patient has been established and the Massage Therapist can proceed with treatment. If the Massage Therapist is of the opinion that the adult patient needs the procedure and is incapable of giving consent, it must then be determined that the adult's substitute decision maker understands the elements of the procedure and is capable of giving the required substitute consent. If there is doubt about the patient's capacity on any given appointment day, it is recommended that the Massage Therapist review the elements of procedure from the initial interview and determine whether the patient has the capacity to provide consent on that day or not.
3. If the adult patient is found by the Massage Therapist to be impaired or lacking in capacity, consent may be given with or on behalf of the patient following the co-decision maker/alternative decision-maker(s), as set out in the *Adult Guardianship and Trustee Act* etc.

*Substitute decision makers:*

The Massage Therapist must determine whether an *Alternative Decision-Maker* exists or verify his/her status through a registry maintained by the *Office of the Public Guardian* or by viewing and attaining a copy of the applicable documents.

***Duties of Co-Decision Maker/Alternative Decision Maker***

The decision to provide consent rests solely with the patient and his/her Co-Decision-Maker / Alternative Decision-Maker but the discussion of information leading to the decision being made is a shared process between the patient and his/her Co-Decision-Maker / Alternative Decision-Maker and the Massage Therapist. The person chosen to give or refuse substitute consent must first consult as well as possible with the adult and comply with any instructions or wishes the adult expressed when capable. If the adult's wishes are not known, the person chosen must decide to give or refuse consent on the basis of the adult's known beliefs and values, or in the adult's best interest. The person chosen must consider things like the adult's current wishes, whether the benefit the adult is expected to obtain from the proposed procedure is greater than the risk of harm. The Massage Therapist should have a discussion in detail with the proposed specific decision-maker about the proposed procedure in order to determine his or her capacity prior to accepting that the person chosen is an acceptable decision maker. It is advisable to document that the person meets the requirements and is willing to give consent on behalf of the adult.

*If a Specific Decision-Maker cannot be found?*

If no family member is available or qualifies, and no specific-decision maker can be found, the Massage Therapist must seek assistance from the *Office of the Public Guardian* to be or find the specific decision-maker.

*Obtaining Consent from a Minor/Mature Minor*

A patient under the age of 18 is presumed to be a *Minor Patient without Capacity* unless they have been deemed a Mature Minor. Legal representatives of a minor are: guardian, mother or father as authorized by law to give consent, divorced parent with custody, appointed guardian, any person authorized by law to give consent under the *Mental Health Act* or for a minor.

The following CANNOT give consent for a minor unless they are the minor's legal representative: step-parent, adult in an adult interdependent relationship if the adult is not the father or mother, grandparent, the parent's girlfriend or boyfriend, family friend or neighbour, nanny or babysitter.

MTAA members must ensure that they are speaking with the legal representative for the minor to gain consent, and that the conversation regarding consent occur with the therapist, minor and legal representative. The Massage Therapist may assess and determine a minor under the age of 18 to be a mature minor by considering factors such as age, intelligence and ability to understand the procedure risks and benefits, maturity, the intrusiveness or

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complexity of the procedure proposed, the ability to give voluntary informed consent, has freedom from parental or guardian control, is self-supporting, married or has children. The Massage Therapist must follow the steps of gaining consent and document the process and outcome in the patient's record. In a situation where the Massage Therapist has determined that a minor under the age of 18 is considered to be a mature minor, after considering all factors as outlined above, the determination of whether a parent/guardian should be present during the treatment is at the decision of the mature minor. In a situation where a minor under the age of 18 is not considered to be a mature minor, the determination as to whether a parent/guardian should be present during the treatment is the decision of the parent/guardian. In either situation, the outcome is to be documented in the patient's record.

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