

Patients' Rights



Public Legal Education
and Information Service
of New Brunswick

Public Legal Education and Information Service of New Brunswick (PLEIS-NB) is a non-profit organization and a registered charity. Its goal is to provide the public with information about the law.

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The aim of this booklet is to answer some of the questions that people commonly ask about their legal rights and responsibilities as a patient. It does not contain a complete statement of the law in the area of patients' rights. Anyone who needs specific advice about his/her own legal position should contact a lawyer.

The information in this booklet applies to patients in a variety of health care situations including: the patient in the hospital, the patient in the doctor's or dentist's office, the resident receiving health care in the nursing home, and so on. Health care professionals include such trained professionals as doctors, nurses, dentists, physiotherapists, chiropractors, and pharmacists. Aside from explaining what could happen if a person becomes mentally incompetent or suffers from mental disorder, the pamphlet does not apply to psychiatric patients.

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General Information

What is health care treatment?

Health care treatment is the treatment provided by health care professionals to someone who needs it. Treatment may include:

- identifying and responding to the illness;
- hospital care;
- home care (for example, visits by a nurse);
- dental care;
- nursing home care;
- physical exercise, rest and diet routines as suggested by the health care professionals;
- rehabilitation; and,
- prevention (for example, immunization or preventive education).

Your doctor may change your health care treatment as your condition changes. You should ask the doctor about any new treatment suggested and make sure you understand what is happening.

What are my rights as a patient?

With some exceptions, you have the right to:

- be informed by health care professionals about the health care treatment;
- be informed about the usual risks, side effects and benefits of the health care treatment;
- a second opinion;
- refuse health care treatment;
- provide informed and voluntary consent to health care treatment;

- professional health care services covered by Medicare;
- choose a doctor who is willing to accept you as a patient;
- request medical assistance in dying if you are suffering from a serious illness and are at the end of your life;
- privacy;
- confidential handling of your health care situation. (Your health care professional may share essential information with those professionals directly involved in your health care.)

What are my responsibilities as a patient?

You play an important role in your health care treatment. Your participation is necessary for the health care treatment to succeed. Your responsibilities include the following:

- Choose a health care professional you can comfortably talk to about your health care condition. Find someone you understand and trust.
- Ask your health care professional if he/she is licensed and belongs to a professional association or licensing body.
- Take an active part in the health care treatment. Make sure you understand the treatment plan. When you agree to the treatment, it is your responsibility to follow the health care professional's instructions. Return for your regular check-ups if requested.
- Ask questions about your health care treatment. Find out about the risks involved and the treatment choices. If you have concerns about how your privacy is being handled, tell the health care staff.
- Tell health care professionals about your particular health problems, such as allergies.
- Get a second opinion if you have concerns about the treatment.



- Know exactly what you consent to when you agree to the health care treatment.
- Read consent forms carefully and add or omit specific directions to express your wishes.
- If you are in an institution, ask about its “philosophy of care” or “residents’ rights” policy. Such a policy will set out your rights as a patient.

Consent

What is consent to treatment?

Consent to treatment is the permission you give to allow health care professionals to provide health care treatment.

How do I consent to treatment?

You may give consent in the following ways:

- You may **allow** health care professionals to treat you.
- You may **ask** health care professionals to begin treatment.
- You may **sign** a consent form agreeing to treatment.

How old do I have to be to consent to treatment?

Generally, the law assumes that everyone 19 years and older is mentally capable and legally competent to consent to treatment unless proven otherwise.



In New Brunswick, for the purpose of receiving medical treatment, the **Medical Consent of Minors Act** gives a teenager who is 16 or older the same right to consent to health care treatment as a person who has reached the age of majority (19 years). This would include consenting to dental treatment, surgery and so on. The law also says that a child under 16 may be able to consent to treatment where the attending medical professional (doctor, dentist, nurse practitioner or nurse) decides that the child is capable of understanding the nature and consequences of the treatment, and that the treatment is in the best interests of the child and his or her well-being and continuing health.

What is required to make consent to treatment valid?

1. Consent must be **informed**. Health care professionals must explain so that you understand:
 - the nature of the illness;
 - the nature of the treatment and why it is necessary;
 - the usual risks, side effects and benefits of the treatment;
 - the various treatment choices available;
 - how the treatment will affect your life;
 - how the treatment may change your work and financial situation (For example, you may need to pay for special costs not covered by Medicare. For more information about health care costs, see page 11.);
 - the possible results of refusing treatment; and,
 - who will perform the treatment procedure.
2. Your questions should be answered **before** you give consent.
3. Consent must be **voluntary**. You must agree to your treatment free from any influence or intimidation from others.
4. You must be **legally competent**. Legal competence includes being mentally capable to make your own decision. This means you must be able to make and understand the consequences of your own decision. Generally, the law assumes that everyone 19 years and older is mentally capable and legally competent unless proven otherwise.
5. Consent should be given for a specific procedure to be performed rather than for a general procedure.
6. You should have a clear mind when you give consent. For example, you should not give consent after receiving an anaesthetic or strong medication.

When can health care professionals start treatment without my consent?

Health care professionals generally cannot begin treatment unless you consent to the treatment. However, if you are in a **life-threatening or emergency situation** which requires immediate treatment, and for one reason or another you cannot take part in the consent process, health care professionals can take the necessary steps to provide treatment without your consent. The care provided would be limited to that which is required to address the life or health threatening condition and which requires immediate attention. Even in emergencies, if the patient expressly refuses to give consent, health care professionals have no right to start treatment.

What if I have a communicable disease?

Health care professionals, by law, must report a **notifiable communicable disease** to a medical officer of health. Measles, tuberculosis, and sexually transmitted diseases are examples of such communicable diseases. The medical health officer may then take appropriate action to prevent and control the spread of the disease. If you do not cooperate, the medical officer of health may ask the court to order that you place yourself under the care of a doctor. This is only for certain communicable diseases where public safety is at great risk, such as tuberculosis. [Note: There is an exemption on reporting the names of individuals who took authorized anonymous testing for HIV/AIDS.]

Can I consent to or reject future treatment?

Yes, as of December 2016 when the **Advance Health Care Directives Act** became law, individuals may create a legally binding directive that sets out their health care wishes in advance, and/or appoints someone (called a proxy) to make health care decisions on their behalf. For more information see the PLEIS-NB booklet “**Advance Health Care Directives: A New Brunswick Guide**”.

You may also create a Power of Attorney for Personal Care in which you name an “attorney” to make personal care decisions on your behalf. There may be some overlap between the authority of the attorney and the proxy. If you are creating both documents you should consult a lawyer.



What happens if I become mentally incompetent or suffer from a mental disorder?

If you become mentally incompetent, or incapacitated, for example because of illness or advanced age, you may no longer be able to make your own health care decisions. If you plan ahead while you are mentally competent, you may create a power of attorney for personal care in which you name a person or persons to make some or all of your personal care decisions when you are unable to do. See the PLEIS-NB booklet **“Powers of Attorney”** or **“Mental Competence”** for more information.

As noted above, if you have an advance health care directive, then health care professionals will follow your written health care instructions or ask your proxy for instructions.

What if I have not planned ahead?

If you become incapacitated or mentally incompetent and you do not have a power of attorney for personal care, or an advance health care directive, it may be necessary for someone, usually a family member, to apply to the court to be appointed as your legal guardian. Only then would they have the authority to make health care decisions on your behalf. If there is nobody willing or able to act on your behalf, the Public Trustee may be appointed. For more information, see the PLEIS-NB booklets called **“Preventing Abuse and Fraud of Seniors”** and **“When You Can’t Manage Your Affairs – Who Will?”**

Can I give consent for any other person for “medical” treatment?

Generally, no one can consent to treatment for another person 16 years or over unless they have been named in a power of attorney for personal care or named the legal guardian for that purpose by the court, or named their proxy in an advance health care directive. Parents or guardians give consent for treatment for children under 16 years of age. In a life-threatening or emergency situation where a parent or guardian is unavailable, treatment can be given to a child without consent.

If a patient has not named a proxy or an attorney and is unable to participate in the consent process, hospitals may allow the person named in the patient’s records as his or her substitute decision-maker to consent to treatment.

Refusing Treatment

Do I have a right to refuse treatment?

Yes, you have the right to refuse treatment. **Health care professionals generally cannot begin treatment if you tell them you don’t want to be treated - even if its absence could mean death.** Refusing treatment includes for example, deciding against surgery, deciding against medication, and releasing yourself from the hospital. However, you should ask the health care professional how your decision will affect your health.

Can treatment ever be forced on me when I refuse it?

Generally, health care professionals must respect your wishes not to be treated. They should tell you what is likely to happen if you decide to refuse such treatment.

Can a teenager refuse treatment?

Yes, as with consent, a teenager, 16 years and older, can refuse treatment. A younger teen may refuse treatment depending on his or her maturity and understanding. Married teens, regardless of age, are treated as adults and can also refuse treatment.

Can I refuse to give consent for treatment for my young child?

Under normal circumstances you make decisions about your child's health care treatment. However, under the **Family Services Act**, where the child's health or well-being is at risk parental consent may be waived by the Minister of Health when the child is in protective care. Similarly, under the **Medical Consent of Minors Act**, a court may waive parental consent where the child's life or health is at risk.

Medical Assistance in Dying

If I am suffering from an incurable medical condition, can I ask my doctor to help me end my life?

Yes, you have the right to request medical assistance in dying. Medical assistance in dying refers to the situation where a physician or nurse practitioner prescribes or administers medication to a competent and consenting adult to intentionally bring about their death. You must meet all of these criteria:

- You requested medical assistance in dying voluntarily, with no pressure from others;
- You are suffering from a serious and incurable disease or disability;
- Your illness is advanced and will not improve;
- Your suffering is constant and unbearable, and cannot be relieved in any way that you find acceptable;
- Your natural death is near, even if no one knows exactly how much time you have left;
- You are 18 years of age or over;
- You are competent to make decisions about your health;
- You are eligible for health services funded by a government in Canada;
- You are affected by serious, incurable health problems;
- You are able to understand the information about "medical assistance in dying" and to give informed consent.



Note: Individuals suffering from mental illness are not eligible for medical assistance in dying. As well, the request for medical assistance in dying cannot be made in advance and cannot be given to a proxy.

See the Horizon Health Network brochure on “[Medical Assistance in Dying](#)”.

Access to Records

Do I have a right to see or get a copy of my health care record?

Yes, you have the right to read and get a copy of your own health care record. Your original health record stays with the doctor, hospital or nursing home. The ***Personal Health Information Privacy and Access Act*** sets out the responsibility of health care professionals for safeguarding the privacy of your records and providing access. Health care professionals must respond to your request within 30 days. They may ask you to put your request in writing and they may charge a reasonable fee for the search, preparation, copying and delivery of your file.

Can other people see or get a copy of my health care information or record?

Health care professionals cannot show your health care record to others without your consent. However, in certain exceptional circumstances, the **Personal Health Information Privacy and Access Act** allows access. Some examples of these circumstances include:

- you are not capable of giving consent, a health care professional may disclose your information in order to contact a relative, friend or your substitute decision-maker;
- the disclosure is required to prevent or reduce a risk of serious harm to your mental or physical health or that of others.

If a health care professional has to share your health care record, he or she may only disclose the minimum amount of information necessary and only to those who have the right to see it.

What if I am unable to consent to the use of my health care record?

If you are incapable of consenting to the collection, use or sharing of your personal health information, a number of persons may agree, on your behalf and in your place, to give, withhold or withdraw the consent for access to your record. This includes, for example, your spouse, common-law partner (if you have lived together continuously for two years), parents, siblings and other next of kin. However, anyone acting on your behalf must take into account your values and beliefs and any written instructions in a power of attorney for personal care, or the wishes set out in your advanced health care directive.

What if I am refused access to my health care record?

If a health care professional refuses to give you access to your health care record, you may make a complaint to the Access to Information and Privacy Commissioner. Or, you can hire a lawyer to help you make an application for access to the Court of Queen's Bench of New Brunswick.

Costs of Treatment

Will I have to pay for health care costs?

Medicare will cover most health care services for New Brunswick residents. This usually includes the cost of necessary surgery and hospital stays. For more information about what services Medicare will pay for, contact New Brunswick Medicare. They can tell you about the ‘entitled services’ that are covered by Medicare. Ask for their booklet on health care costs.

Complaints

What can I do if I think my rights as a patient have been violated?

Depending on the nature of your complaint, the following individuals, associations and government departments may be able to respond.

- The health care professional who treated you. You should first discuss your problem with your health care provider. If you are not satisfied with his/her explanation you can then take further action.
- The medical facility or nursing home. You can speak with the administrator or director of the facility. You should ask whether a patient advocate, patient representative, or a patient/resident council is available. They may help you file a complaint about the health care services of that facility.
- A licensing authority such as the College of Physicians and Surgeons of New Brunswick. Licensing authorities are listed in your telephone book or you can get their phone number from the directory assistance. The hospital where the health care professional works will know what licensing authority to call to help you file your complaint.



- A professional association. For example, you can contact the professional association of the health care provider. Look in the phone book.
- The Public Trustee. Protects the financial and personal interests of the elderly, the mentally challenged, children, and missing or deceased persons, when there is no one else able and willing to do so.
- The Office of the Ombud. This is an independent provincial office. The Ombudsman helps people who have complaints about provincial departments or agents, such as hospitals.
- Office of the Access to Information and Privacy Commissioner.
- The provincial government under the ***Personal Health Information Privacy and Access Act***.
- The Minister of Health.
- The Director of New Brunswick Medicare. This office can only deal with complaints about payments for health care services.
- Contact the police about offences covered by the ***Criminal Code***.

When should I contact a lawyer?

You should contact a lawyer when you feel that your rights as a person have been violated. For example, in the case of health care treatment, you may require legal advice if you were treated by a health care professional without your consent. (Note: Even if you signed a general consent form the courts **may** void the consent if they decide you were not fully informed or the directions in the consent form were too general.)

You may also need legal advice if you feel that your health care professional failed to provide **REASONABLE** care and treatment and you suffered an injury as a result of the treatment.

If you decide to sue, **you must begin the legal process quickly**. The laws set out specific time limits when an action can be brought against a health care professional. If you wait until after the time allowed, you will not be able to sue.

Legislation Dealing With Patients' Rights:

- *Advance Health Care Directives Act*
- *Family Services Act*
- *Hospital Act*
- *Infirm Persons Act*
- *Medical Consent of Minors Act*
- *Medical Services Payment Act*
- *Mental Health Act*
- *Nursing Homes Act*
- *Personal Health Information Privacy and Access Act*
- *Public Health Act*
- *Public Trustee Act*