

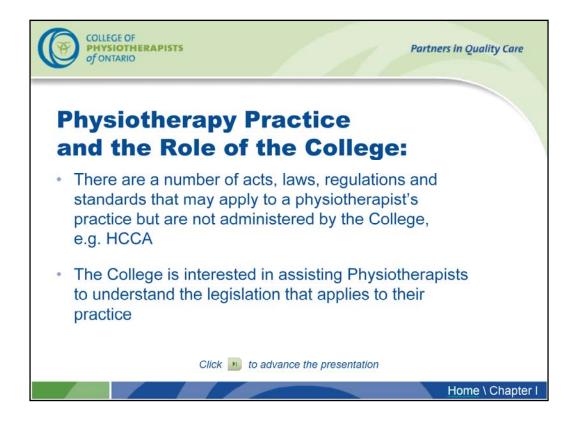
The College of Physiotherapists of Ontario presents the Health Care Consent E-Learning Module. This module will be divided into four chapters. Chapter one provides an overview of the Health Care Consent Act and the Substitute Decisions Act.

In Chapter two we will review the 10 key principles governing consent to treatment.

Chapter three covers consent as it applies to a physiotherapist's practice. This chapter will also explore consent challenges that physiotherapists have identified.

The final chapter in this series can be used to test your knowledge. The quiz questions found in chapters 1, 2, and 3 have been combined as an opportunity to review the material from all chapters.

This module features an interactive opportunity to learn. On slides that feature bold and highlighted terms you may scroll over the terms to obtain a definition. A glossary of these terms will be provided at the end of each chapter.



A physiotherapist's practice is defined by a variety of acts, laws, regulations and standards. Some are administered by the College of Physiotherapists of Ontario such as the College's Standards of Practice, the Physiotherapy Act, the Professional Misconduct Regulation and Position Statements. Others, like the Health Care Consent Act, are administered by a body other than the College.

The College is eager to assist physiotherapists in understanding the laws that influence their practice even though they were not created by the College.



In this module we will focus on the Health Care Consent Act and the Substitute Decisions Act.

Consent is a topic that affects all clinical practice areas within the profession. It is important that physiotherapists understand how the expectations outlined in these acts relate to their practice.

The intent is not to cover everything in the Health Care Consent Act; but rather to provide an overview to help physiotherapists apply the consent laws to their practice. For more information about this topic, physiotherapists are encouraged to review the Briefing Note to the Health Care Consent Act located in the Registrants' Guide, as well as the Health Care Consent Act itself.

The College does not provide a legal interpretation of the Health Care Consent Act or the Substitute Decisions Act, but the College will help guide physiotherapists in understanding their obligations under this legislation.



Physiotherapists in clinical practice are required to obtain consent for a variety of activities including:

- Assessment
- Treatment
- Sharing with or providing information to third parties (this includes personal as well as health information)

There are some situations in which explicit consent to share information may not be necessary. Information about this is found in the Briefing Note for Physiotherapists Privacy Requirements in Ontario.

There are different acts or laws that apply to the various circumstances when consent is required.





Applicable Consent Laws

- Common Law (assessment and treatment)
- Health Care Consent Act (HCCA) (treatment)
- Personal Health Information Protection Act (PHIPA) (<u>health information</u>)
- Personal Information Protection and Electronic Documents Act (PIPEDA)
 (personal information, includes health)

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Common laws are the rules established by the decisions made by judges in court cases. Common law has established the need to obtain informed consent for both assessment and treatment but does not clearly outline responsibilities of a health care practitioner in the case of individuals who are unable to provide informed consent.

It is the Health Care Consent Act that provides explicit rules about when consent is required for treatment, who can give the consent, and the roles of substitute decision-makers in the consent process.

It is important to recognize that the Health Care Consent Act does not deal with every aspect of consent because the law is constantly evolving in this area. This means that in circumstances that are not specifically covered by the Health Care Consent Act, health care practitioners still have an obligation to obtain consent under common law.

The Personal Health Information Protection Act or PHIPA is a provincial statute that regulates how individuals collect, use and disclose personal health information.

The Personal Information Protection and Electronic Documents Act or PIPEDA is a federal statute that governs the collection, use and disclosure of personal information in the course of commercial activities. This will apply to all physiotherapists engaged in private practice and for some physiotherapists working in the public sector.

As you work through this module, you may scroll over any word that is underlined and in bold to obtain a definition.



This chart allows you to review examples of when physiotherapists must obtain consent from their patients. Take a moment to scroll over each circle. Before proceeding to the next slide, think about the conversations you have with your patients about consent.





Health Care Consent Act

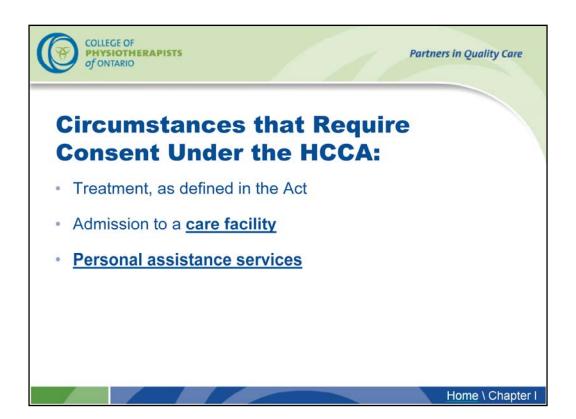
- Administered by the Ministry of Health and Long Term Care
- Ensures that health care practitioners have no authority to make treatment decisions on behalf of patients
- Provides a hierarchy of substitute decision-makers who can provide consent or decline treatment on behalf of a patient who is not capable

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The Health Care Consent Act is administered by the Ministry of Health and Long Term Care. When providing treatment to patients, health care practitioners have a legal and ethical obligation to obtain consent.

This law ensures that health care practitioners have no authority to make treatment decisions on behalf of patients. Patients must be provided information to allow for informed decision-making. This means that physiotherapists must act only on the decisions of the patient or the patient's substitute decision-maker.

Additionally the Health Care Consent Act provides a hierarchy of substitute decision- makers who can provide consent or decline treatment on behalf of a patient who is not capable of making the decision themselves.



There are three specific circumstances that require consent, according to the Health Care Consent Act: treatment, admission to a care facility, and personal assistance services. This module focuses on consent for treatment.

As a reminder you can scroll over any underlined word to obtain a definition to assist your understanding.



As noted previously, physiotherapists as health care practitioners are accountable for obtaining consent prior to initiating treatment. In the Health Care Consent Act treatment is defined as anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose. It includes a course of treatment, plan of treatment or community treatment plan. If an individual treatment is part of a course of treatment, a plan of treatment, or a community treatment plan, then separate consent for each individual treatment component may not be required as long as the patient is capable to understand and provide consent for the range of treatments that are part of the plan or course of treatment.

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What is NOT Considered Treatment According to the HCCA:

- · Assessment of the patient's capacity
- Assessing the general nature of the patient's condition
- Taking health history
- Communicating an assessment or diagnosis
- Admitting a person to a hospital or other facility
- A personal assistance service
- A treatment that poses little or no risk of harm to the patient
- Activities prescribed by the regulations under the HCCA as not constituting treatment (at the time that the Briefing Note was written, no activities are prescribed in this way)

Although these activities do not constitute treatment under the Act, consent in accordance with common law is still needed.

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The Health Care Consent Act also defines several items that do not constitute treatment. Take a few moments to review the items on the list that are not considered treatment for the purpose of the Health Care Consent Act.

The two items on this list that are most likely to pertain to physiotherapists are assessments of the general nature of a patient's condition and providing treatment in situations that pose little risk of harm to the patient.

It is important for physiotherapists to understand that although the Act does not consider these items treatment, you would still need to obtain consent because it is required by a different law or in this case, common law.

Health practitioners can choose to obtain consent for any or all activities that are not described under the Health Care Consent Act. There are some benefits to this approach, including increased transparency. This complex topic is described in greater detail in the Briefing Note to the Health Care Consent Act.



Now that we have reviewed the circumstances that require consent under the Health Care Consent Act and the definition of what treatment is, we can look at more detail related to the intention of the Health Care Consent Act.

The intent of the Health Care Consent Act is to: provide rules with respect to consent to treatment; facilitate treatment for persons lacking the capacity to make those decisions; and promote an individual's autonomy.

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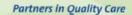


How is Autonomy Enhanced Under the HCCA?

- Persons found incapable can apply to the <u>Consent</u>
 <u>and Capacity Review Board</u> for a review of this finding
- Capable patients can choose who will make their treatment decisions should they become incapable
- Expressed wishes while a person is capable and older than 16, must be followed

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Autonomy is particularly important for persons deemed incapable of making their own decisions. For incapable patients the Health Care Consent Act enhances autonomy in three ways: by allowing persons found incapable to challenge the finding of incapacity by applying to the Consent and Capacity Board; by allowing persons to select the individual who will make decisions on their behalf should they become incapable; and by requiring that their treatment wishes expressed while capable and after reaching the age of 16 be adhered to.





The Intent of the Health Care Consent Act cont'd:

- Facilitates communication and understanding between health care practitioners and patients
- Ensures a significant role for family members if a patient is incapable of giving consent
- Permits intervention by the Public Guardian and Trustee only as a last resort

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The Health Care Consent Act also achieves three other purposes. It facilitates communication and understanding between health care practitioners and patients. The Act also ensures a significant role for family members if the patient is incapable of giving consent.

Finally, if no other individual is available to provide consent, the Act allows the intervention of the Public Guardian and Trustee to make decisions about the patient's treatment.

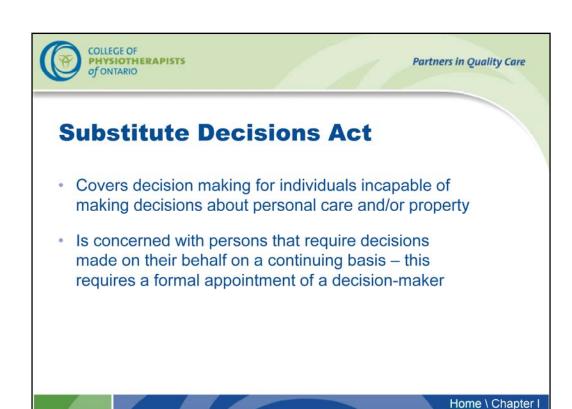


When it comes to obtaining consent for treatment, the patient's consent can be obtained in writing, given verbally or implied. With implied consent, the patient indirectly accepts or refuses a proposed treatment through his or her actions.

Caution should be used by health care practitioners when acting on implied consent. If for any reason the patient's actions are unclear, it would be wise to obtain the informed consent verbally or in writing.

Each physiotherapist must determine if the patient's action indicates that the patient has truly understood the information provided and made an informed choice.

Finally, it is important for physiotherapists to understand that consent is not ever- lasting. A patient can withdraw consent at any time. When consent is withdrawn for a component of treatment, the physiotherapist should investigate why consent is being withdrawn and discuss alternatives with the patient.



The Substitute Decisions Act goes hand in hand with the Health Care Consent Act and covers decision-making for individuals incapable of making decisions about either their personal care or their property, or in some cases both.

Whereas the Health Care Consent Act is concerned with the capacity to make decisions in relation to health care treatments, the Substitute Decisions Act is concerned with the formal appointment of legal decision-makers in circumstances where the individual's capacity to make decisions or manage his or her affairs is expected to be compromised on a continuing basis.

Such appointments may grant full decision- making authority, or they may be limited in scope and only apply to certain types of decisions. If the person's capacity returns the substitute decisionmaker's authority can be revoked.





Features of the Substitute Decisions Act

- An individual can name a person to make decisions about personal care or treatment in the event they become incapable
- An individual may express wishes or instructions for the decision-maker to follow, if necessary

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We have already reviewed some of the features related to the Health Care Consent Act. We will now focus our attention to the features of the Substitute Decisions Act that are relevant to the day to day practice of physiotherapists.

This Act allows an individual to designate a specific person to make decisions about personal care or treatment if the individual becomes incapable. The designated person may be asked to follow certain wishes or instructions that the incapable person had expressed while capable.

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Is the Patient Capable of Providing Consent?

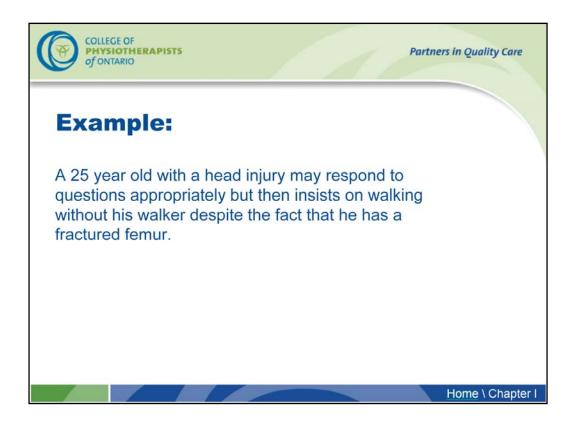
Physiotherapists can begin by assuming that each patient is capable.

According to the HCCA, a person is capable if he or she:

- understands the information that is relevant; and
- appreciates the possible consequences of a decision or lack of decision.

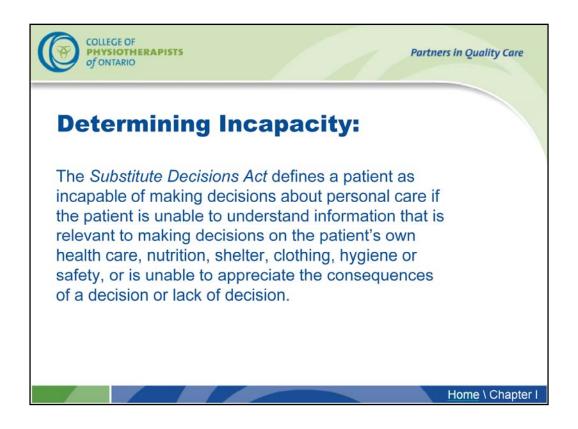
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When obtaining consent, a health care practitioner is entitled to assume that the patient is capable of providing consent unless there are reasonable grounds to believe that the patient is incapable. The Health Care Consent Act states that a patient is capable with respect to a treatment, if the patient understands the information that is relevant to making the decision; and appreciates the reasonably foreseeable consequences of a decision or lack of a decision.



A 25 year old male with a head injury may respond to questions appropriately but then insists on walking without his walker despite the fact that he has a fractured femur and should not be weight bearing.

This example highlights the point that while you should not make assumptions of capacity based on the patient's injury, you can make inferences based on a patient's behaviour. In this situation, additional discussion would occur to find out if the patient appreciated the consequences of his decision not to use a gait aid.



Both the Health Care Consent Act and the Substitute Decisions Act define incapacity in a similar way.

A patient is deemed as incapable of making decisions about personal care if the patient is unable to understand information that's relevant to making decisions on health care, nutrition, shelter, clothing, hygiene or safety, or is unable to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Once the health care practitioner determines that the patient does not have the capacity to consent to the proposed treatment, the patient must be advised of this finding. The patient would be included in the decision making process to the extent that this is reasonably possible.

As with the Health Care Consent Act a patient may be capable of providing consent for some treatments but not others.



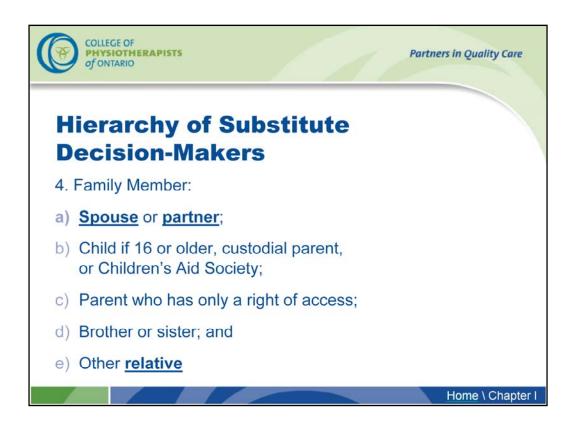
Once a health care practitioner determines that a patient is incapable and a substitute decision-maker is needed, the hierarchy of substitute decision-makers listed on the slide is used to determine the most appropriate substitute decision-maker.

Under the Substitute Decisions Act, a person who is at least 16 years old can choose a substitute decision-maker in the event that the he/she becomes incapable. The substitute decision-maker would need to be designated prior to the patient becoming incapable.

According to the Health Care Consent Act, if a person becomes incapable, consent must be obtained from the highest-ranking available substitute decision-maker in the person's life if one has not already been appointed by the person before they became incapable.

If no individual meets the qualifications to be the substitute decision-maker or two equally ranked substitutes cannot agree, then the Public Guardian and Trustee will make the patient's health care decisions.

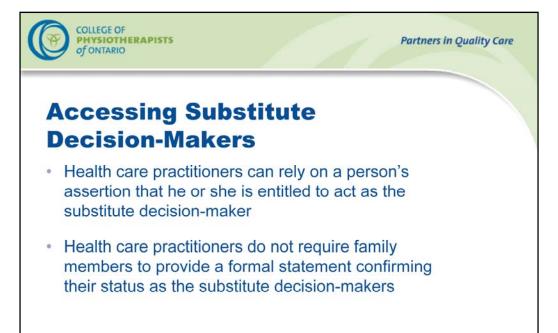
The most common substitute decision-makers that physiotherapists consult are family members. The following slide will describe the hierarchy of family members.



Family members are the substitute decision-makers that physiotherapists most often encounter in their day to day practice.

Amongst family members, there is also a hierarchy. A spouse or partner is at the top of the family hierarchy. If the patient does not have a spouse or partner then another relative would be the a decision-maker. A child over the age of 16, a custodial parent or the Children's Aid Society are equal in rank.

The next level down the list is a parent who has only a right of access; followed by a brother or sister. In the event that no immediate family members are available, any other relative could be used as the substitute decision-maker.



In practice, physiotherapists may ask the family member if they

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are the substitute decision-maker. If a family member states they are the substitute decision-maker, there is no reason for the physiotherapist to require a formal confirmation of this information or to seek out a higher ranking individual.

In order to be thorough, physiotherapists may wish to ask if the family member knows of any formally appointed substitute or higher ranking decision-maker.

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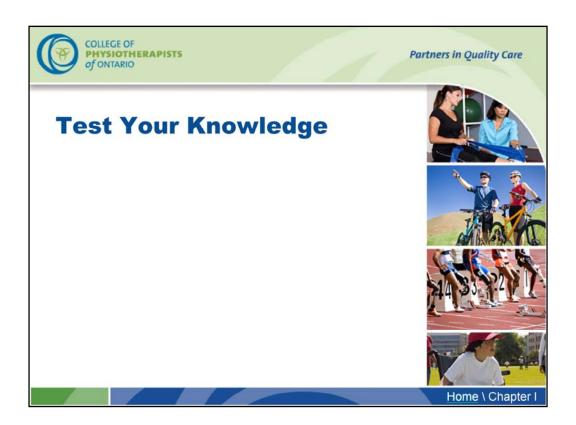
Qualifications of Substitute Decision-Makers

- Must be capable of consenting to, or refusing treatment
- Be available
- Be willing to assume the responsibility of consenting to, or refusing consent
- Be at least 16 years old or the parent of the incapable person
- Not prohibited by any legal reasons to provide consent on behalf of the incapable person

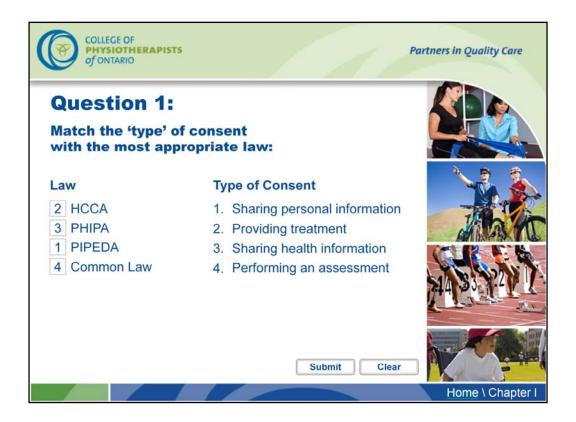
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Physiotherapists need to know how to identify the substitute decision-maker. In addition, the substitute decision-maker must qualify to make the decisions.

Take a moment to review the qualifications of Substitute Decision-Makers.



This last section will test your knowledge of the information provided in this chapter. You can return to previous slides, if necessary, to review the information.



Match the type of consent with the most appropriate law.

To answer, click a law on the left, then drag and release it over the matching statement on the right.

Once you have completed your selections, click submit.





Answers to Quiz:

HCCA - 2

Under the HCCA, a physiotherapist must obtain informed consent prior to providing treatment.

PHIPA - 3

Under PHIPA, a physiotherapist must obtain consent from the patient in order to release a patient's personal health information to a third party. There are some special circumstances where formal consent is not required. Please see the Briefing Note for Physiotherapists – Privacy Requirements in Ontario.

PIPEDA - 1

Sharing information that is defined as personal information requires consent under the federal statute PIPEDA.

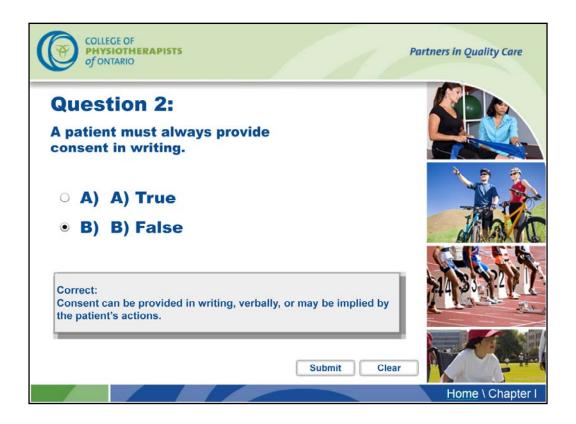
Common Law - 4, 2

Common law encompasses the need to obtain consent for a variety of activities including assessments and treatments.



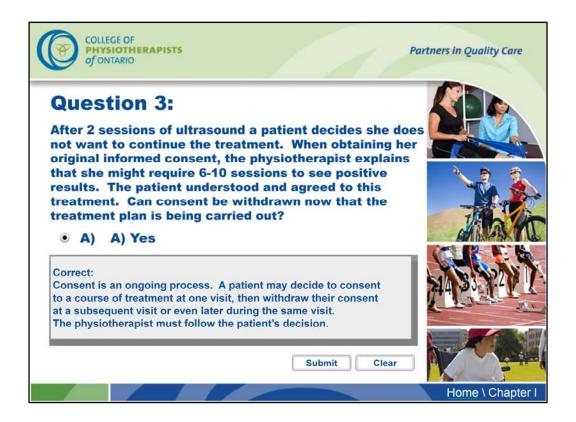


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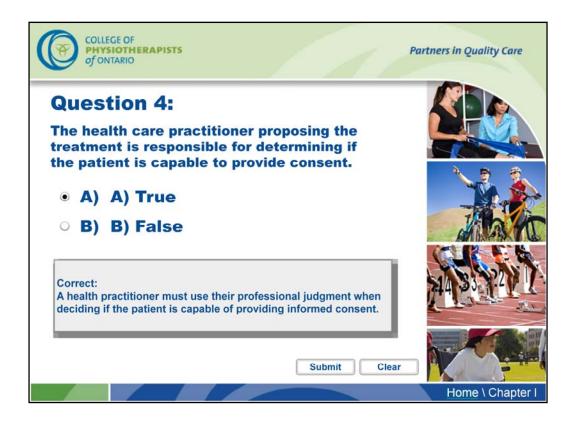
Read this statement and decide if the answer is true or false.

Once you have made your selection, click submit to continue.



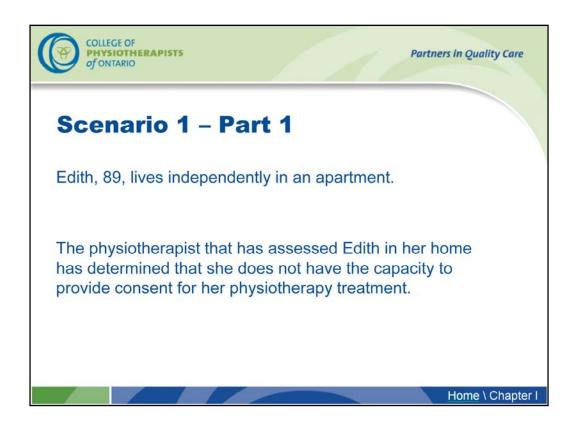
After 2 sessions of ultrasound a patient decides she does not want to continue the treatment. When obtaining her original informed consent, the physiotherapist explains that she might require 6-10 sessions to see positive results. The patient understood and agreed to this treatment. Can consent be withdrawn now that the treatment plan is being carried out?

Choose the correct response and click submit to continue.



The health care practitioner proposing the treatment is responsible for determining if the patient is capable to provide consent.

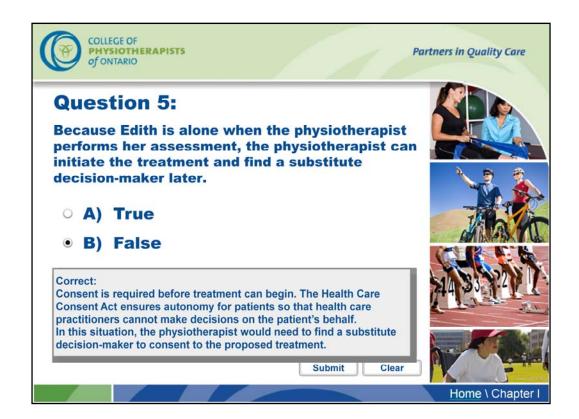
Choose the correct response, then click submit to continue.



Edith, 89, lives independently in an apartment.

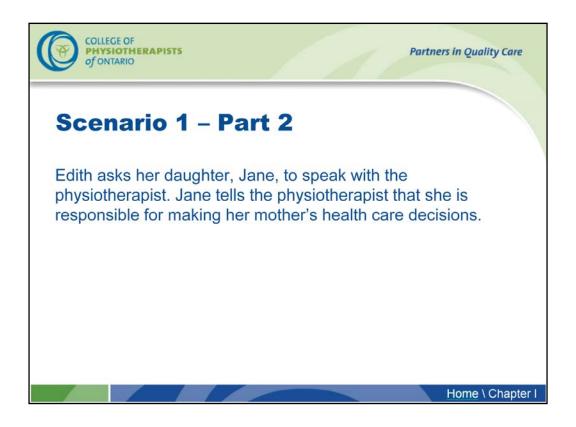
The physiotherapist that has assessed Edith in her home has determined that she does not have the capacity to provide consent for her physiotherapy treatment.

The physiotherapist needs to advise Edith of her determination of incapacity and include Edith in the decision-making to the extent that this is reasonably possible.

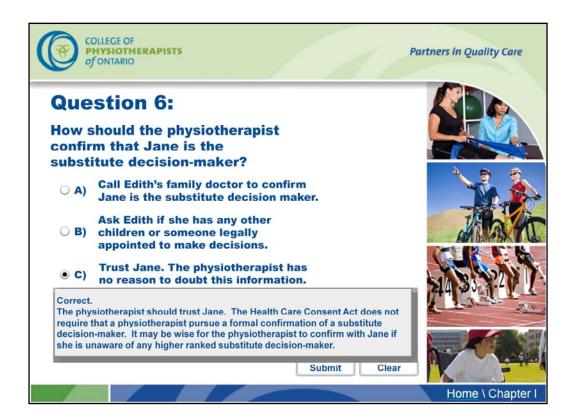


Because Edith is alone when the physiotherapist performs her assessment, the physiotherapist can initiate the treatment and find a substitute decision-maker later.

Choose the correct response and click submit to continue.

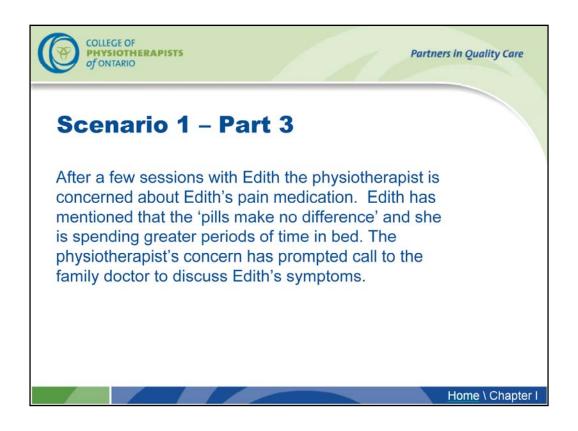


Edith asks her daughter, Jane, to speak with the physiotherapist. Jane tells the physiotherapist that she is responsible for making her mother's health care decisions.

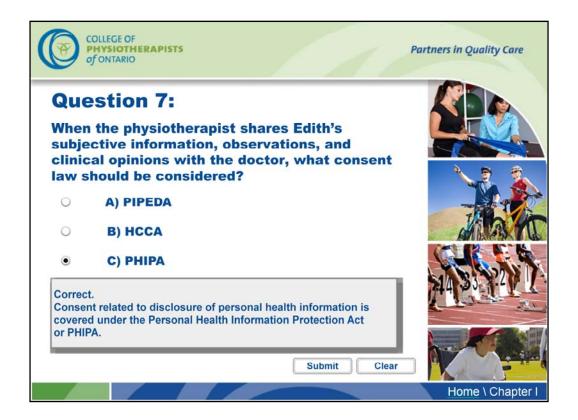


How should the physiotherapist confirm that Jane is the substitute decision-maker?

Select the most correct answer and click submit to continue.

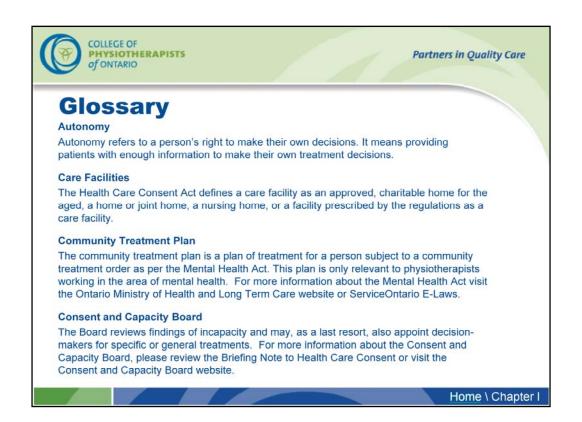


After a few sessions with Edith, the physiotherapist is concerned about her pain medication. Edith has mentioned that the 'pills make no difference' and she is spending greater periods of time in bed. The physiotherapist's concern has prompted a call to the family doctor to discuss Edith's symptoms.



When the physiotherapist shares Edith's subjective information, observations, and clinical opinions with the doctor, what consent law should be considered?

Select the most appropriate response and click submit to continue.



This slide and the next two slides provides a glossary of terms used in this chapter of the Consent E-Learning Module.

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Glossary Cont'd

Course of Treatment

A series or sequence of similar treatments administered to a patient over a period of time for a particular injury or problem. For example, obtaining consent for stretching and strengthening exercises.

Health Information

Includes: health history, physical or mental health, individual plan of service under the Long Term Care Act, payments for health care or eligibility for health care, the donation, testing or examination of any body part or fluid, health number, the name of the substitute decision-maker.

Partner

Defined as two persons who have lived together for at least one year and have a close personal relationship that is of primary importance in both persons' lives.

Personal Assistance Services

In the Health Care Consent Act this phrase means 'assistance with or supervision of hygiene, washing, dressing, grooming, eating, drinking, elimination, ambulation, positioning or any other routine activity of living, and includes a group of personal assistance services or a plan setting out personal assistance services to be provided to a person'.

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Glossary Cont'd

Personal Information

Any information about an identifiable individual that relates to their personal characteristics (e.g., gender, age, ethnic background), their health or their activities and views (e.g., dealings with the physiotherapist, opinions expressed by an individual, religion, political involvement, a physiotherapist's view or evaluation of an individual).

Plan of Treatment

A plan of treatment may be developed by one or more practitioners addressing a patient's single problem or multiple problems. The plan of treatment may also address problems the patient may have in the future based on their current condition. This type of plan may include varied treatments but allow for the withholding or withdrawal of these treatments depending on the patient's current health condition. For example, a care plan or care map following a total joint replacement.

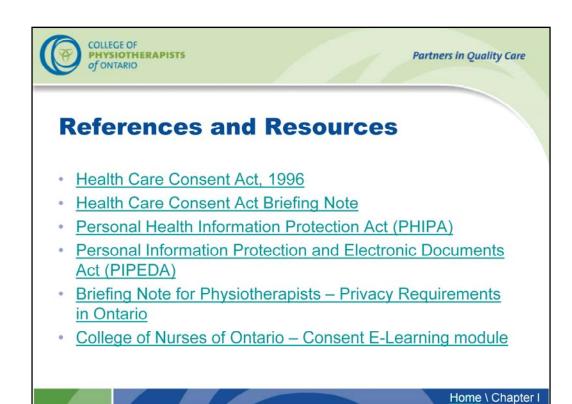
Relative

Two persons are relatives if they are related by blood, marriage or adoption

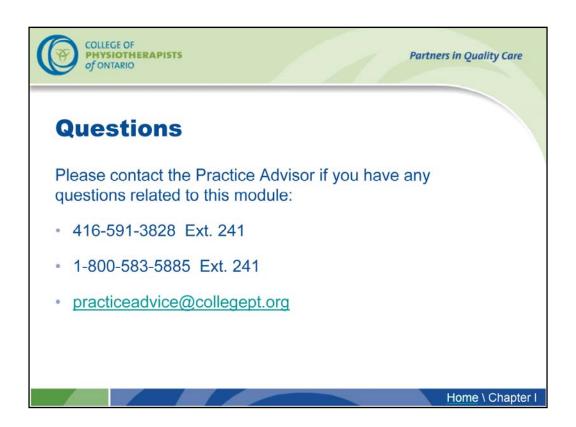
Spouse

The HCCA defines a person as a spouse if they are married to the person, living in a conjugal relationship outside of marriage having lived together for at least one year, together the parents of a child, or are living in a cohabitation agreement as defined in the Family Law Act.

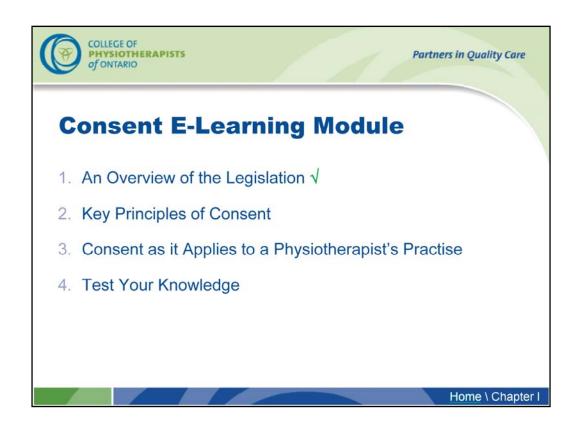
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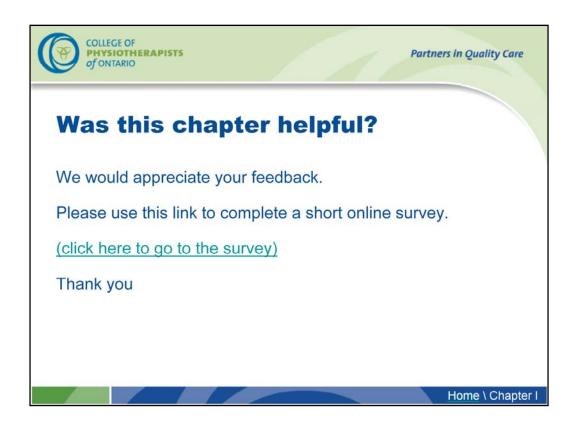
Click on the references to be linked to the corresponding documents.



If you have any questions related to this module, please contact the Practice Advisor.



Congratulations, you have now completed Chapter 1.



We are very interested to hear your feedback on this chapter of the Consent E-Learning Module. Please use the link on the screen to complete a very short online survey.

Thank you.