

Informed Consent

Informed consent is a valuable component of standards in prevailing physical therapy practice, ensuring patient autonomy and choice. To protect the public interest, the North Carolina Board of Physical Therapy Examiners, at its September 13, 2023, Board meeting, adopted this guidance for licensees about regulatory expectations related to informed consent.

The COVID-19 global pandemic brought the topic of informed consent to the forefront, specifically as related to the delivery of telehealth physical therapy services. In its 2020 *Summary: Telehealth in Physical Therapy*, the Federation of State Boards of Physical Therapy (FSBPT) states:

Informed consent is the process of communication between the PT and a competent client, or competent designee, during which the therapist and client discuss the examination and recommended plan of care. Upon gaining a clear understanding of the risks, benefits, alternatives to the proposed treatment plan and anticipated timeframes and costs, the client is enabled to make an informed and voluntary decision on whether or not to proceed with physical therapy care. Informed consent procedures should follow state law. Typically informed consent may be verbal, written, or recorded and the documentation of consent should be maintained in the medical record. The standard of care that is expected during face-to-face encounters is also expected for telehealth encounters.

For NC physical therapists and physical therapist assistants, professional and ethical practice includes obtaining informed consent from the patient/client or their legally authorized representative. As outlined in both the NC PT Practice Act and Board rules, informed consent is a critical element of the physical therapy profession's standards of practice/standards of care.

The regulatory language that holds NC PT/PTA licensees accountable for obtaining informed consent includes:

- The NC PT Practice Act definition of physical therapist assistants and physical therapists includes the expectation that their role in the practice of physical therapy be “commensurate” with their education and training [§90-270.90 (3)(4)].
- The Board rules further define “educational program” to be accredited by CAPTE [21 NCAC 48A .0105 (3)].
- The Commission on Accreditation in Physical Therapy Education (CAPTE) “standards and required elements for accreditation of physical therapist AND physical therapist assistant education programs” states the following in 6A: “The comprehensive curriculum plan is based on: (1) information about the contemporary practice of physical therapy; (2) standards of practice; and (3) current literature, documents, publications, and other resources related to the profession, to the delivery of health care services, and to physical therapy education, and to educational theory.”
- Within this 6A requirement, CAPTE further defines “contemporary practice” as: “Delivery of physical therapy services as documented in current literature, including the *Guide to Physical Therapist Practice*, the *Standards of Practice*, and the *Code of Ethics*.”

- The American Physical Therapy Association (APTA) publishes the *Standards of Practice for Physical Therapy*, the *Code of Ethics for the Physical Therapist*, and the *Standards of Ethical Conduct for the Physical Therapist Assistant*. The *Standards of Practice* document references both the *Code of Ethics* and the *Standards of Ethical Conduct* documents. Principle 2C of the *Code of Ethics for the Physical Therapist* states: “Physical therapists shall provide the information necessary to allow patients or their surrogates to make informed decisions about physical therapist care or participation in clinical research.” Similarly, the *Standards of Ethical Conduct for the Physical Therapist Assistant* Standard 2C includes: “Physical therapist assistants shall provide patients and clients with information regarding the interventions they provide.”
- The NC PT Practice Act outlines grounds for disciplinary action that pertain to the issue of informed consent: **§ 90-270.103. Grounds for disciplinary action.** *Grounds for disciplinary action shall include but not be limited to the following:*

(7) The commission of an act or acts of malpractice, gross negligence or incompetence in the practice of physical therapy;

(9) Engaging in conduct that could result in harm or injury to the public.

- Article 1B. Medical Malpractice Actions of § 90 defines “physiotherapy” as being a health care provider to whom the article applies [§ 90-21.11(1)]. This article goes on to define informed consent and specifically acknowledges informed consent being an expectation within “standards of practice among members of the same health care profession” (§ 90-21.13).

§ 90-21.13. Informed consent to health care treatment or procedure.

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or other person authorized to give consent for the patient where:

(1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and

(2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or

(3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by

the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact. A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

(1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a).

(2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted.

(3) An agent, with powers to make health care decisions for the patient, appointed by the patient, to the extent of the authority granted.

(4) The patient's spouse.

(5) A majority of the patient's reasonably available parents and children who are at least 18 years of age.

(6) A majority of the patient's reasonably available siblings who are at least 18 years of age.

(7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

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(c1) If none of the persons listed under subsection (c) of this section is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is confirmation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of G.S. 35A-1245, 90-21.17, and 90-322, Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C of the General Statutes, the provisions of those sections and Articles shall control and continue in full force and effect. (1975, 2nd Sess., c. 977, s. 4; 2003-13, s. 5; 2007-502, s. 13; 2008-187, s. 37(b); 2017-153, s. 2.5; 2018-142, s. 35(a).)

Informed consent is required of NC PT and PTA licensees by virtue of being critical to the standards in prevailing physical therapy practice. Both the process surrounding and details within informed consent may vary depending upon factors such as the level of risk/complexity with recommended physical therapy evaluation and/or treatment as well as patient treatment setting.

References:

- (1) [https://www.fsbpt.org/Portals/0/documents/news-events/Telehealth in PT Summary COVID19.pdf](https://www.fsbpt.org/Portals/0/documents/news-events/Telehealth%20in%20PT%20Summary%20COVID19.pdf)
FSBPT 2020 Telehealth Policy Resource
- (2) <https://www2.ncptboard.org/app/LawAndBoardRules/LawAndBoardRules.php>
NC PT Practice Act
- (3) <https://www2.ncptboard.org/app/LawAndBoardRules/LawAndBoardRules.php>
NC PT Board Rules
- (4) https://www.capteonline.org/faculty-and-program-resources/resource_documents/accreditation-handbook
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- (5) https://www.capteonline.org/faculty-and-program-resources/resource_documents/accreditation-handbook
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- (6) <https://www.apta.org/apta-and-you/leadership-and-governance/policies/standards-of-practice-pt>
Standards of Practice for Physical Therapy
- (7) <https://www.apta.org/apta-and-you/leadership-and-governance/policies/code-of-ethics-for-the-physical-therapist>
Code of Ethics for the Physical Therapist

- (8) <https://www.apta.org/apta-and-you/leadership-and-governance/policies/standards-of-ethical-conduct-for-the-physical-therapist-assistant>
Standards of Ethical Conduct for the Physical Therapist Assistant

- (9) https://www.ncleg.gov/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_90/Article_1B.html
§90 Article 1B. Medical Malpractice Actions