Consent and capacity, on one page

Valid consent, how it applies in psychotherapy, capacity, who decides for an incapable client, children, and consent to share information.

Study aid, not legal advice. Last verified against the official sources linked below on 11 November 2026.

1 Valid consent (HCCA s. 11)

- **Four elements**: it relates to the treatment, is informed, voluntary, and not obtained by misrepresentation or fraud.
- **Informed:** nature, expected benefits, material risks and side effects, alternatives, consequences of no treatment, answers to questions.
- **A signature** does not necessarily make consent informed.

2 In psychotherapy (HCCA; Standard 3.2)

- **Treatment (s. 2 (1))**: done for a therapeutic or health-related purpose; assessment and history taking are not treatment. **None without consent** (s. 10).
- RPs judge capacity for their own therapy; they are **not HCCA evaluators** or SDA assessors.
- **Ongoing**; **consent again** when therapeutic methods change.
- Touch: **express consent in every instance**. Withheld or withdrawn: **comply immediately**.
- **Document** the date, options, risks and benefits, and how consent was given.

3 Capacity (HCCA s. 4)

- Capable: able to **understand** the relevant information and to **appreciate** the reasonably foreseeable consequences of a decision or of none.
- **Presumed**, unless there are reasonable grounds to believe otherwise; **specific to the decision and to the moment**.
- Appears to lack capacity: **assess and document it**; if incapable, identify the substitute decision-maker (3.2.1).

4 The substitute (HCCA ss. 20, 21)

- The **highest-ranked** person below who is capable, 16 or older (unless a parent), available, willing, and not barred by a court order or separation agreement.
- Nobody qualifies, or equals disagree: the **Public Guardian and Trustee** decides.
- They follow the client's **prior capable wish** applicable to the circumstances, made at 16 or older; failing one, their best interests.

5 Who decides, in rank order (HCCA s. 20 (1))

1. Guardian of the person with authority for treatment
2. Attorney for personal care with that authority
3. Representative appointed by the Consent and Capacity Board
4. Spouse or partner
5. Child or parent, or a children's aid society or other person lawfully entitled to consent in the parent's place
6. Parent with only a right of access
7. Brother or sister
8. Any other relative

6 Children and separated parents

- **No minimum age for consent**: a capable child consents to their own therapy and **controls the information about that therapy**.
- Incapable child: a parent decides; **either may act for both** (CLRA s. 20 (3)), except a separated parent the child does not live with, absent an order or agreement (s. 20 (4)).
- **Read any order or separation agreement**: it can set who decides, or bar a parent (HCCA s. 20 (2)).

7 Consent to share information (PHIPA)

- **Circle of care**: implied only for health care, between custodians, never once withheld. Not employers, insurers, lawyers, schools or family.
- CRPO strongly encourages **express consent** for other providers; share only what is relevant and necessary.
- A capable client decides, **at any age**. Under 16, a parent may too (not on treatment the child chose alone); a capable child prevails (s. 23).

Capacity for this decision, now. Consent the client understands, for this treatment.

Official sources: Health Care Consent Act, 1996 and CRPO Standard 3.2: Consent. Condensed from The Legal Framework and Client-Therapist Relationship. Independent study aid, not legal advice.