



NBASW ETHICS STANDARDS AND GUIDELINES TRAINING
CAPACITY OF MINORS TO CONSENT TO SOCIAL WORK SERVICES Q&A

Q: When were these Standards adopted?

The NBASW adopted the [Standards Regarding the Capacity of Minors to Consent to Social Work Services](#) on February 27, 2021. These Standards were adopted to clarify the ethical obligations of social workers and to expand access to social work services for children and youth in New Brunswick. The NBASW adopted the [Guideline on Assessing the Capacity of Minors](#) on February 26, 2022, to provide social workers with additional information on capacity assessments and to expand on the principles outlined in the Standards.

Q: Why are these Standards important?

These [Standards](#) remove barriers to children and youth looking to access social work services. This is done by clarifying that social workers indeed possess the skills, expertise, and training required to assess whether a child or youth has the capacity to fully understand the nature and consequences of treatment and thus whether they can be considered a mature minor. The [Standards](#) establish the expectation that, if a child or youth is assessed as being a mature minor, their consent is the only consent that is required for service provision and that it would be unethical to deny them services based on their age. Further information on assessing the capacity of minors can be found in the [Guideline on Assessing the Capacity of Minors](#), which was adopted by the NBASW on February 26, 2022.

Q: What is the *Medical Consent of Minors Act* and does it apply to social workers?

In New Brunswick, the [Medical Consent of Minors Act](#) codifies the *Mature Minor Doctrine* as it applies to medical treatments, stating that those 16 and older are to be treated as though they've reached the age of majority and that individuals under 16 years of age can provide consent to medical treatment if they are capable of understanding the nature and consequences of the medical treatment and if the medical treatment and the procedure to be used is in the best interests of the minor and the minor's continuing health and well-being. This Act applies specifically to legally qualified medical practitioners, dentists, nurse practitioners, nurses, licensed practical nurses, and midwives; this Act does not apply to the professions providing psychosocial interventions, such as the social work profession. The Act does not apply to psychosocial interventions by the social work profession or to the provision of social work services.

Q: What is the *Mature Minor Doctrine*?

The mature minor doctrine is a common law that indicates that minors who possess the capacity to understand the nature of consequences of a proposed treatment can provide consent to receive services with their consent being the only that is necessary.

Q: What does it mean for someone to have the capacity to consent?

Capacity is the ability to understand information relevant to a decision and to appreciate the reasonably foreseeable consequences of choosing to act or not to act. For an individual to have the capacity to consent to social work services, they must possess the four capacity indicators of being able to understand relevant information, appreciate the situation and its consequences, have the ability to reason, and have the ability to communicate and express a choice.

Q: How do social workers assess whether someone is a mature minor?

For someone to be considered a mature minor, they must have the capacity to provide informed consent. Capacity can be assessed using the four decision-making abilities (capacity indicators) of being able to understand relevant information, appreciate the situation and its consequences, have the ability to reason, and have the ability to communicate and express a choice. Further information on assessing the capacity of minors can be found in the [Guideline on Assessing the Capacity of Minors](#), which was adopted by the NBASW on February 26, 2022. The guidelines provide examples of questions that social workers can ask when assessing whether an individual possess the four capacity indicators and includes an optional assessment tool that social workers can use to help guide the capacity assessment process, if they choose to.

Q: What rights do minors have regarding confidentiality?

Social workers must ensure that all clients are aware of mandatory reporting requirements at the onset of services. Social workers must adhere to legal reporting requirements, which include reporting suspected child abuse or neglect, intended serious self-inflicted harm, and the intent to harm another person. Social workers may also be required to breach confidentiality when required by a court order.

If a minor is deemed a mature minor, they have the right to confidentiality as would clients who were the legal age of majority.

If a client is not deemed a mature minor, there should be a clear understanding between the child, the parent(s)/legal guardian(s), and the social workers regarding the sharing of confidential

information. Social workers may reserve the right to disclose some information to parent(s)/legal guardians(s), when it's in the best interest of the child.

Q: My client, who is a mature minor, shared some information with me that I would want to know as a parent. Am I able to disclose this information to their parents?

If the client did not share information that leads the social worker to believe that they themselves or someone else is in immediate harm, or if a disclosure is not otherwise legally required, social workers have the duty to maintain client confidentiality.

Q: I'm working with a minor that is not a mature minor, what information can I provide to their parents?

At the beginning of the therapeutic relationship, there should be a clear understanding between the child, the parent(s)/legal guardian(s), and the social worker regarding the sharing of confidential information. Social workers may reserve the right to disclose some information, when in the best interest of the child. If a social worker is conflicted about whether they should share certain information gained from the client with the parent(s)/legal guardian(s), social workers should work with the client to understand why they do want the information shared. Social workers should revisit how information sharing was addressed as part of the informed consent process and must complete a thorough risk assessment to determine if a disclosure is in the best interest of the client. Social workers must document their rationale for disclosure or non-disclosure in the client's file.

Q: How do capacity assessments work when part of a multi or interdisciplinary team?

Social workers often work on teams with other types of professionals. While providing social work services to clients on these teams, social workers are responsible for assessing whether a client is capable to provide consent for social work services. This is done as early in the relationship as possible, through discussions with the client that determine whether the client fully understands the nature of consequences of receiving services. Social workers do not assess whether a client can consent for other types of services and vice versa, each member of the team must ensure that the client is capable of providing informed consent for the various profession-specific services.

Q: When do social workers need to start abiding by these Standards?

These [Standards](#) were adopted on February 27, 2021 and have, since that date, outlined the expectations in place regarding social work service provision to minors.

Q: Are social workers qualified to assess a client's capacity to consent to services?

Social workers must be the professionals assessing whether a minor has the capacity to provide informed consent to social work services. This is highlighted in the NBASW [Code of Ethics](#) (2007), which states that social workers shall evaluate a client's capacity to give informed consent as early in the relationship as possible (section 1.4.3) and that social workers who have children as clients shall determine the child's capacity to consent and shall explain to the child (where appropriate), and to the child's parents or guardians (where appropriate) the nature of the social worker's relationship to the child and others involved in the child's care (section 1.4.4).

Q: These Standards conflict with my workplace policies/procedures. What should I do?

Some social workers may find themselves conflicted between workplace practices and their professional Standards. In recognizing that the NBASW's [Standards](#) and [Guidelines](#) align with common law and are in the best interest of children and youth, as they remove barriers to children and youth receiving social work services, the NBASW believes that systems should be child-centered and should work to reduce barriers and allow children and youth to access the services they need, when they need them. No child or youth that has the capacity to consent to social work services should ever be denied access to those services.

The NBASW believes that provincial social workers have a competence required to assess the capacity of minors to consent to social work services, as is outlined in the [Code of Ethics](#), [Standards](#), and [Guidelines](#). The NBASW recommends that social workers who receive conflicting directives have discussions with their employers regarding their professional ethics and responsibilities as social workers.

The NBASW [Code of Ethics](#) (2007) states that social workers must take all reasonable steps to ensure that employers are aware of their professional ethical obligations and must advocate for workplace conditions and policies that reflect ethical practices (section 4.1.2). When the policies and procedures of employing bodies are in conflict with a social workers obligation to the client or Code of Ethics, the social worker shall document the issue in writing and shall bring the situation to the attention of the employer (section 4.1.5). If the ethical conflict continues after the issue has been brought to the attention of the employer, the social worker will bring it to the attention of the NBASW (4.1.6).

Q: If a minor's parents are separated, who provides consent?

If a minor is a mature minor, their consent is the only consent needed to provide services.

If a minor is not a mature minor, a parent or a legal guardian must provide consent to services. In cases of shared custody or in cases where there is no court order in place, either parent has the right to provide consent for their child to receive services.

If there are concerns about who has legal custody of the minor, social workers have the responsibility to request a legal agreement or court order to ensure the parent or guardian has the legal right to provide consent. Please note that this is not a routine requirement and that legal documentation should only be requested if there are questions or concerns regarding someone's legal rights.

Q: Who owns/has access to a minor's file?

If a minor is a mature minor, they have the right to access their file and they must provide consent before the file or any of the information contained within the file is shared with any other party, including parents.

If a minor is not a mature minor, the person that provided consent for the minor to receive services is the individual who has access to the file and the consent of this individual must be obtained before the file or any of the information contained within the file is shared with any other party, including a parent/guardian that did not provide the initial consent for the minor to receive services. Information can only be shared with the parent/guardian that did not provide consent for services if the parent/guardian who provided initial consent for services also provides consent for this release of information. If they do not provide consent to release this information, the requesting parent may apply for access to the file through the court.

Q: Does this Standard contradict any existing New Brunswick legislation?

Although social workers are considered health professionals in New Brunswick, the profession of social work is not included in the [Medical Consent of Minors Act](#) and the Act therefore does not apply for the provision of social work services. There is no legislation in New Brunswick outlining what age people can consent to receiving social work services. Therefore, the Association adopted the [Standards](#) to align with the Mature Minor Doctrine common law. These [Standards](#) apply to all New Brunswick social workers and clarify that social workers can assess whether a minor is considered mature, and therefore whether they can have the capacity to consent to receive social work services.