COLLEGE OF DENTURISTS OF ONTARIO

Guide to the Standard of Practice: Informed Consent

The College's Standard of Practice: Informed Consent establishes the expectations that are fundamental to achieving informed consent. This Guide to the Standard offers further information regarding elements surrounding the informed consent process and how to apply the Standard in practice. The Guide also includes Practice Scenarios that illustrate elements of the informed consent process and some quiz questions.

What Do I Need to Do to Obtain Informed Consent from a Patient?

All of the expectations regarding informed consent are presented in the Standard of Practice: Informed Consent.

Where Can I Get Further Information About Informed Consent?

Some useful resources are listed below. Some of those resources are individual pieces of legislation that speak to some elements of the informed consent process. The College's Jurisprudence Handbook includes a consideration of Informed Consent and presents some case scenarios.

What are the Differences between Implied and Expressed Consent?

Implied consent refers to consent that is implied by a patient's actions. For example, if a patient arranges an appointment with a denturist, keeps the appointment, provides a history to the denturist, answers questions related to that history and submits to an oral examination without objection, then, in these circumstances, consent for the examination is clearly implied. Denturists should be reasonably confident that the actions of the patient imply permission for an examination. Where there is any doubt, it is preferable that the consent be expressed, either orally or in writing.

Expressed consent is expressed by the patient either orally or by signing a written form after an informed consent conversation has taken place.

How Should I Document Informed Consent?

If consent is provided orally, a denturist can note in the patient's record that the informed consent process was followed, that the discussion occurred, the patient was given an opportunity to ask questions, and whether or not informed consent was obtained. (Note: oral consent is usually reserved for situations where the treatment and/or proposed services pose little-to-no risk of harm to the patient.)

If consent is provided in writing, the form that is used should confirm that the patient engaged in an informed consent process, that the denturist explained all the necessary information and allowed time to respond to the patient's questions before obtaining the signature. A signature on the form is not valid informed consent unless each of these steps in the informed consent process is actually carried out.

When Should I Request Consent in Writing?

A denturist can determine the level of risk associated with proposed treatment(s) to determine if the patient should be asked to sign a written consent form after the informed consent discussion. It may be prudent practice to obtain written consent when developing a plan of care, making a change in the treatment plan, and/or if there is a change in the financial arrangements. It may also be prudent to document consent in writing in situations where a substitute decision maker is involved in the consent to treatment or where there are concerns that a patient who is deemed capable of making an informed decision may not recall what they authorized.

What is the Health Care Consent Act and How Does It Apply to Me?

The *Heath Care Consent Act, 1996 (HCCA)* provides a set of rules for the process of obtaining informed consent for treatment. It clearly articulates the information that must be shared with the patient prior to providing treatment and addresses obtaining consent when the patient is incapable of giving consent. The *HCCA* also presents the order in which substitute decision-makers are appointed for patients lacking the capacity to make such decisions for themselves.

It is important to recognize that the *HCCA* does not and cannot 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 *HCCA*, health practitioners still have an obligation to obtain consent for those activities for which a reasonable person would consider consent to be necessary and very important before proceeding. With this in mind, in every circumstance in which a denturist engages in a patient care activity, consent should be obtained, even in circumstances where there does not seem to be a specific obligation to do so under the *HCCA*.

What is Capacity?

Capacity refers to the ability of an individual to understand the information that is needed to make a decision, including the ability to appreciate the consequences and/or risks of that decision. A person is presumed to be capable of making a healthcare decision for him/herself unless there are reasonable grounds to suspect incapacity, meaning they seem to be unable to make some or all of their healthcare decisions. It is well accepted that a person who is incapable to make decision regarding certain matters might still have sufficient mental capacity to give valid consent to medical treatment.

What is the Substitute Decisions Act and How Does it Apply to Me?

The *Substitute Decisions Act, 1992* is a law that governs what may happen when someone is not mentally able to make certain kinds of decisions. The Act covers financial or property management decisions, and decisions about personal care, which include health care, food, housing, and safety.

The *Substitute Decisions Act, 1992* describes how a decision-maker may be appointed for a mentally incapable person. The procedures to be followed depend on the type of decision the person is unable to make. One set of procedures and rules applies when a person is incapable of making decisions about their property or finances; another applies if the incapacity relates to personal matters such as health care or housing.

What Rules Must a Substitute Decision Maker Follow?

A substitute decision maker must comply with the following rules:

- The substitute must act in accordance with the last known capable wishes of the patient, if known. For example, if a patient clearly said, “Never pull my teeth unless I am in pain” before he became so ill that he could not think clearly, the substitute needs to obey those wishes.

- The substitute must act in the best interests of the patient if the substitute does not know of the last known capable wishes of the patient. For example, if a proposed treatment is simple and painless, would cause little risk of harm but would make the patient more comfortable, the substitute decision maker should consent to it.

- Where it becomes clear that a substitute decision maker is not following the above rules, the practitioner should speak with the substitute decision maker about it. If the substitute decision maker is still clearly not following the above rules, the practitioner should call the Office of the Public Guardian and Trustee. The contact information of the Public Guardian and Trustee of Ontario is available on the internet.

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Who Can Be a Substitute Decision Maker?

According to the *HCCA*, if a person is incapable of giving consent with respect to a proposed treatment, consent may be given or refused by an individual identified in the following rank-ordered list:

1. The incapable person's guardian, if the guardian has authority to give or refuse consent to the treatment;
2. The incapable person's attorney for personal care, if the power of attorney confers authority to give or refuse consent to treatment;
3. The incapable person's representative appointed by the Consent and Capacity Board under Section 33 of the HCCA, if the representative has authority to give or refuse consent to the treatment;
4. The incapable person's spouse or partner;
5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This paragraph does not include a parent who has only a right of access. If a children's aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent;
6. A parent of the incapable person who has only a right of access;
7. A brother or sister of the incapable person;
8. Any other relative of the incapable person.

What About a Consent Form?

As outlined in the Standard, a consent form must confirm that the patient or substitute decision maker was engaged in the informed consent process, that the denturist explained all the necessary information and allowed time to respond to the patient's or substitute decision maker's questions before obtaining any signature indicating consent to treatment. **A consent form itself is not the "consent".** It is simply written confirmation that the explanations were given and that the patient agreed to what was proposed.

Practice Scenarios

Consent Scenario No. 1

Donna, a denturist, meets a new patient named Paula. Paula complains about how her old dentures are unstable and food gets under them. Donna says, "I would like to fully understand your eating habits and how you use your dentures. This information will help me know your case and make the best recommendations for your situation. If you are uncomfortable with any of my questions, please let me know. OK?" Donna has just obtained informed consent for taking the patient's history.

Consent Scenario No. 2

David, a denturist, proposes that his patient, Paul, get partial dentures. David does not mention anything about dentures over implants because David would then have to refer the patient elsewhere. Paul spends a lot of money on the partial dentures. On his next dentist's visit, Paul learns of the denture over implants option that would have been much better for Paul in his particular case. Paul complains to the College about not being given his full options. Nothing in the file supports that David told Paul of the dentures over implants option. The Inquiries, Complaints and Reports Committee issues a decision cautioning David for not obtaining informed consent because he did not give Paul all of the relevant options.

Consent Scenario No. 3

Donna, a denturist, proposes a treatment plan for her patient Paula. Paula does not understand the proposed treatment plan at all. She is clearly incapable. Donna knows that Paula appointed her friend Pat to be her power of attorney for personal care. However, Pat is travelling outside of the country and cannot be reached. Therefore Pat is not able to make the decision. Donna contacts Paula's elderly sister, but Paula's sister is frail herself and does not feel confident in making the decision. Thus Paula's sister is not willing to act as a substitute decision maker. Paula's niece is willing and able to make the decision on Paula's behalf and appears to understand the information and its consequences for Paula. Paula's niece is able to give the consent even though she is not the highest ranked substitute.

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Consent Scenario No. 4

David, a denturist, proposes a treatment plan for his patient, Paul. Paul does not understand the proposed treatment plan at all. He is clearly incapable. David knows that Paul appointed his friend Pat to be his power of attorney for personal care. Pat is going to inherit Paul's money when Paul dies. Paul has a lot of money. Paul is going to die within a few months. The proposed treatment plan is simple and painless, would allow Paul to eat solid foods and has little risk of harm. Pat refuses to give consent for Paul to perform the proposed treatment plan. David is convinced that Pat is refusing to consent to the treatment in order to inherit more money (even though treatment is not very expensive). The rest of Paul's family is very upset because they want Paul to receive the treatment. David suggests that the family contact the Office of the Public Guardian and Trustee.

Quiz Questions

1. Which of the following is the highest ranked substitute decision maker (assuming that everyone was willing and able to give consent):

    i. A power of attorney for personal care for the patient.
    ii. The patient's live-in boyfriend.
    iii. The patient's mother.
    iv. The patient's son.

The best answer is i). Only a court appointed guardian is higher ranked than a power of attorney for personal care. Answer ii) is not the best answer because the patient's spouse or partner is a lower ranked substitute decision maker. In addition, it is not clear that the live-in boyfriend is a spouse (under the Health Care Consent Act, they must have been living together for at least one year, have had a child together or have a written cohabitation agreement to be spouses). Answers iii) and iv) are not the best answers because they are lower ranked than both a power of attorney for personal care or a patient's spouse. In addition, the patient's mother and son are equally ranked so either they would have to agree or one would have to defer to the other.

2. Obtaining a broad consent (often called a "blanket consent") in writing from the patient on his or her arrival at the office is probably a bad idea because:

    i. The patient does not know if they will need someone to drive them home afterwards.
    ii. The patient does not have confidence in the practitioner yet.
    iii. The patient does not understand to what they are being asked to agree.
    iv. The patient does not know how long the visit will be.

The best answer is iii). Informed consent requires the patient to understand all of the relevant information including the nature, risks and side effects of the available choices. It is impossible for the patient to know these things upon her first visit. Answer i) is not the best answer because it focuses on a side issue and does not address the main issue. Answer ii) is not the best answer because having confidence in the practitioner is not enough for there to be informed consent. A patient may trust the practitioner and that may motivate the giving of consent, but the patient still needs to understand to what they are being asked to agree. Answer iv) is not the best answer because it focuses on a side issue and does not address the main issue.

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Other Resources:

Denturism Act, 1991: Ontario Regulation 854/93: "Professional Misconduct Regulations"
http://www.ontario.ca/laws/regulation/930854

Health Care Consent Act, 1996, S.O. 1996, c. 2, Sched. A
https://www.ontario.ca/laws/statute/96h02

Substitute Decisions Act, 1992, S.O. 1992, c. 30
https://www.ontario.ca/laws/statute/92s30

A Guide to the Substitute Decisions Act. Ministry of the Attorney General of Ontario
https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/pgtsda.pdf

Important Legal Principles Practitioners Need to Know, Jurisprudence Handbook, College of Denturists of Ontario, 2016.

Consent: A guide for Canadian physicians, June 2016. https://www.cmpa-acpm.ca/-/consent-a-guide-for-canadian-physicians

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