

Consent to Treatment Based on Capacity, Not Age



Deborah Cohen MHS, RD
Practice Advisor &
Policy Analyst

Under the *Health Care Consent Act* (1996), clients are assumed to be capable to consent to treatment. This means that, in law, a person is presumed to have the ability to understand the treatment information, the options and the consequences of a decision or a lack of decision relating to their treatment.¹

MINIMUM AGE OF CONSENT

The law does not set a minimum age to consent to treatment. RDs should involve children when treating pediatric clients based on their capacity to consent, not their age. As a general guideline, a dietitian may find that:

- Children under 7 are incapable of consent for almost any treatment;
- Children between 7 and 12 can rarely consent to treatment; and
- Youth over 12 need to be carefully assessed on a case-by-case basis.²

DETERMINING CLIENT CAPACITY TO CONSENT

An assessment of a client's capacity is made only when there is reason to doubt it. It is not about their general mental capacity; the assessment is based on behavioural observations, what the client says and does, rather than on presumptions, generalizations or stereotypes such as age, diagnosis, disability.² It determines capacity based on the condition of the client to make a decision about a proposed treatment or service in their treatment plan.

CAPACITY TO CONSENT TO TREATMENT CAN VARY

A client may be capable of consenting to fairly simple treatments, but not to more complex treatments or situations that require tough decisions, such as choosing between two less than ideal options. A client may also be capable

during some periods but not others. For example, with some forms of dementia, a client may have "good days" and "bad days," or lucid versus more confused moments.

CONSENT IS NOT PERMANENT

Clients have the right to refuse or withdraw consent at any time during the course of treatment or the delivery of dietetic services. RDs should always exercise due diligence to obtain informed consent from their clients, especially when new treatment options or changes to the nutrition care plan are warranted.

ELEMENTS OF INFORMED CONSENT

When obtaining consent, a client is entitled to know the following before any assessment or treatment is performed.²

1. The nature of the treatment or assessment;
2. Who will be providing the intervention;
3. Reasons for the intervention;
4. Material effects, risks and side-effects of the intervention;
5. Alternatives to the intervention;
6. Consequences of declining the intervention; and
7. Answers to their questions or concerns.

CLIENT CONSENT FOR DISCLOSURE OF PERSONAL HEALTH INFORMATION

The *Personal Health Information Protection Act* (2004) has established rules for the collection, use and disclosure of personal health information.³ As a result, clients (including children) have the right to know how, why and to whom their personal health information will be collected, used and disclosed. All capable clients have the right to give and to withdraw their consent for the collection, use and disclosure of their personal health information. Therefore, in addition to obtaining informed client consent to treatment, RDs also have a professional responsibility to maintain confidentiality of client health information and to obtain consent from their clients for its disclosure.

PROFESSIONAL PRACTICE SCENARIO

I'M PREGNANT, PLEASE DON'T TELL MY MOTHER!

An RD working in a family health team has been seeing a 15-year-old female client for weight loss counselling. During the first two visits with the RD, the client's mother was present and a treatment plan was established. The client has since attended the last two appointments alone and the RD is confident that the client has the capacity to understand and apply the information that is being relayed during the nutrition counselling sessions.

During the client's most recent visit she told the RD: "I'm pregnant, please don't tell my mother!" The following day, the mother calls the RD to receive an update on how her daughter is doing. Is the RD able to talk to the mother regarding her daughter's progress? Does the RD have a responsibility to inform the mother of her daughter's pregnancy?

As the *Health Care Consent Act* (1996) specifies, there is no minimum age of consent.¹ In this scenario, if the RD is confident in the client's capacity to consent to treatment and to the collection, use and disclosure of personal health information, then the RD must respect the client's wishes and keep the pregnancy confidential. In fact, unless the client clearly expressed her consent for the RD to correspond with the mother about her progress, the RD would not be permitted to discuss any matters pertaining to her treatment.

The College's *Professional Misconduct Regulation* (1991), states that it is misconduct for RDs to, "Give information about a client to a person other than the client or his or her authorized representative except with the consent of the client or his or her authorized representative or as required or allowed by law."⁴ While parents often feel they have a right to know about their children's progress and treatment plan (especially if they are paying for the services), RDs must follow the law. In this scenario, the RD would not be permitted to inform the mother of her daughter's pregnancy, and would only provide an update of the daughter's progress with expressed client consent.

The College recognizes that many RDs are mothers. When faced with ethical situations such as this one, an RDs belief system may clash with what is required by law. While RDs may morally and ethically feel that the mother should be informed about her daughter's pregnancy, they need to put aside their personal beliefs and respect their client's wishes to keep the pregnancy confidential. Ultimately, RDs need to follow the law, and the law clearly states that the daughter has the right to determine how her personal health information will be collected, used and disclosed.

WHAT CAN BE DONE?

It would certainly be appropriate for the RD to discuss with her client the concerns about keeping her pregnancy confidential, and to respectfully try to persuade her to discuss the pregnancy with her mother. As pregnancy requires prenatal health care outside of the scope of practice of dietetics, it would also be advisable that the RD refer her client to see her primary care physician. The RD might also refer her client to other support services with the client's consent.

NEED TO KNOW

- Consent must be informed;
- Consent is based on client-capacity;
- There is no minimum age of consent;
- Clients are assumed to be capable and may be assessed only when there is reason to doubt it;
- Capacity to consent can change;
- Client consent is needed for the collection, use and disclosure of personal health information; and
- Client consent can be withdrawn at any time.

1 Health Care Consent Act, (1996). Available from: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_96h02_e.htm#BK19

2 Richard Steinecke & CDO. (September 2011). Jurisprudence Handbook for Dietitians in Ontario, Chapter 7: Consent to Treatment. Available from: <http://www.cdo.on.ca/en/pdf/Publications/Books/Jurisprudence%20Handbook.pdf>

3 Professional Misconduct Regulation, (1991). Available from: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_930680_e.htm

4 Professional Misconduct Regulation, (1991). Available from: http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_930680_e.htm