Putting Consent into Practice

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In fall 2016, the College facilitated 31 in-person and three Ontario Telemedicine Network Workshops on *Unpacking Consent, Regulatory & Professional Obligations for Dietetic Practice.*

705 RDs (18% of members) and 55 dietetic interns attended

The workshop discussed consent to treatment and consent to collect, use and disclose personal health information. Participants worked with the new *Standards of Consent* by applying them to practice scenarios and situations from diverse dietetic practice areas and settings. Below are additional answers to questions which were asked by workshop participants.

HEALTH CARE CONSENT ACT, 1996

Is a signed consent form the same as obtaining informed consent for treatment including assessment?

RDs sometimes confuse a signed consent form with obtaining informed consent. Obtaining an informed consent is a process that involves a conversation whereby the client then clearly understands the reasons for the treatment, the process, the risks and the outcomes expected. The signed consent form is the confirmation that the conversation took place and that the client consents to the dietetic treatment proposed by the dietitian.

Consent to treatment does not always need to be obtained in writing or even confirmed orally. In most routine assessments, client consent may be implied. If a particularly risky intervention is recommended, then a written consent form may help a dietitian ensure that a proper consent was obtained. The consent form should be simple and easy to understand to avoid confusion as much as possible.

Written consent forms are not necessarily a defence to an allegation of failing to obtain consent. A client can still claim that the form was not clearly explained before their signature was obtained, or that they did not understand or appreciate what was signed. Therefore, the written consent form should not be obtained in a rushed or routine fashion.

What do I need to consider when using consent templates for treatment, including assessments?

When using consent templates, RDs need to carefully fill in the blanks, using language that is easy to understand for the client or their substitute decision-maker.

Write the form in the first person, for example: "I have read the Information" and "I have had the opportunity to ask the RD any questions". A form may also include:

"I have been told about the following:

a. What the treatment is.
b. Who will be providing the treatment.
c. The reasons why I should have the treatment.
d. The alternatives to having the treatment.
e. The material risks and side-effects of the treatment and the alternatives to the treatment.
f. What might happen if I do not have the treatment."

If desired, add an explicit acknowledgement of understanding for a particular risk or side-effect; for example, a skin prick may result in slight discomfort.

Ensure the consent form is read and understood by the client or substitute decision-maker, signed and handed back to the RD. Give the client or substitute decision-maker an opportunity to ask questions about the form and the proposed treatment.

PERSONAL HEALTH INFORMATION PROTECTION ACT, 2004 (PHIPA)

Are consent forms useful to obtain permission from clients to collect, use and disclose their personal health information?

Yes, consent forms are useful tools to obtain permission from clients to collect, use and disclose their personal health information for treatment. The consent form should indicate why personal health information is collected, how it will be used and under which circumstances it might be disclosed to another party, if at all. For organizations, consent forms should refer to the organization's privacy policy, with clear indications of why personal health information is collected, how it will be used and under which circumstances it might be disclosed to another party, if at all.

When do I need a client's consent to disclose personal health information?

Consent is almost always required for every collection, use or disclosure of personal health information. Under PHIPA, there are circumstances that permit or require RDs to disclose client personal health information without consent. The complete list of when information can be disclosed without consent is on the website of the Information and Privacy Commissioner of Ontario. Here are a few examples from that list:

- To contact a relative or friend or other potential substitute decision-maker of an individual who is injured, incapacitated or ill and unable to give consent personally;
- To the Public Guardian and Trustee, a children's aid society and the Children's Lawyer for the purpose of carrying out their statutory functions;
- To disclose that an individual is a patient or resident in a facility, the individual's general health status and the location of the individual in the facility, but only if the health information custodian (HIC) offers the individual the option, at the first reasonable opportunity after admission to the facility, to object to such disclosures and the individual has not objected;
- To eliminate or reduce a significant risk of serious bodily harm to a person or group of persons;
- To a person carrying out an inspection, investigation or similar procedure that is authorized by a warrant or PHIPA or another Act, for the purpose of complying with the warrant or for the purpose of facilitating the inspection, investigation or similar procedure;
- To determine or verify someone's eligibility for publicly funded health care or related goods, services or benefits;

- For the purpose of administration and enforcement of the law by specific professional regulatory colleges and other regulatory bodies;
- To a person conducting an audit or reviewing an accreditation or application for accreditation related to the services of a HIC;
- For the purpose of legal proceedings, or contemplated legal proceedings, in which the HIC or the agent or former agent of the HIC is, or is expected to be, a party or witness, if the information relates to or is a matter in issue in the proceeding or contemplated proceeding.

WORKSHOP EVALUATION SURVEY RESULTS

We would like to express our sincere thanks to everyone who attended the workshops and joined the consent conversation. In the end, 308 RDs (44% response rate) responded to the workshop evaluation survey.

- 96% of respondents agreed or strongly agreed that they have an increased understanding of when to obtain consent in dietetic practice;
- 96% of respondents are aware of the resources related to consent to support dietetic practice;
- 95% of respondents feel confident in their ability to apply the information from the workshop to appropriately obtain consent in dietetic practice; and
- 95% of respondents felt that overall the workshop was a worthwhile learning experience.

Participants express their 'Ah-Ha' Moments

- *I didn't fully understand the application of the lock-box principle until attending this workshop.*
- *Referral to an RD does not imply patient consent.*
- *One health care practitioner can obtain consent on behalf of others.*
- *Implied vs. Express consent*
- *A competent person's right to make informed decisions takes legal precedence over 'best-interest.' We all have the right to make a risky decision.*
- *The requirement to specifically document express consent.*
- *Consent is strongly tied to legislation and client-centred care, and it is our responsibility and obligation to do so – but also it is the right thing to do considering individual autonomy.*