

Consent for Treatment

Background

For some time, there has been an expectation in common law, that health practitioners obtain the client's consent prior to commencing treatment. This expectation was clarified in legislation in 1992 with the passing of the Consent to Treatment Act. This Act was amended with the passing of the Health Care Consent Act (HCCA), in 1996. The HCCA sets out the specific requirements for obtaining consent for treatment, and in particular addresses situations where the client is incapable of providing consent, and a substitute decision maker is required.

Policy

Massage therapists are expected to obtain consent from clients prior to commencing any treatment. Individuals are assumed to be capable to provide consent, unless they demonstrate otherwise to the practitioner. There is no specific age that determines when an individual is deemed capable. This determination will depend on the individual's ability to understand the situation and the treatment proposed.

Clients may withdraw consent to a treatment at any time, and this must immediately be respected by the Massage Therapist.

The Health Care Consent Act (HCCA)

The HCCA sets out the following:

- what constitutes the elements required for consent to treatment;
- in what situations it is required;
- how to determine the client's capacity to provide it; and what to do if the client is incapable.

The HCCA states that consent must:

- relate to the treatment being proposed;
- be informed;
- be voluntary; and
- must not be obtained through misrepresentation or fraud.

The Massage Therapist, when explaining the proposed treatment to a client, must explain:

- the nature of the treatment;

- the expected benefits of the treatment;
- the material risks and side effects of the treatment proposed and any of the alternative options; and
- the likely consequences of not having the treatment.

Consent is informed if:

- information about the treatment is given; and
- responses to additional requests for information are given.

Treatment

The HCCA defines treatment as anything done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose including a course of treatment or plan of treatment. A practitioner can only administer treatment without consent in emergency situations.

It does not include the following activities in the definition of treatment:

- the assessment of capacity or the general assessment of the client's condition;
- the taking of a health history;
- the communication of the assessment findings;
- the admission of the person to a hospital or other facility;
- a personal assistance service; or, a treatment that poses little or no risk of harm to the client.

Even though the above noted activities are outside the definition of treatment in the HCCA, it is the College's expectation that Massage Therapists will obtain consent for any client interaction, specifically assessment and treatment.

Determination of Capacity

A capable person is considered to be someone who is able to understand the information being provided about the treatment being proposed, and is able to appreciate the consequences of having the treatment or not.

Individuals are deemed capable unless the Massage Therapist has reason to believe otherwise. Situations where capacity might be questioned include: evidence of confused or delusional thinking, alcohol or drug impairment, the client's inability to make a clear treatment choice, or a lack of ability to communicate.

There is no specific age at which an individual is deemed capable. The ability to provide consent will depend on the cognitive and maturity level of the person,

the risks associated with the treatment proposed and the complexity of the issues. An individual may be capable of providing consent for some treatments but not for others and this reality should be recognized by the Massage Therapist. A client may also be capable to give consent at one time and not at another. The wishes of the client while capable will take precedence.

Colleges have been given the responsibility of providing their members with guidelines on providing information when dealing with incapable clients.

Guidelines for the Provision of Information to Incapable Clients

The Massage Therapist must tell the incapable client that a substitute decision maker will assist the client in understanding the proposed treatment and inform that person of the reason for the use of the substitute decision maker. If the client disagrees with the finding of incapacity, they must be informed of their right to go to the Consent and Capacity review board to have the decision overturned (for more information on this process, contact the College or consult the HCCA, 1996).

The Massage Therapist must involve the incapable client, to the extent possible, in discussion with the substitute decision-maker.

If the client disagrees with the need for a substitute decision-maker because of the finding of incapacity, or disagrees with the involvement of the present substitute, the member must advise the client of his/her options. These include finding another decision maker of the same or senior rank that is more acceptable to the client, and/or exercising his/her right to apply to the Consent and Capacity Review Board.

members are expected to assist clients in exercising their rights. If the therapist feels unable to do this, he/she should seek direction from the College or contact an advocacy agency to provide advice to the client.

Substitute Decision Makers

Substitute Decision Makers (SDM) are individuals who make treatment decisions for individuals who are not capable of making them independently. In most cases, the individual will be a family member. The SDM is expected to act in the client's best interests and to make decisions that are consistent with the client's last known wishes.

The Health Care Consent Act sets out a hierarchy of substitute decision makers:

- an official guardian appointed by the courts;
- an attorney for personal care;
- a representative appointed by the Consent and Capacity Review Board to act for the client;

- a spouse, partner or relative in the following order: – spouse or partner; – child if 16 years or older or the custodial parent; – parent who has only a right of access; – brother or sister; or – any other relative. In most cases, the Massage Therapist will speak with the client and/or family members to determine the highest ranking individual to make treatment decisions for the client.

Scenario 1

A thirteen year old girl arrives at a Massage Therapy clinic for treatment, following a sports related injury in which she suffered soft tissue damage . She is not accompanied by a parent but provides the Massage Therapist with the information necessary to bill the treatment to her mother's extended health insurance plan.

The Massage Therapist assesses the client, establishes a treatment plan, and discusses the treatment options with the client.

The therapist is confident that the client understands the information provided and is capable of consenting to treatment.

The client consents to the treatment and attends the clinic three times for treatment over the next two weeks. By that time, the client has recovered from her injuries and is discharged.

Conclusion

In this case, the Massage Therapist determined that the client, while only 13 years of age, was capable of consenting to the proposed treatment. The client had been able to provide an accurate medical history, as well as a detailed account of how the injury occurred and the symptoms that resulted.

The treatment proposed did not present any significant risk to the client and she was capable of understanding and appreciating the benefits that could be expected.

Scenario 2

A client is seen by a Massage Therapist in a chronic care facility for neurologically impaired clients. The client has sustained soft tissue injuries due to a fall.

The therapist interviewed the client and determined that the client was unable to understand the treatment plan. The therapist based this evaluation on the evidence of confused thinking exhibited by the client. The client was informed

by the therapist that the client's substitute decision maker would be contacted to assist the client in understanding the proposed treatment.

When the therapist informed the client the substitute decision maker would be contacted due to the fact that the client did not appear to understand the proposed treatment plan, the client agreed to the guardian being contacted.

The therapist reviewed the treatment plan with the guardian and obtained consent for treatment.

Conclusion

In this case, the Massage Therapist determined that the client was incapable of giving consent, informed the client of the need to contact a substitute decision maker, obtained agreement for this step and obtained consent from the guardian.

Approved: June 14, 1996 **Revised:** July 7, 2000

References:

Health Care Consent Act, 1996

The *Massage Therapy Act*, Ontario Regulation 544/94, Part VIII, Professional Misconduct

CPO A member's Reference Guide to the HCCA

A Guide to the HCCA and Substitute Decision Legislation for Occupational Therapists