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Informed Patient Consent to Treatment

Preamble:

Registrants must obtain consent from a patient or their substitute decision maker prior to a proposed treatment. Limited exceptions exist for emergency treatment and patients admitted to hospital under the Mental Health Act.

For consent to be valid, it must:

1. be voluntary;
2. be obtained from an individual who has capacity and authority to provide consent; and
3. be informed.

Voluntariness of Consent

Patients have the legal right to refuse or withdraw consent. Registrants must respect the wishes of a patient but should ensure that the patient understands the consequences of not undertaking the treatment and any available alternative treatment.

In circumstances where the patient has refused or withdrawn consent, the registrant must document the treatment offered, the discussion with the patient regarding the treatment, including consequences and alternatives, and the patient's refusal or withdrawal of consent.

Capacity and Authority to Provide Consent

A patient is generally capable of providing consent if they are able to understand the nature and anticipated effects of the proposed treatment and available alternatives and appreciate the reasonably foreseeable consequences of providing or withholding consent. Adult patients are presumed to have the capacity to make decisions until the contrary is determined.

Capacity is fluid and can change over time. As such, capacity must be assessed in relation to the point in time and specific treatment being offered. A patient may be capable with respect to a treatment at one point in time and incapable at another. Capacity can also be regained in circumstances where a temporary impairment is resolved (e.g. intoxication, delirium, coma).

Substitute Decision Makers

Consent must be obtained from the patient's substitute decision maker in circumstances where the patient lacks capacity. This individual has legal authority to act on behalf of the patient in respect of healthcare decisions.

In some cases, a patient may have appointed a substitute decision maker through a legal document to act on their behalf in the event of incapacity. If a patient has not appointed a substitute decision maker, a registrant must obtain

consent from the applicable person outlined in the *Consent to Treatment and Health Care Directives Act*. It is important to be aware that the person listed as “next of kin” in the patient’s medical record is not necessarily the patient’s legal substitute decision maker.

Registrants must always act in the best interests of their patients. If a patient’s decision maker is not acting in their best interest, and the registrant has reason to believe the person may be in need of protective intervention, the registrant has a duty to report these concerns.

If there is a dispute between two or more individuals with equal decision-making authority about a proposed treatment, the registrant should try and obtain consensus through discussing the goals of care in a manner that is patient centered. If consensus cannot be achieved, or the registrant believes that a substitute decision maker is not acting in the patient’s best interest, ethical and legal advice should be sought on how to proceed.

Minors

Assessing capacity in a minor is based on maturity, not chronological age. In most cases, a minor is considered capable of consenting or refusing treatment if they have the capacity to fully appreciate the nature of the proposed treatment, its anticipated effect, and the consequences of refusing treatment. As such, a minor may have the capacity to consent to certain treatments, but not others. Where a registrant determines that a minor has capacity to consent, they must obtain consent from the minor.

If a minor does not have capacity, consent must be obtained from the minor’s substitute decision maker. In most cases, this will be the minor’s parents. A registrant can reasonably assume a parent of a minor who is present with the minor can provide consent to treatment. Only when circumstances suggest an adult accompanying a minor may not be the minor’s substitute decision maker is the registrant required to make further inquiries before providing any non-emergency treatment.

Informed Consent

Registrants must provide their patients with adequate information regarding the treatment to allow them to make an informed decision. The adequacy of consent explanations is judged by the "reasonable patient" standard, that is, what a reasonable patient in the particular patient's position would have expected to hear before consenting.

Registrants must consider the specific circumstances of the patient and use their clinical judgement to determine what information must be provided. In most cases, registrants should advise the patient as to:

1. the diagnosis, or the differential diagnosis, where possible;
2. the nature of the proposed treatment;
3. the anticipated outcome of the treatment;
4. the material and special risks involved in the treatment, including risks that:
   a. occur frequently,
   b. are rare, but very serious (e.g. death or permanent disability), and
   c. risks that have particular relevance to the patient;
5. the consequences of not undertaking the treatment;
6. recommended alternative treatments, where appropriate; and
7. whether part or all of the treatment is to be delegated to a trainee.

Registrants should be satisfied that the patient demonstrates a reasonable understanding of the information being provided regarding treatment.

Types of Consent

Consent is often implied based on the actions of the patient. Where a reasonable person would believe that consent has been given, implied consent may be inferred. If relying on implied consent, registrants should be confident the actions of the patient imply consent. When there is doubt, the patient should be asked to express their consent verbally.

Express consent requires an oral or written acknowledgement from the patient that the registrant can proceed with the intended treatment. Obtaining express consent helps to avoid misunderstanding and is required for:

1. an examination of the pelvic, genital, breast, or perianal area of a patient's body; and
2. proposed treatments which may be more than mildly painful, carries appreciable risk, will terminate a bodily function, or is an invasive procedure.

Documenting Consent

Documentation of the consent process is required in circumstances where the treatment is likely to be more than mildly painful, carries appreciable risk, will terminate a bodily function, or is an invasive procedure.

Documentation of the consent process is recommended in all other circumstances.

Delegating Consent

Registrants may delegate the act of obtaining consent to another qualified healthcare professional if they are confident the delegate has the knowledge and experience to provide adequate explanations to the patient and to answer the patient's questions.

Medical Emergencies

Consent is not required in a medical emergency where there is severe suffering or an immediate threat to the life of the patient if treatment is delayed in order to obtain consent. Under such circumstances, treatments must be limited to those that are necessary to prevent prolonged suffering or to deal with imminent threats to life, limb, or health.

In emergency circumstances where treatment is provided without consent, registrants must limit the treatment to that which is necessary to prevent prolonged suffering or to deal with imminent threats to life, limb or health. Known previous wishes of the patient must be respected and the registrant must document why care was provided without consent.

Involuntary Admission

Where a person is admitted to a healthcare facility on an involuntary basis, the attending registrant may provide treatment relating to the patient's mental disorder without the consent of the patient in accordance with the *Mental Health Act*. Registrants who provide treatment to patients under the authority granted through this Act must be aware of and act in accordance with all legal requirements, including those relating to consultation with the patient and their representative.

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