

CONSENT TO TREATMENT POLICY

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LEGISLATIVE REFERENCE:		Health Care Consent Act, 1996; Ontario Regulation 854/93
COLLEGE CONTACT:		Quality Assurance Committee

PURPOSE

The purpose of this document is to clarify when and how Denturists can obtain a patient's consent to treatment and what constitutes consent.

UNDERLYING PRINCIPLES

1. The best interests of the patient are central to all denturists - patient interactions.
2. Respect for the autonomy and personal dignity of the patient is central to the provision of ethically sound patient care. Through the translation of these ethical principles to law, the Supreme Court of Canada has confirmed the fundamental right of the individual to decide which medical interventions will be accepted and which will not.
3. In order to exercise their autonomy, patients must be capable of making informed decisions about their dental health care.
4. The goals of the *Health Care Consent Act (HCCA)* include promoting individual autonomy and decision-making capacity, and facilitating communication between health care practitioners and their patients.
5. Denturists have the obligation to secure consent and patients have the legal right to either consent to or refuse treatment.

DUTIES

The duties set out below are codified in the *Health Care Consent Act (HCCA)*. This document does not summarize the *Act* in its entirety and Denturists are encouraged to consult the *Act* in order to familiarize themselves with all the legislative provisions. 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.

Briefly, the following must occur when a Denturist proposes a treatment:

- The Denturist determines if a patient is capable of consenting. If the patient is capable, the Denturist must provide information about the treatment. The patient either provides consent or refuses the treatment. If the patient consents, then the Denturist proceeds with the treatment until the patient's capacity changes or the treatment changes.
- If the patient is determined to be incapable, then the Denturist must identify the substitute decision-maker, and go through the same process to obtain consent.
- Patients may withdraw consent to a treatment at any time, and this must immediately be respected by the Denturist.

A practitioner can only administer treatment without consent in emergency situations. There is an emergency if the person is experiencing severe suffering or is at risk of sustaining serious bodily harm if the treatment is not administered promptly. An examination or diagnostic procedure that is a treatment may be conducted without consent if it is reasonably necessary to determine if there is an emergency.

- 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;
- 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 denturists will obtain consent for any client interaction, specifically assessment and treatment.

DETERMINING CAPACITY

A person has capacity if that person is capable of consenting to treatment. The person must be able to understand the information that is relevant to making a decision about the treatment and must be able to appreciate the reasonably foreseeable consequences of a decision or a lack of decision.

A Denturist must determine that a patient is capable of giving consent and must obtain consent from a patient before providing treatment. A Denturist is entitled to assume that a patient is capable of giving consent unless there are reasonable grounds to believe otherwise. For example, there could be something in a patient's history or behaviour that would make a Denturist question the patient's capacity to consent. But, if a patient knows who they are, where they are, what is being proposed, and the consequences of the decision they are being asked to make, it is likely safe for a Denturist to rely on the presumption that the patient is capable.

Capacity is not static – it can change over time and be different depending on the nature and complexity of the specific treatment decision. What is being determined is whether the patient has the ability to understand the nature and effect of the treatment being proposed, not the “global” capacity of the person.

Two things can trigger the consent to treatment process:

1. when a treatment is proposed or there is going to be a change in the treatment, and
2. there is a change in the person's ability to understand the nature and effect of the treatment.

A patient who is capable of providing consent is also capable of withdrawing consent to the treatment. The policy also explains what a Denturist must do if he or she determines that a patient is incapable. This is discussed in detail below.

MINORS

The Act does not identify an age at which minors may exercise independent consent for health care because the capacity to exercise independent judgment for health care decisions varies according to the individual and the complexity of the decision at hand. Denturists must make a determination of capacity to consent for a child just as they would for an adult.

ELEMENTS OF CONSENT

Four conditions, which are explained in detail below, must be present in order for consent to treatment to be valid:

1. CONSENT MUST BE RELATED TO TREATMENT

Subsection 2 (1) of the HCCA sets out the definitions which apply to consent to treatment. “Treatment” is “anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health-related purpose, and includes a course of treatment, plan of treatment or community treatment plan...”

'Course of treatment' is "a series or sequence of similar treatments administered to a person over a period of time for a particular health problem."

'Plan of treatment' is "a plan that,

- a) Is developed by one or more health practitioners,
- b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future, given the person's current health condition, and
- c) Provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person's current health condition." 'Community treatment plan' is defined in the Mental Health Act and is a "plan that is a required part of a community treatment order."

Although the Act contains exceptions to the definition of "treatment," the College advises Denturists to obtain consent for all Denturist-patient interactions. For many of these interactions, a Denturist can have the patient sign a Consent to Treatment Plan. Unless it is unreasonable to do so in the circumstances, a Denturist may presume that consent to treatment includes consent to variations or adjustments in the treatment, and to the continuation of the same treatment in a different setting unless there is significant change in the expected benefits, material risks or material side effects.

2. **CONSENT MUST BE INFORMED** Consent is not valid unless it is informed. A Denturist must provide a patient with information about the nature of the treatment, its expected benefits, its material risks and side effects, alternative courses of action and the likely consequences of not having the treatment. A Denturist should not assume that a patient has sufficient background or may not be interested in the information. Without full information, the patient does not have sufficient background to make informed health care decisions and consent may not be valid.
If the patient requests additional information, he or she must receive a response.
3. **CONSENT MUST BE VOLUNTARY**
Consent cannot be given under duress. The patient must be acting for him or herself. If a Denturist believes otherwise, they should ensure that there has been no coercion.
4. **CONSENT MUST NOT BE OBTAINED THROUGH FRAUD OR MISREPRESENTATION**
In conveying the information about the treatment to a patient, a Denturist must be frank and honest.

EVIDENCE OF CONSENT

Although the Act states that consent to treatment may be express or implied. Denturists are advised to obtain a signed Consent to Treatment plan by the patient. Denturists should be aware that the critical element of the consent process is the information given to the patient by the Denturist. Signed consent forms are simply documentary confirmation that the consent process has been followed, and the patient has agreed to the proposed treatment. Denturists are advised to note in the patient's record that consent has been obtained by noting what went into the decision-making process. Likewise, Denturists should note in the patient's record if the patient has refused consent and the discussion that took place.

INCAPABLE PATIENTS

If the Denturist determines that a patient is incapable of consenting to a treatment, the

Denturist must identify and obtain consent from an appropriate substitute decision maker. The HCCA sets out the following hierarchy of individuals/agencies who may give or refuse consent:

1. An official guardian appointed by the courts
2. Attorney for personal care
3. Representative appointed by Consent and Capacity Board
4. A spouse, partner or relative in the following order
 - a. spouse or partner;
 - b. child if 16 years or older or the custodial parent;
 - c. parent who has only a right of access;
 - d. brother or sister; or
 - e. any other relative.
5. Public Guardian and Trustee

The highest-ranking person on this list, if available, capable and willing, is the substitute decision-maker for the incapable person. If there is disagreement between persons described in the same paragraph, which cannot be resolved, then the Public Guardian and Trustee may be called upon to make the decision.

A Denturist must provide the substitute decision-maker with the information that would otherwise have been given to the patient to enable him or her to make an informed decision as to consent.

The substitute decision-maker must make a decision which complies with the most recent wish expressed by the person, while capable, if the following criteria are met: the person was at least 16-years-old at the time; the wish applies to the circumstances; and it is not impossible to comply with the wish. In other words, the substitute decision maker must reflect on what the patient, if capable, would have wanted. At times, this decision will be extremely difficult and the Denturist may be able to help the substitute decision-maker.

In the event the substitute decision-maker does not know of any wish that meets these criteria, he or she must act in the incapable person's best interests. A number of factors must be considered, including the following: any values and beliefs the incapable person held while capable; any wishes the incapable person expressed that are not binding according to the above criteria; and the nature and likely effects of both providing and withholding the proposed treatment. A Denturist must consider whether the substitute decision-maker is complying with the principles set out in the HCCA. If a Denturist is of the view that the substitute decision maker is not acting in accordance with the HCCA, he or she can call the Office of the Public Guardian and Trustee.

Even when there is a substitute decision-maker, a Denturist must still involve the patient.

The College advises the Denturist to take the following steps:

1. Tell the incapable patient that a substitute decision-maker will assist the patient in understanding the proposed treatment and will be responsible for making the final decision.
2. Involve the incapable patient, to the extent possible, in discussions with the substitute decision-maker.
3. If the patient disagrees with the need for a substitute decision-maker, or disagrees with the involvement of the present substitute, the Denturist must advise the patient of his or her options. These include finding another substitute of the same or more senior rank, and/or applying to the Consent and Capacity Board for a review of the finding of incapacity.

4. Reasonably assist the patient if he or she expresses a wish to exercise the options outlined above in paragraph 3. The person's behalf will prolong the person's suffering or will put the person at risk of sustaining serious bodily harm.

PROFESSIONAL MISCONDUCT

Under the regulations to the Denturism Act, certain activities can be considered grounds of professional misconduct.