Standard

Informed Consent

Purpose:

The purpose of this standard is to inform members of their obligations regarding consent.

Introduction:

The act of acquiring the Informed Consent of a client serves five main purposes:

- to protect an individual's right to "security of the person" according to the Canadian Charter of Rights and Freedoms
- to enhance communication and the special relationship of trust between dr. and patient (legally called a fiduciary relationship
- to avoid litigation as a risk management measure
- to assist individuals to make decisions about their care
- demonstrates respect for the patient

Members must receive a patient's consent in writing before: collecting personal health information, obtaining a case history, performing an examination or testing and initiating treatment.
The consent must also ensure the patient has a clear understanding of an administered procedure or treatment, as well as the risks, benefits and alternatives.

Definitions:

Capacity**:** a person is deemed capable with respect to an intervention/decision if the person is able to understand the information relevant to making a decision about the intervention, and able to appreciate the reasonably foreseeable consequences of a decision, or lack of decision.
People:
• are presumed capable unless there is information to lead the Member to think otherwise;
• may be capable with respect to one intervention/decision but not another;
• may be capable with respect to an intervention/decision at one time and incapable at another.

Consent: to acquiesce, agree, approve, assent and give permission to some act or purpose.

Informed Consent: a phrase used in law to indicate that the consent given by a person has been based upon a clear appreciation and understanding of the facts, implications, and future consequences of an action. In order to give informed consent, the individual concerned must have adequate reasoning faculties and be in possession of all relevant facts at the time consent is given.

Substitute Decision-maker: a person who makes decisions for someone who is incapable of making his/her own decisions, and who is authorized to give or refuse consent to an intervention on behalf of a person who is incapable of making a decision with respect to the intervention.

1. Informed Consent:

Consent is an ongoing process and not a singular event. To be valid, consent must be informed. The Member has a duty to ensure the patient has sufficient information to make valid decisions about his/her care.
Patients have the right to refuse treatment or withdraw consent for treatment at any time.

The Member ensures that consent is obtained prior to:
1. collecting personal health information;
2. obtaining a case history;
3. performing an examination or testing;
4. initiating treatment.

The consent must also ensure the patient has a clear understanding of an administered procedure or treatment, as well as the risks, benefits and alternatives.

To be valid, consent:
• relates to the proposed intervention;
• is informed;
• is voluntary;
• is not obtained through fear, misrepresentation or fraud.

The Member appropriately documents the discussion in the patient chart. Patients need to understand and appreciate the reasonable foreseeable consequences of their decisions, in order to give informed consent.

The Member ensures that the patient or substitute decision-maker understands the following with respect to the proposed course of action:
• the nature of the intervention;
• its expected benefits;
• the material risks and side effects;
• available reasonable alternatives;
• the likely consequences of not receiving the intervention;
• any associated costs; and
• the right to withdraw consent.

The Member discloses risks or side effects that are likely to occur as well as risks and side effects that can result in significant harm or death even though they are unlikely to occur.

The Member answers questions or addresses any special concerns of the patient or substitute decision-maker.

The Member ensures that the patient or substitute decision-maker understands the professional status of those providing professional services.

2. Consent to Assessment and Treatment

The Member ensures that informed consent is obtained from the patient or substitute decision maker at the start of and throughout the assessment and treatment process.

The Member discusses the following with the patient or substitute decision-maker as appropriate:

- scope and reason for the assessment and treatment;
- associated costs;
- the purpose and nature of the assessment and treatment including whether information will be obtained from other individuals;
- the potential benefits and limitations of the assessment and treatment and the likely consequences of not receiving the intervention;
- the expected outcomes of the assessment and treatment;
- the right of the patient or substitute decision maker to withdraw consent at any time.

The Member:

- provides an opportunity for the patient or substitute decision maker to ask questions and responds to them in a manner that helps the patient or substitute decision-maker understand.

3. Determining Capacity

The Member when obtaining consent ensures that the patient understands the information provided and is capable of giving consent to assessment and/or treatment.

The Member:

- assumes that the patient is capable of providing consent, unless there is information that would lead the member to think otherwise;
- considers factors that may indicate that the patient is incapable;
- utilizes interpreters, if necessary, to ensure that the patient understands the consent process;
- when there is an indication to do so, follows a process to determine capacity:
  - gathers objective and subjective information to determine the patient's capacity to give consent;
  - analyzes the information gathered to determine the ability of the patient to make the required assessment and/or treatment decision;
  - does not make presumptions of incapacity based on:
- diagnosis of a psychiatric or neurological condition;
- communication impairment;
- disability;
- refusal of intervention;
- age;
- acute or chronic health status;
- the fact that there is a guardian or substitute decision-maker in place
- engages the patient in a collaborative approach regarding the capacity process;
- upon determining incapacity, communicates to the patient the finding of incapacity, the reasons and his/her right of a review of this finding with the Manitoba Health Care Directive;
- upon determining incapacity, takes reasonable measures to confirm the substitute decision-maker, and informs the patient that the substitute decision-maker will make the final decision related to the naturopathic services;
- Utilizes the hierarchy of substitute decision-makers, if a substitute decision-maker has not been identified;
- Involves the patient in discussions with the substitute decision-maker whenever possible.

4. Record Keeping

The member documents the consent process.

In addition to the Association's Standard of Practice for Record Keeping, the Member documents:

- that a discussion regarding consent took place and the patient understands the proposed assessment or treatments and their risks, limitations and benefits;
- any modifications to the consent;
- when consent was obtained through the use of an interpreter, alternate means of communication, or a substitute decision maker; the identity of the interpreter or substitute decision maker, the legal entitlement of the substitute decision maker as applicable (documentation on file, copy of Power of Attorney for personal care provided, etc.);
- that the patient withdrew consent, why he/she did so, and what specifically was withdrawn.

5. Informed Consent to Naturopathic Manipulation Treatment

Naturopathic practitioners who use manual therapy techniques such as spinal adjustments are required to advise patients that there are or may be some risks associated with such treatment. Please refer to the MNA *Manipulation Guidelines* https://86c037a4-88bc-43e3-94e4-ff299774bbcf.filesusr.com/ugd/1f8554_66fc4375ae2644388584a974b3b5e810.pdf

Related Standards and Guidelines:

Personal Health Information Act
MNA Advertising & Social Media Standard
MNA Spinal Manipulation Guidelines Manitoba Health Care Directive

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Thank you to the College of Naturopathic Doctors of Alberta and the College of Naturopaths of Ontario for sharing their standards