The Association of Hearing Instrument Practitioners of Ontario

Quality Assurance Committee
2019

GUIDANCE DOCUMENT ON CONSENT

Overview

Hearing healthcare practitioners have a legal and ethical obligation to obtain informed consent from a capable person prior to providing hearing healthcare treatment.

Consent is permission for something to happen. Consent may be express or implied. Express consent is clearly and noticeably stated, and may be written, verbal or in any other form (e.g. sign language). Implied consent is inferred from a person's words or actions and the circumstances of a particular situation (or in some cases, by a person's silence or inaction).

Informed consent must be obtained prior to hearing healthcare treatment. Informed consent means the person giving consent must receive all information that a reasonable person in the same circumstances would require in order to make a decision and the person must be provided with responses to any requests for additional information. The information must include the nature, expected benefits, material risks and material side effects of the treatment as well as alternative courses of action and the likely consequences of not having the treatment.

A person is capable of giving consent if s/he understands the information that is related to making a decision and appreciates the reasonably foreseeable consequences of a decision or a lack of a decision.

With respect to hearing healthcare, consent must be obtained from the patient for screening and assessment services as well as for treatments such as ear impressions and cerumen (earwax) removal. It should be noted that even if a consent form is signed, consent is not valid unless it can be demonstrated that the consent was related to the treatment, was informed, given voluntarily and not obtained through misrepresentation or fraud. Relevant findings and events related to consent must be recorded with diligence by the hearing healthcare practitioner.

Ontario's Health Care Consent Act (HCCA)

The Ontario *Health Care Consent Act* (*HCCA*) enacted in 1996 provides the rules with respect to consent to treatment that is to be applied consistently throughout the Province. It also provides the means to facilitate the admission, treatment and compelled assistance required by persons who lack the capacity to make such decisions for themselves.

Consent Required for Treatment

Any treatment to be provided by a hearing healthcare practitioner requires the informed consent of the patient, or where they are incapable, from their substitute decision-maker.

The elements of informed consent are as follows:

1. The consent must relate to the treatment.
2. The consent must be informed.
3. The consent must be given voluntarily.
4. The consent must not be obtained through misrepresentation or fraud.

Capacity to Provide Consent

A hearing healthcare practitioner has the responsibility to assess a patient's capacity. The capacity to provide consent can change over time and/or with respect to different treatments.

If the patient is incapable, a hearing healthcare practitioner requires the consent of the substitute decision-maker, which is determined by the following hierarchy:

1. Guardian.
2. Attorney for personal care.
3. A representative appointed by the Consent and Capacity Board.
4. Spouse or partner.
5. Child or parent (custodial parent if child is minor) or children's aid society.
6. Parent who has only a right of access.
7. Brother or sibling.
8. Other relative.
9. Public Guardian and Trustee.

A substitute decision-maker must be capable; at least 16 years old (unless parent of person); not be prohibited by a court order or separation agreement from having access to the person or giving or refusing consent on the person's behalf; be available and willing to make the decision; and act in accordance with the person's last capable wishes or in the person's best interests.

Protection from Liability

When a hearing healthcare practitioner acts in good faith, then s/he is not liable if:

- A service is administered after consent was given;
- A service is not administered because consent was refused; or
- A service is withheld or withdrawn according to a treatment plan that the person has consented to.

PRINCIPLES OF PATIENT CONSENT

The following considerations are general and should not be taken as all-inclusive.

- Every patient has the legal right to refuse care and treatment.
- It may not be assumed that a person who seeks advice is automatically consenting to the procedure being advised.
- The signing of a consent to treatment document is not by itself considered by the law as a valid consent unless the various elements required for the process of obtaining a valid informed consent have been fulfilled.
- A patient or someone on behalf of a patient should never be told that the signing of a consent form is a "mere formality".
- Consent is an ongoing process. A consent previously given may be withdrawn at any time up to and including immediately prior to or during treatment.
- The procedure which is performed must match that to which the patient consented.
- Extra care must be taken with a person who is hearing impaired.
- It may not be assumed that a person who is mentally challenged cannot consent to anything.
- It may not be assumed that a person under the age of majority cannot consent. Capacity to consent depends on a person's ability to understand the situation and the proposed treatment.
- It may not be assumed that a person who presents his/herself as representing a patient has the legal authority to consent on behalf of the patient.
- It may not be assumed that people who say they understand English or who say they understand what they are being told do actually understand.
- It may not be assumed that a person who is given something to read is literate to the level required to understand the written material that is presented.
- Consent must always be obtained before the procedure takes place and never afterwards.
- Caution must be exercised in having someone other than the actual person providing care obtain the consent, since it is the hearing healthcare practitioner who will best be able to advise the patient on what is to occur and the other salient information.

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RISK MANAGEMENT PRINCIPLES FOR USE OF CONSENT FORMS

The following considerations are general and should not be taken as all-inclusive. Moreover, depending on the circumstances, they may not always be appropriate.

1. Do not obtain a person's signature until the consent process has been completed.

2. Do not obtain consent from a person who is under the influence of medication or other substances that might affect the mental ability of the person to make a decision regarding treatment.

3. Document relevant observations. If the person providing consent is medicated, it would be prudent to make a note that there is "no mental impairment evidenced" as appropriate.

4. Fill blanks in block letters that are clearly legible.

5. Make certain that the consent form is complete and accurate before the person signs it.

6. Have the consent form signed before the procedure is commenced.

7. Do not have the person sign the consent form just before the procedure, since this may be seen as putting pressure on the person to sign. Give the person adequate time for consideration, to ask questions and to receive additional information as needed.

8. If the person has any questions after the consent form is signed, delay the procedure until the questions are answered.

9. Do not use terms in the consent form that the person does not understand.

10. Do not make any additions, deletions or alterations to the consent form after the person signs it.

11. Make certain that the consent form clearly sets out which aspects of the procedure is being consented to or refused.

12. Have the person who is in charge of the procedure obtain the signed consent form so that if any questions arise, accurate answers may be given.

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EXAMPLE OF CONSENT FOR TREATMENT: EAR IMPRESSIONS

Date: _____

Patient Name: _____

Date of Birth: _____

I hereby authorize and give "NAME OF CLINIC" and whomever they may designate, permission to take ear impressions on my ear(s) for the purpose of making hearing aids, shells for custom hearing aids, or for ear plugs.

I understand that among possible risks, there is the potential during the insertion of the impression material to seep around the cotton/foam block and possibly come into contact with my eardrum. Should this occur, the impression material could be more difficult to remove than normal and may necessitate the removal by a physician. If impression material were to come into contact with the eardrum, it is possible for permanent ear damage to occur. Additionally, there is always a rare risk of possible perforation of the eardrum during the ear impression process. Should the eardrum be perforated, there is a risk of permanent hearing loss.

I understand that temporary conditions, though unlikely, may occur such as itching of the ear canal, tenderness or aching of the ear canal, hematoma (blood clot) of the ear canal or eardrum, bleeding of the ear canal and/or a conductive hearing loss.

If I decide I do not want to have ear impressions taken, I may stop the procedure at any time.

Patient or Substitute Decision-Maker Signature: _____ Date: _____

Practitioner Signature: _____ Date:_____

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EXAMPLE OF CONSENT FOR TREATMENT: CERUMEN (EAR WAX) REMOVAL

Date: _____

Patient Name: _____

Date of Birth: _____

Your hearing healthcare practitioner has decided that it would be best to remove ear wax from your ear canal. Removing ear wax is a procedure that should only be undertaken by a professional. It is not without risk. Every precaution possible will be taken to avoid discomfort or adverse results. Complications and side effects of cerumen (earwax) removal are rare and may include:

Cerumen remains: If your hearing health professional is unable to remove the cerumen, you will be directed to see your primary care provider or otolaryngologist (ENT) for further treatment.

Discomfort: Some people may feel mild to moderate discomfort, dizziness, nausea, vomiting and/or stress or anxiety related to participation in the procedure.

Injury to the ear canal: Abrasions to the ear canal may occur during cerumen removal. Some bleeding may occur during the procedure. Bleeding is usually slight and resolves on its own.

Medication: I agree to inform the hearing health professional of any blood thinning or other medications I am currently taking.

If I decide I do not want to have my wax removed at any time, I may stop the procedure.

I have been informed of my condition and consent is hereby voluntarily given for cerumen (earwax) removal.

Patient or Substitute Decision-Maker Signature: _____ Date: _____

Practitioner Signature: _____ Date:_____