College of Massage Therapists of Ontario

Guide to Capacity and Consent in Massage Therapy

An important part of providing effective Massage Therapy care involves the client providing their **informed consent** to treatment.

Before conducting an assessment, providing treatment or modifying a treatment plan, an RMT must obtain the client's consent. Consent includes a discussion with the client about the following elements:

1. The nature of the treatment;
2. The expected benefits;
3. Risks and side effects;
4. Alternative courses of action;
5. Likely consequences of not having treatment; and
6. The client's right to ask questions about the information provided and that assessment or treatment will be stopped or modified at any time at their request.

For consent to be informed, the client must also be **capable** of providing consent. Generally, clients can be assumed to be capable and RMTs only need to consider capacity in situations where concerns are raised. A client's capacity to consent to a treatment may change during or in-between treatments. In other instances, the client may not be able to fully understand the treatment proposed and is incapable of providing consent (e.g., a decreased level of consciousness due to medication). A client is considered capable of giving informed consent if they can:

- Understand the information; and/or
- Anticipate any foreseeable consequences of a decision or lack of decision.

Incapacity and the Role of Substitute Decision-Makers

Sometimes it is apparent that a client is not capable. If an RMT is concerned that a client is not capable of providing consent, the RMT should explain the importance of capacity for consent to be valid, and that treatment cannot proceed without valid consent. The RMT should then suggest that a substitute decision-maker (SDM) may be needed. The client should still be included in the discussions as much as possible unless there are specific circumstances where involving the client is not possible (e.g., if it will be upsetting to the client).

Even if a client is not capable of providing consent for treatment, they can still indicate their preferences. If the client refuses or indicates that they do not want treatment, this should be carefully considered. Depending on the circumstances, a client may become capable later, and may then refuse care or change their consent.

Unless it is an emergency (which should be extremely rare), the RMT must obtain consent for the assessment and/or treatment from the client's appointed SDM. The SDM must meet the following requirements:

- Be at least 16 years old. There is an exception where the SDM is the client's parent (e.g., a 15-year-old mother can be the SDM for the care of her child).
- Be capable themselves. The SDM must understand the information and appreciate the consequences of the decision.
- Be able and willing to act.
- There must be no higher ranked SDM who is able and willing to make the decision.

The ranking of the SDM is as follows (from highest ranked to lowest ranked):

1. A court-appointed guardian of the person.
2. A person who has been appointed attorney for personal care. The client would have signed a document appointing the SDM to act on their behalf in health care matters if they ever became incapable.
3. A person appointed by the Consent and Capacity Board to make a health decision in a specific matter.
4. The client's spouse or partner. A partner can include a same-sex partner. It can also include a non-sexual partner (e.g., two elderly women who live together).
5. A child or parent of the client or the Children's Aid Society who has been given wardship of the client.
6. A parent of the client who does not have custody of the client.
7. A brother or sister of the client.
8. Any other relative.
9. The Public Guardian or Trustee if there is no one else.

Where there is a dispute about the care of incapable clients, the decision-making body responsible for making decisions in Ontario is the Consent and Capacity Board (CCB). An RMT, client or SDM may apply to the CCB when a decision relating to a client's consent or capacity needs to be made. A client may challenge a decision of the CCB by appealing to the courts.

More information on substitute decision-makers can be found in the following:

- The *Health Care Consent Act, 1996* (HCCA) sets out rules about consent to treatment, especially where there is concern about the client' capacity to consent to treatment. In brief, except in cases of emergency, informed consent for any assessment or treatment must be obtained from the client. If the client is incapable of providing informed consent, it must then be obtained from the client's SDM; and
- The *Substitute Decisions Act, 1992* establishes the legal criteria for determining whether a person can make decisions that are fundamental to their well-being.