

CCO COMMUNIQUÉ

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Informed Consent

Maria arrives for her first appointment since the accident. She has already been shown to an examination room and asked to undress to her underwear and to put on a paper gown. The chiropractor, Joe, enters the room and says "Let's see what we have here." Joe opens the gown slightly and starts examining Maria, being careful at all times to keep Maria draped as much as possible. On the way out of the clinic, Maria complains to the receptionist that she had not given permission for Joe to examine her. Does Maria have a legitimate complaint?

The principle of informed consent is one of those rules that is honoured more in its breach than in its compliance. Chiropractors know they are supposed to obtain informed consent and probably believe that they generally do obtain it, but some objective observers might disagree that patients have truly given an informed consent.

There are a number of reasons for this discrepancy in perception:

- **Chiropractors assume a level of sophistication** that often does not exist. In the above example, the chiropractor might assume that Maria knew when she was asked to disrobe that she was going to be physically examined by the chiropractor she had made an appointment to see. Most of the time that assumption would be correct. However, it is possible that Maria is not familiar with this routine



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(which Joe has followed hundreds of times). In addition, Maria may have assumed that the examination would not be as intrusive as the chiropractor planned it to be.

- **Chiropractors are rushed.** In today's environment of cutbacks and downsizing, there is tremendous pressure to "get through" patient visits.
- **Poor communication skills.** In the above example, Joe made a statement; he did not ask a question. Out of deference to the authority of the chiropractor, compliant patients will often not express their surprise as to what is happening at the time.
- **Ignorance of the requirements of informed consent.** While all chiropractors know that they need "informed consent," they may not always appreciate all that this entails. In the above example, Joe might be surprised that informed consent is needed for assessments as well as treatments.
- **The nature of the treatment or assessment.** Chiropractors must be careful not to assume that patients know what will happen next. While not always necessary, it is generally prudent to explain the nature of the assessment and the manner or mechanism by which any treatment works. It is in this area where Joe failed in his duty to Maria.
- **Who will be providing the procedure.** The patient will generally see who is administering the treatment. However, the patient should know whether the person is registered or not. It would also be prudent to tell the patient who will be administering the treatment ahead of time because some patients may feel uncomfortable in telling the person to stop the treatment and get someone else to do it. For some procedures, it is also prudent to communicate the gender of the person as well.
- **The reasons for the procedure.** The patient should understand the expected benefits of the procedure.

While most of the court decisions on informed consent relate to surgery, consent is needed for all assessments and treatments. Often, consent can be quite informal. For example, when chiropractors ask a patient a question about their medical history, the patient generally consents by answering the question. However, whenever a chiropractor touches a patient, or orders or administers a treatment, more formal steps must be taken.

A patient is entitled to know the following before any assessment or treatment is given:

- **The material effects, risks and side-effects of the procedure.** One court has described a material risk in the following way: *a risk is thus material when a reasonable person in what the [chiropractor] knows or ought to know to be the patient's position would be likely to attach significance to the risk or cluster of risks in determining whether or not to undergo the proposed therapy.* Thus, remote risks that are a mere possibility usually need not be disclosed unless the consequence is significant (e.g., death, paralysis, stroke).



- **The alternatives to having the procedure.** Often there is more than one option available. While the other options may not be preferred by the chiropractor, it is ultimately up to the patient to decide. For example, some options may be more intrusive, painful or expensive than others, which could influence the patient's choice. It is acceptable to explain why the chiropractor does not recommend the other options. The material effects, risks and side-effects of the alternative should also be explained in a general way. It is not acceptable to just provide the options the chiropractor is able to offer.
- **The consequences of not having the procedure.** Not having the procedure is an alternative to all patients. Therefore, patients should have an opportunity to consider the advantages and disadvantages of that option as well. This discussion should not create the impression, however, that the chiropractor is attempting to coerce patients to undergo the procedure.

In addition to the general aspects of an informed consent listed above, chiropractors should be sensitive to any particular concerns that an individual patient might have. If the chiropractor knows that the procedure could offend a religious, ethical or personal belief of the patient, that should be communicated as well.

For repetitive matters, it is acceptable to give patients a written description of the information the patient needs to know. This will often save considerable time. However, there should

always be some individual discussion with the patient after they have read the description to ensure that the patient understands the information and appreciates the consequences of each option. Some patients are functionally illiterate and hesitant to disclose this fact. The discussion with the patient should be sufficient to ensure that the information was comprehended. Simply asking "did you understand what you read?" is generally not sufficient.

Consent need not be obtained in writing from the patient. In many circumstances, such as a routine physical examination, a written consent is impractical. However, if a particularly risky procedure will be done, or if the patient appears unreliable, a written consent can help the chiropractor prove that he or she did obtain a proper consent. The consent form should be simple and easy to understand.

Written consent forms are not a complete defence to an allegation of failing to obtain an informed consent. The patient can still assert that the form was not clearly explained before his or her signature was obtained or that he or she did not understand what was signed. Therefore, the written consent should not be obtained in a rushed or routine fashion and should never be obtained at the time of the patient's initial registration with the office or clinic. However, a clear and simple consent form signed by the patient and witnessed by the chiropractor or another person places a heavy onus on the patient to explain why he or she signed the form without obtaining the explanation referred to.



If a written consent is not obtained, chiropractors should document in the chart that an informed consent was obtained verbally for particularly risky procedures or where the patient appeared unreliable.

If a patient does not understand any aspect of the informed consent process or does not appreciate the consequences of their choice, then the patient is said to be incapable. Where a patient is incapable, the chiropractor needs to obtain consent from a substitute decision maker. These are listed in priority order in the *Health Care Consent Act*, as follows:

1. The incapable person's court appointed guardian of the person, if the guardian has authority to give or refuse consent to the treatment.
2. The incapable person's attorney for personal care, if the power of attorney confers authority to give or refuse consent to the treatment.
3. The incapable person's representative appointed by the Consent and Capacity Board if the representative has authority to give or refuse consent to the treatment.
4. The incapable person's spouse or partner (which need not be a sexual partner).
5. A child or parent of the incapable person, or a children's aid society or other person who is lawfully entitled to give or refuse consent to the treatment in the place of the parent. This does not include a parent who has only a right of access and is not lawfully entitled to give or refuse consent

to treatment. If a children's aid society or other person is lawfully entitled to give or refuse consent to the treatment in the place of the parent, this paragraph does not include the parent.

6. A parent of the incapable person who has only a right of access.
7. A brother or sister of the incapable person.
8. Any other relative of the incapable person.
9. As a last resort, the Public Guardian and Trustee.

In general, the highest ranked substitute who is willing and able to provide consent becomes the decision maker. Chiropractors are generally able to rely upon the statements of friends and family members as to who is the appropriate substitute.

Consent to treatment is just one of three areas where chiropractors must be careful to have consent. Similar principles apply to the collection, use and disclosure of personal health information by chiropractors and to the billing of patients. Generally, patients have the right to know all material information and to make voluntary and informed choices about their personal health information and about the billing for the services provided to them.

CCO reminds members to review the consent standards of practice, including S-013: Consent, S-012: Orthotics, and S-017: Acupuncture.

