Unpacking Consent

Professional & Regulatory Obligations for Dietetic Practice

MODULE 2:
Informed Consent to Treatment

2017

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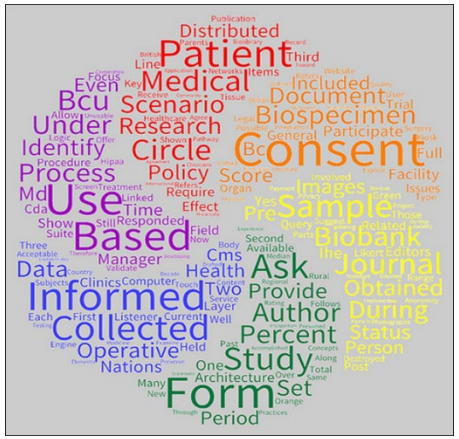
Contents

Section 1

Why do RDs Need Consent?



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It's the Law

Ontario

1. *Health Care Consent Act, 1996* (HCCA)

2. Professional Misconduct Regulation under *Dietetics Act, 1991*

Professional Misconduct

6. Doing anything to a client for a therapeutic, preventative, palliative, diagnostic, cosmetic, research or other health-related purpose in a situation in which a consent is required by law, without such a consent.

Professional Misconduct

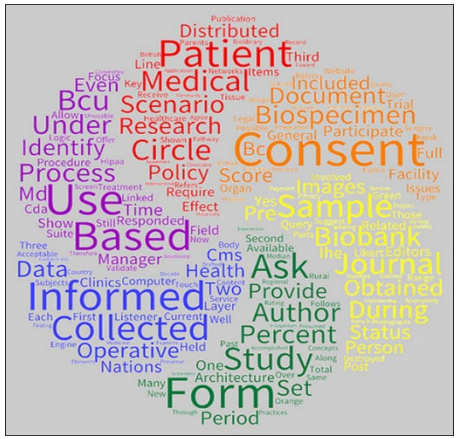
"5. Failing to maintain a standard of practice of the profession."

"22. Failing to keep records as required."


Client-Centred

Section II

When is Informed Consent to Treatment Required?



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What is Treatment?

"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.**"

Health Care Consent Act, 1996

Course of Treatment

Series or sequence of similar treatments administered over a period of time for a particular health problem.

Health Care Consent Act, 1996

Plan of Treatment

- Developed by one or more health practitioners
- Deals with one or more health problems currently and in the future
- Administration of treatment or course of treatment
- May include withholding or withdrawing treatment

Health Care Consent Act, 1996

Community Treatment Plan

A plan of treatment and supervision for a person who suffers from a serious mental disorder that is less restrictive than being detained in a psychiatric facility.

Mental Health Act, 1990

For a chart review or screen, RDs can rely on implied consent

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Consent to Treatment Includes…

a. Consent to variations/adjustments in the treatment, if benefits, risks and side effects are not significantly different from original treatment; and

b. Consent to the continuation of the same treatment in a different setting.

Heath Care Consent Act, 1996

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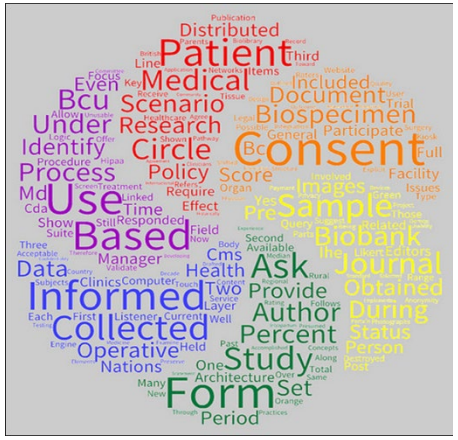
Section III

Obtaining Informed Consent



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Informed Consent Process

1. Information
2. Understanding
3. Respect Client Decisions
4. Interprofessional Collaboration

1 . Information

Six Elements for Informed Consent

1. Nature of treatment must relate to the specific treatment, including the assessment being proposed.

2. The expected benefits.

1 . Information

Elements of Informed Consent

3. Material risks & side effects (what is likely to occur, even if not serious or what is less likely to occur that is serious).

4. Alternative courses of action.

1 . Information

Elements of Informed Consent

5. Likely consequences of declining the intervention.

6. Specific questions or concerns.

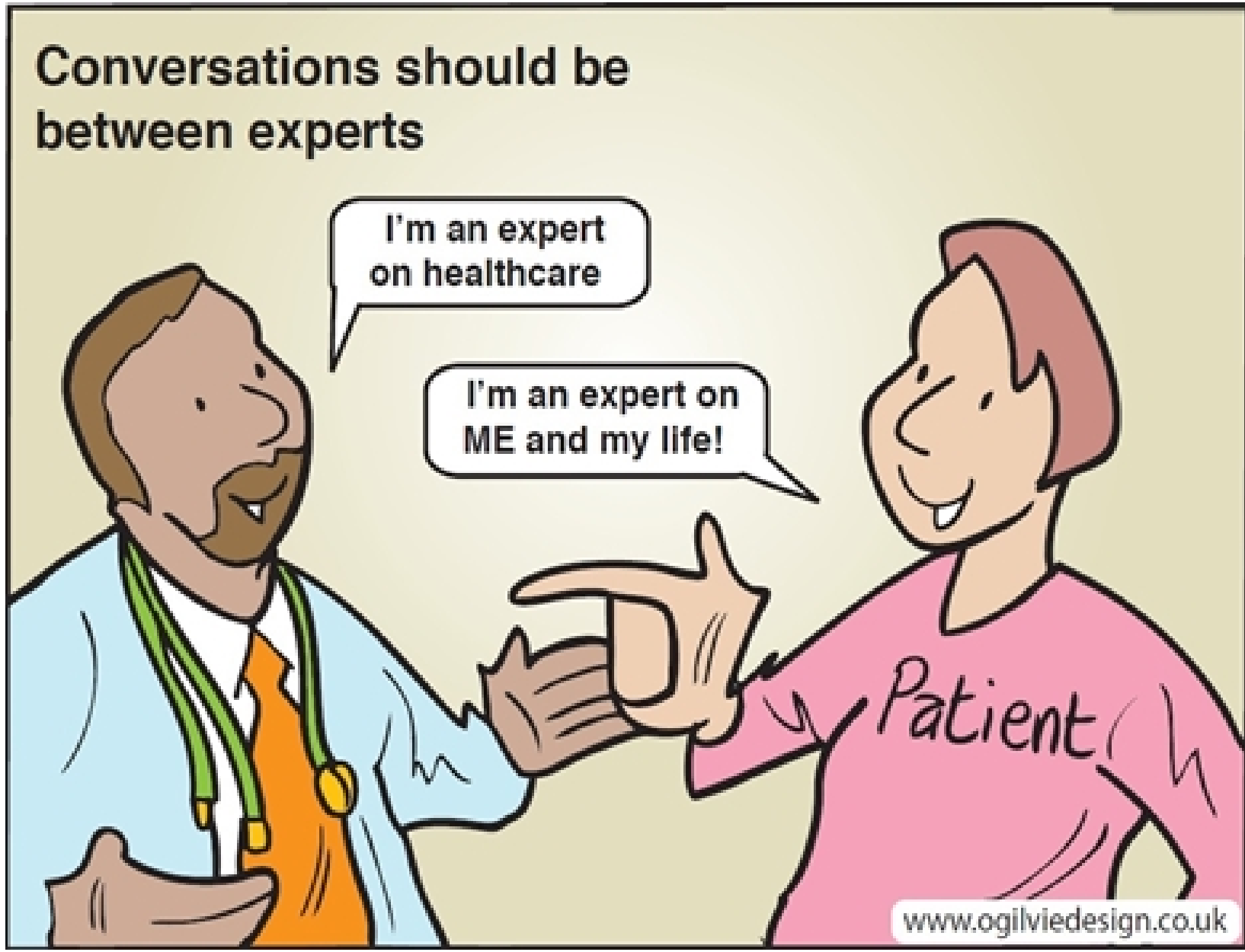
1 . Information

Consent must be given voluntarily

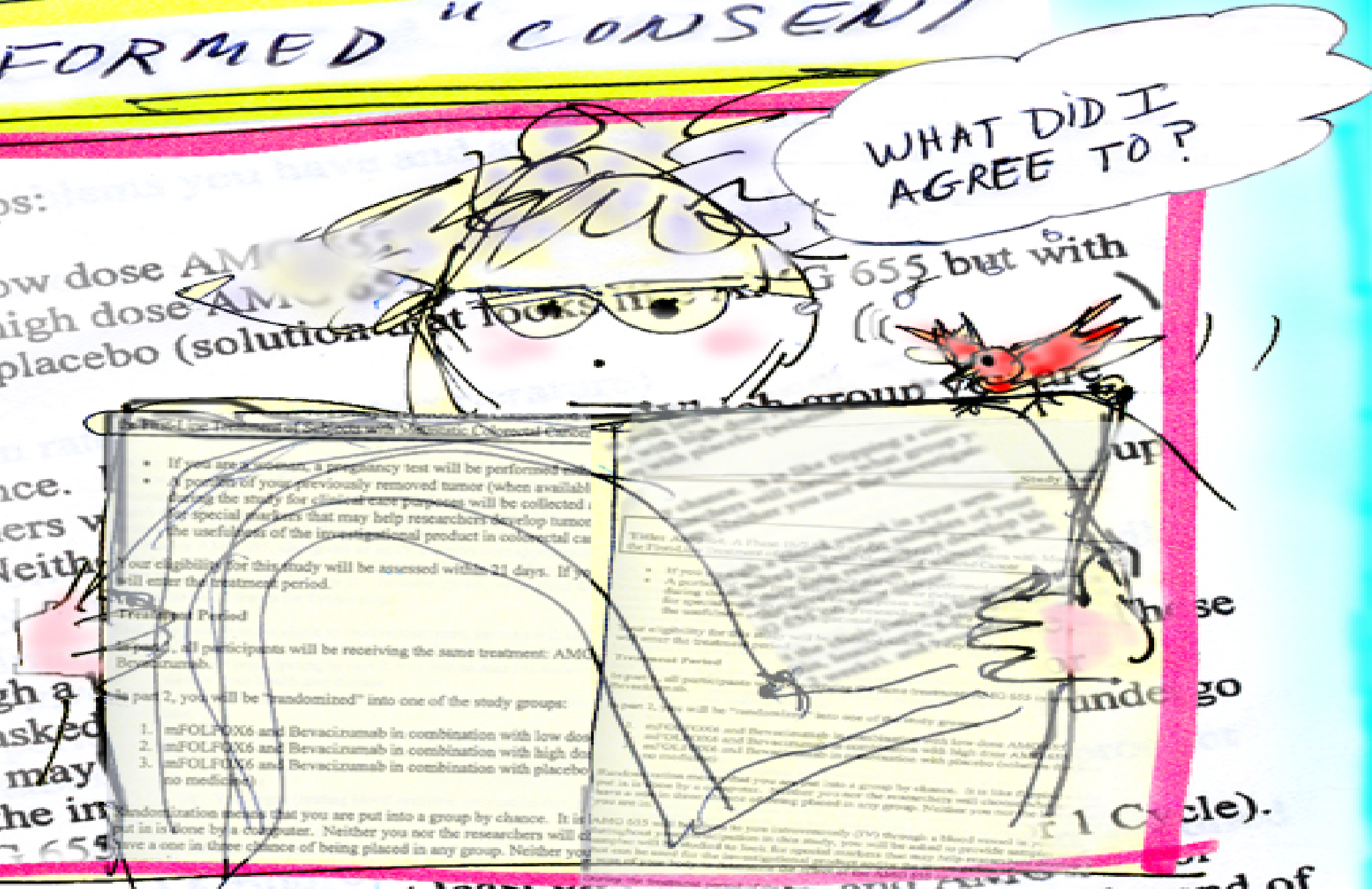
Informed Consent Process

2. Understanding

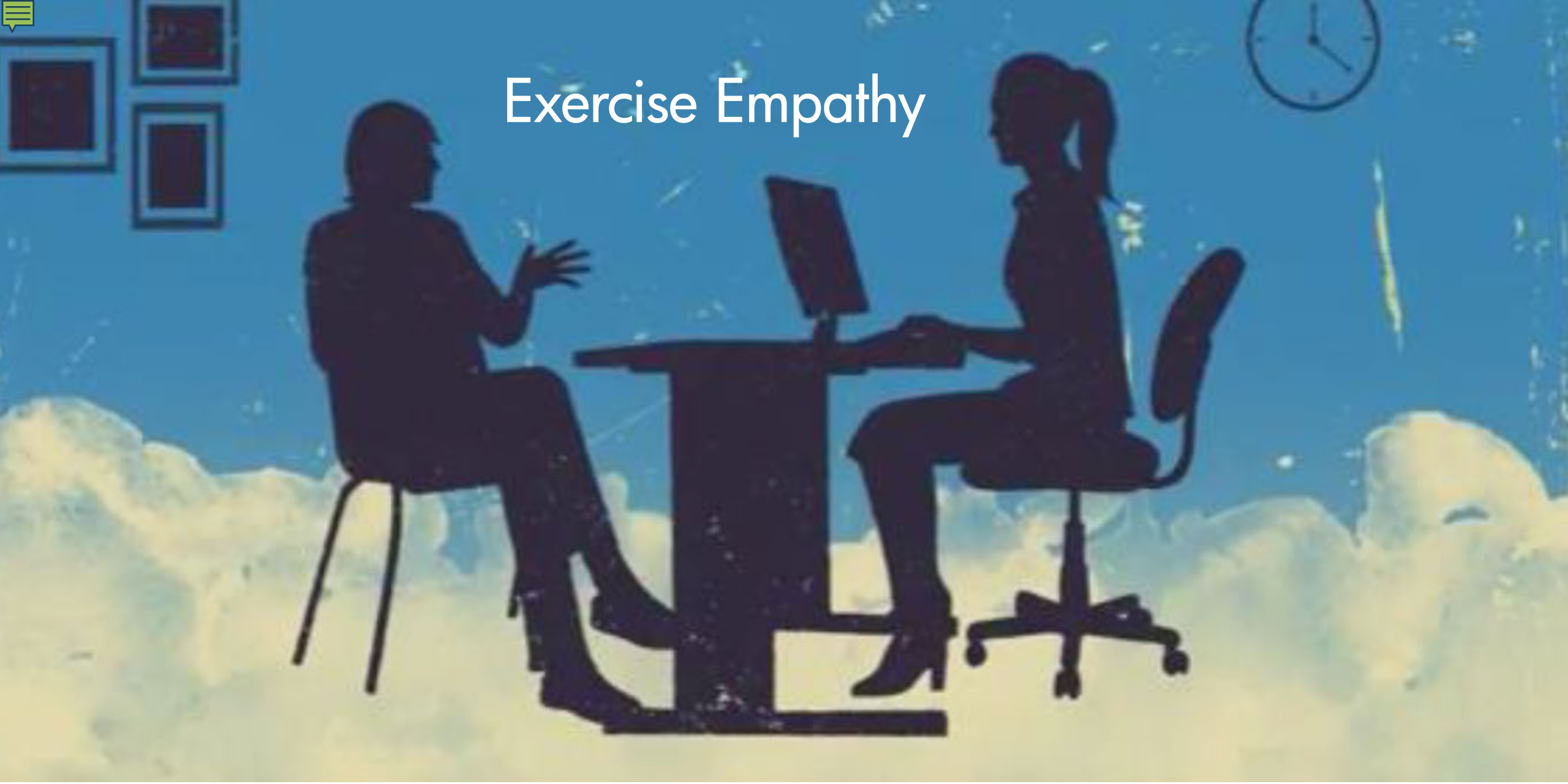
2. Understanding



"INFORMED" CONSENT



Exercise Empathy



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2. Understanding

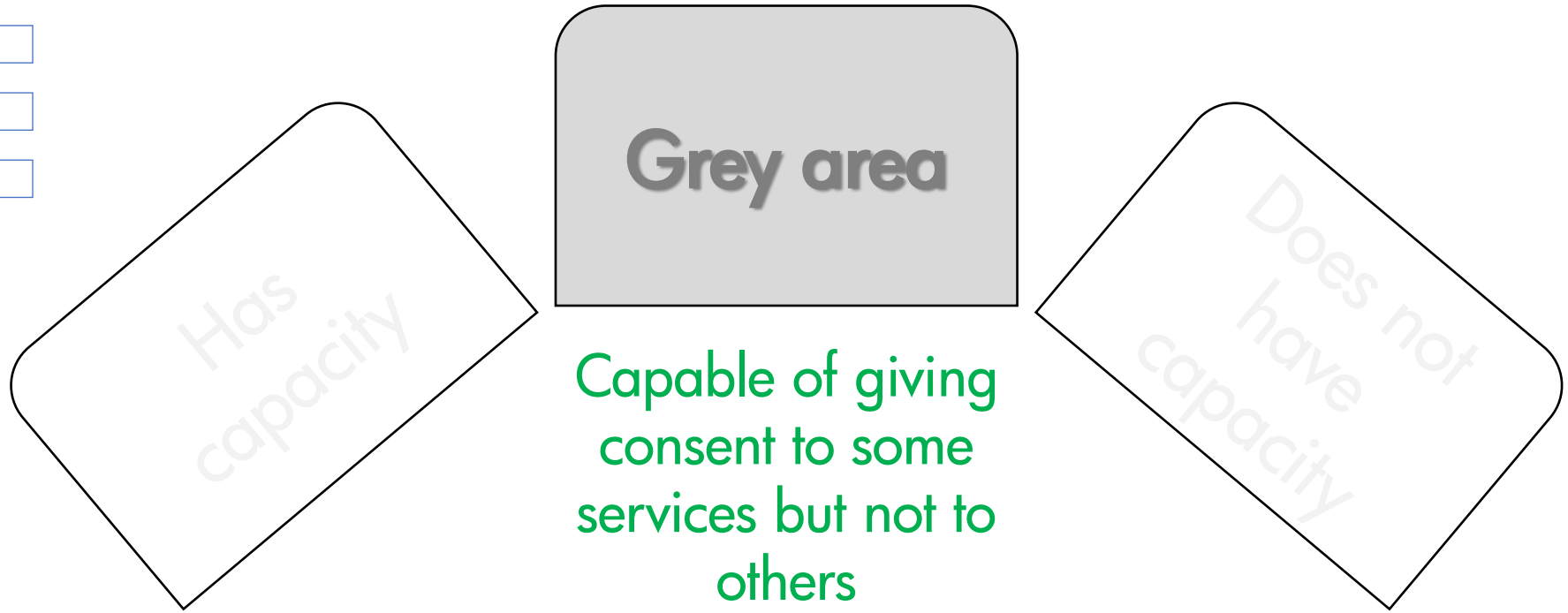
Capacity

Has capacity

Grey area

Does not have capacity

2. Understanding



Capable of giving consent to some services but not to others

Capable during some periods and not at others

2. Understanding

Definition of Capacity

A person is able to understand the information that is relevant and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Health Care Consent Act, 1996

2. Understanding

Able to Understand

- A person has the ability to factually grasp and retain information.
- A person must demonstrate understanding through communication.

(Capacity Assessment Office,
Ministry of the Attorney General of Ontario)

2. Understanding

Able to Appreciate

- Ability to **attach personal meaning** to the facts in a given situation.
- Appreciation focuses on the **reasoning process**.

(Capacity Assessment Office,
Ministry of the Attorney General of Ontario)

2. Understanding

Consent is based on capacity

2. Understanding

Who Determines Capacity?

- RD are responsible for determining a client's capacity based on observations
- RDs should not proceed if they question capacity
- RDs are not responsible for assessing general capacity
- Refer to another health care provider accordingly

2. Understanding

If a client is not capable, a substitute decision-maker must be identified

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Hierarchy of Individuals/Agencies

Involve the Client

Informed Consent Process

1. Information
2. Understanding
3. Respect Client Decisions
4. Collaborative Processes

3. Respect Client Decisions

Beneficence

- To do "good" and in the client's best interests

Autonomy

- Right to self-determination
- Right to make informed treatment decisions

(Beauchamp & Childress, 2001)

3. Respect Client Decisions

Client's right to self-determination

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3. Respect Client Decisions

Respect client refusal or withdrawal of consent

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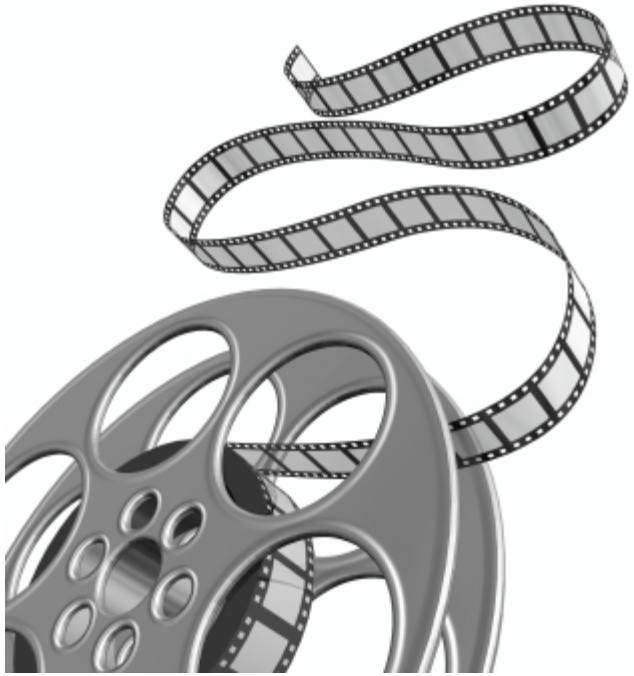
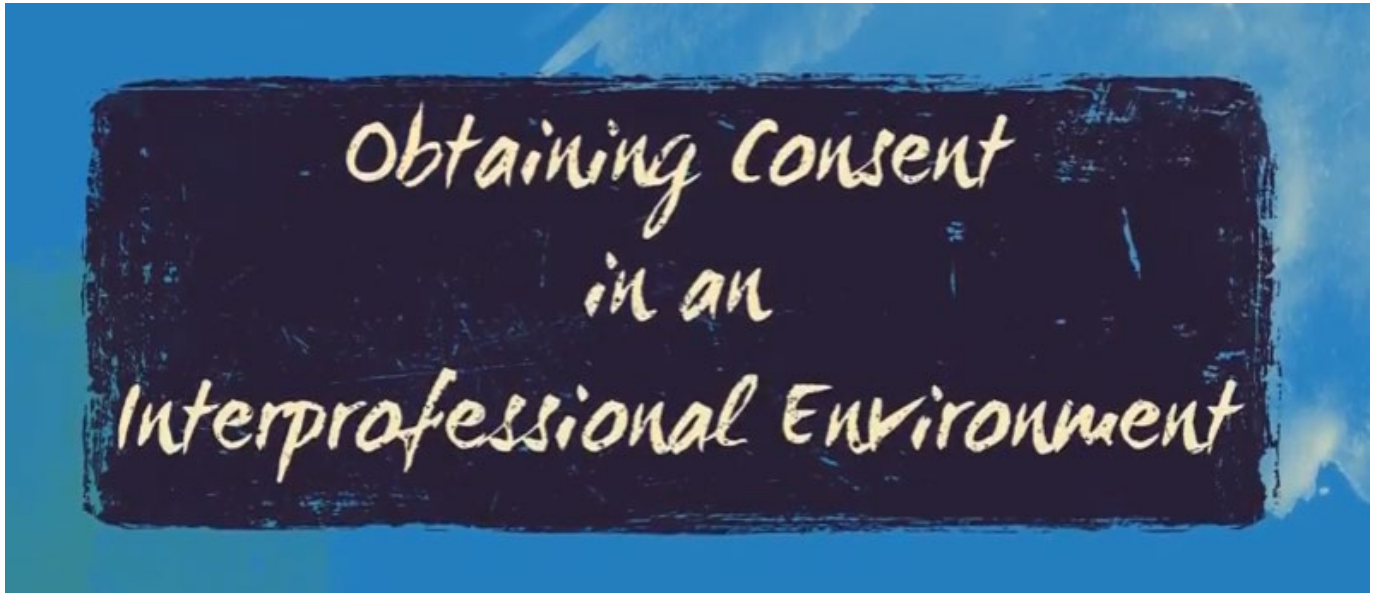
Informed Consent Process

1. Information
2. Understanding
3. Respect Choice & Decision
4. Interprofessional Collaboration (IPC)

4. IPC





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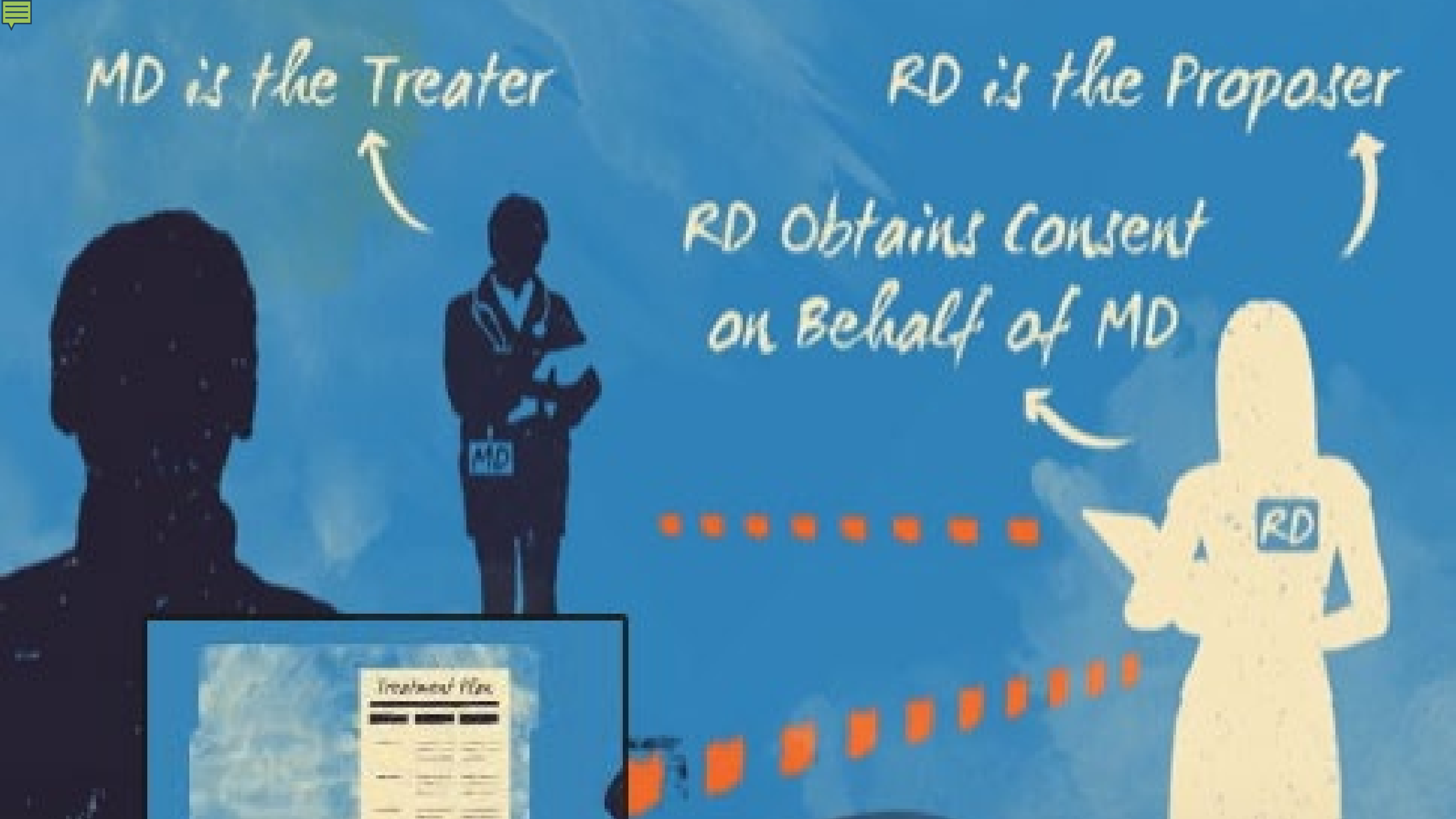
One health practitioner may obtain consent for the healthcare team


MD is the Proposer & Treater
MD Obtains Consent
RD Consulted for Expertise
MD
RD
I consent

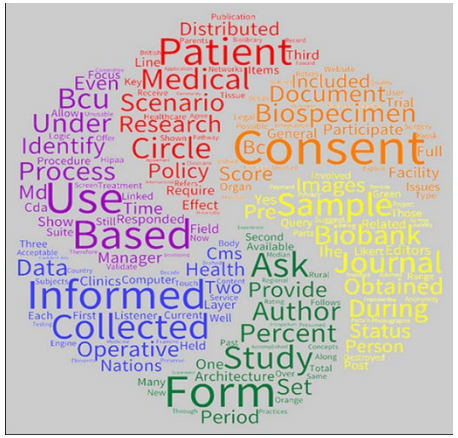

MD is the Treater
RD is the Proposer
RD Obtains Consent
on Behalf of MD
MD
RD
Treatment Plan

4. IPC

RDs should seek to understand their organization's processes for obtaining informed consent to treatment in a collaborative practice setting

Section IV

Express vs. Implied Consent



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Informed Consent

Express vs Implied

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Informed Consent
Express
or
Implied


Express
Oral
Written


Implied
Responses and Actions

Document express consent or refusal/withdrawal of consent

Exercise professional judgment to document implied consent


Be familiar with organizational processes
for documenting consent

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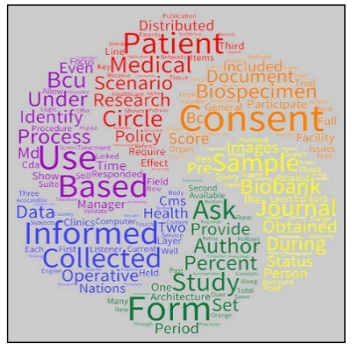
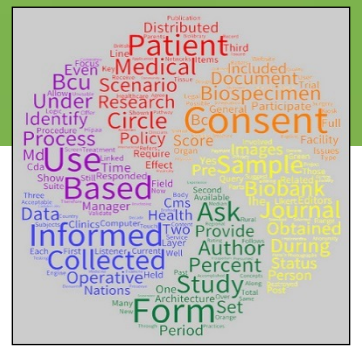
Summary

- Consent is required by law:
  - *Health Care Consent Act, 1996*: Treatment, including assessments
  - Professional Misconduct Regulation, under *Dietetics Act, 1991*
- Informed consent is always required except for emergencies
- Obtaining consent is a process supporting clients to make knowledgeable and informed decisions about their treatment.
- Clients have the right to refuse or withdraw their consent to treatment at any time.
- Understand organizational processes for obtaining consent to treatment and collaborate with other healthcare providers.



Section V: Scenarios

1. Interprofessional Collaboration
2. Custodial vs. Access Parent
3. Group Education
4. Continuation of Treatment
5. Right to Refuse
6. Questionable Capacity
7. Documenting Consent



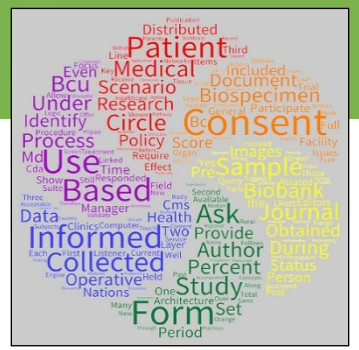
Scenario 1 – Interprofessional Collaboration

A pre-term infant has been admitted to the neonatal intensive care unit. The baby requires parenteral nutrition. Mom is currently unconscious at another hospital for treatment due to severe blood loss. Dad is with Mom.

What is the role of the RD to obtain consent?

Scenario 1 – Considerations

- Is this an emergency?
- If yes, treatment can be provided without consent
- If no, consent must be obtained by baby's SDM
- Who is the proposer and implementer of treatment?
  - If physician proposes, they obtain consent or the RD obtains consent on behalf of MD
  - If RD proposes, then the RD obtains consent



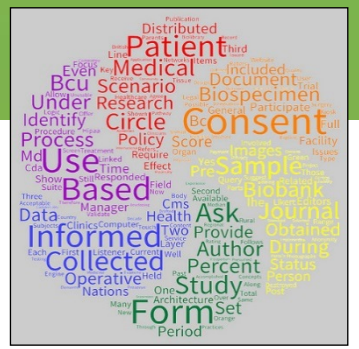
Scenario 2 – Custodial vs. Access Parent

Robert wants you to see his six year old daughter Kate right away who is with him for the day and has to be returned to her mother in the morning. He is concerned that Kate is not being properly fed by her mother and wants you to do an assessment. Robert is not the custodial parent.

How should you proceed?

Scenario 2 – Considerations

- Who is the custodial parent?
- Custodial parent is ranked higher than access parent
- RD must obtain consent to assess and treat from Kate's mother
- Know who custodial parent is when child's parents are separated or divorced
- Consider mandatory reporting obligations



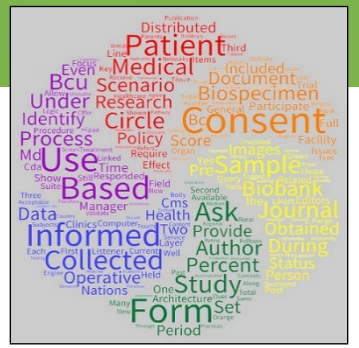
Scenario 3 – Group Education

A Public Health RD delivers a food skills workshop. Prior to the workshop, the community agency in which the workshop is being delivered registered 10 participants for the session.

What are the RD's responsibilities for obtaining participant consent?

Scenario 3 – Considerations

- Is the group education considered treatment?
- If so, RDs must ensure they or another health care practitioner obtains informed consent
- If not treatment, no consent is required
- At start of class, review outline of class and conduct expectations:
  - General nature; confidentiality; no individual counselling; may freely leave session



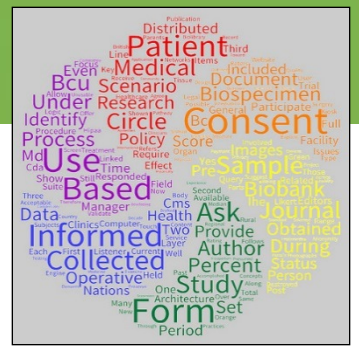
Scenario 4 – Continuation of Treatment

A new resident has been admitted to a long-term care (LTC) home. He was transferred from hospital and the chart notes that he is on a minced diet and tolerating well. After an initial assessment, the RD agrees with the same diet order.

Is consent required to continue the diet order in the LTC home?

Scenario 4 – Considerations

- Rely on presumed consent for same treatment in different facility
- No additional consent is required



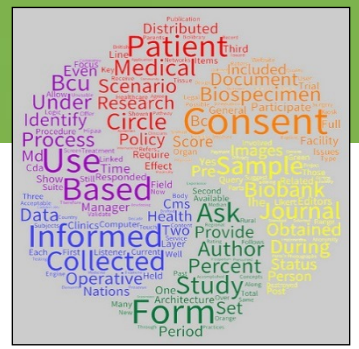
Scenario 5 - Right to Refuse

A home care RD has assessed a client and determined that they should be on a thickened fluid, pureed diet due to choking risk. The client's partner is the caregiver and SDM and refuses to give their spouse "baby food" due to previously expressed wishes of the client.

What are the RD's responsibility for obtaining consent?

Scenario 5 - Considerations

- SDM has the right to refuse treatment
- Refusal must be informed
- SDM must act in client's best interests (which can include known wishes of client when competent)
- Respect SDM decision unless reason to question
- Exception under section 37 of HCCA



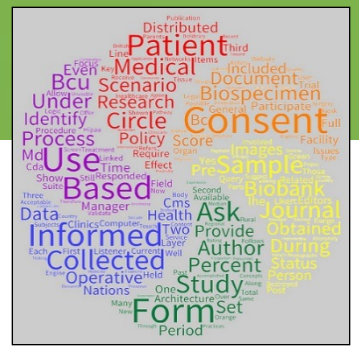
Scenario 6 – Questionable Capacity

An in-store RD has seen a client for individual counselling. Client has subsequently come into the store asking questions, called the RD on several occasions and seems confused at times. The RD has another follow-up appointment with the client in two weeks.

How should the RD proceed?

Scenario 6 – Considerations

- Does the client have capacity to consent to nutrition care?
- Establish if client already has substitute decision-maker
- Suggest a friend/family member accompany client
- Refer to primary care provider for capacity assessment



Scenario 7 – Documenting Consent

During an initial assessment in a CHC, an RD needs to take a waste-hip circumference of a client. The RD explains the process and the client then moves her clothes to ensure accuracy. Measurements are taken and goals for the client's nutrition care plan are established. The client agrees to work on these goals.

What are the RD's responsibilities for documenting consent?

Scenario 7 – Considerations

- Rely on implied consent for waist-hip circumference
- Use professional judgment when documenting implied consent
- Document implied consent in sensitive situations
- Oral express consent obtained for nutrition care plan
- RDs must always document express consent

Resources

- Jurisprudence Handbook for Dietitians in Ontario. (2015). Chapter 6 & 7
- Standards of Consent (2017)
- résumé newsletter articles:
  - Changes in the Plan of Treatment & Consent (2007)
  - Documenting Consent (2009)
  - Managing Conflicts Between RDs & Substitute Decision-Makers (2009)
  - Consent to Treatment Based on Capacity, Not Age (2011)
  - Consent Basics (2013)
  - Complex Issues & Consent to Treatment (2013)
  - Cultural Competence & Informed Consent (2013)

References

- *Health Care Consent Act, 1996*. https://www.ontario.ca/laws/statute/96h02
- *Dietetics Act, 1991, Professional Misconduct Regulation*. https://www.ontario.ca/laws/regulation/930680
- College of Dietitians of Ontario. (2016). *Standards of Consent*. http://www.collegeofdietitians.org/Resources/Standards/NormesConsentmentFevrier2016.aspx
- College of Dietitians of Ontario. (2017). Standards for Record Keeping. https://www.collegeofdietitians.org/Resources/Standards/Record-Keeping.aspx
- Capacity Assessment Office, Ministry of the Attorney General of Ontario. https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php

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