

Changes in the Plan of Treatment & Consent

At the long term care facility where Sam works as an RD, the feeding and swallowing team's recent assessment for one of the residents indicates that her plan of treatment for dysphagia now requires a change in diet texture and some specific seating and positioning techniques. Sam had several questions for the College.

Is a change in diet texture a treatment? Are seating and positioning used in her dysphagia management considered a personal assistance service or are they treatment?

In this scenario, the changes in diet texture, seating and positioning techniques are all considered treatment as they are given for therapeutic purposes in a plan of treatment for dysphagia. The *Health Care Consent Act, 1996* (HCCA) defines treatment as:

...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.

The Act makes it clear that, with some limited exceptions, consent is needed for treatment which, according to the definition above includes a plan of treatment. The HCCA defines a plan of treatment as a health plan that:

- (a) is developed by one or more health practitioners,
- (b) deals with one or more of the health problems that a person has and may, in addition, deal with one or more of the health problems that the person is likely to have in the future given the person's current health condition, and
- (c) provides for the administration to the person of various treatments or courses of treatment and may, in addition, provide for the withholding or withdrawal of treatment in light of the person's current health condition. (*HCCA, S.O. 1996, Chapter 2, Schedule A, Part 1 General, Interpretation*)

Is consent required for making diet texture, seating and positioning changes in the plan of treatment?

Yes, consent is required for making these changes in the

plan unless consent has previously been obtained for a plan of treatment that included various food textures as well as seating and positioning techniques. Except for emergencies, a client's consent for a change in treatment should never be presumed. The Registered Dietitian has an obligation to make certain that informed consent has been obtained from either the

client or her substitute decision-maker. If Sam and her team have already obtained consent for the plan of treatment needed to manage the client's dysphagia, they now need to revisit the consent previously given to ensure that it includes adjustments made to the plan. If not, a new informed consent must be obtained. Please remember that failure to obtain consent for any health treatment may be grounds for professional misconduct.

Elements of Consent to Treatment

From: Health Care Consent Act, 1996, c. 2, Sched. A, s. 11 (1).

The consent must relate to the treatment.

The consent must be informed.

The consent must be given voluntarily.

The consent must not be obtained through misrepresentation or fraud.

Should consent be obtained from the client or her decision-maker?

The client's capacity to provide consent is assumed unless there is a reason to believe that the client is not capable. If the client is capable of understanding the changes in her dysphagia treatment and has given consent, then Sam may proceed. If Sam considers that the client is incapable of understanding the

continued...

changes required, consent must be obtained from the client's substitute decision-maker who is authorized to give or refuse consent to a treatment on the client's behalf. Section 4, ss1, of the HCCA describes capacity as follows:

A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

Who obtains consent?

If a plan of treatment is proposed by a team, any member of the team may obtain the consent for treatment on behalf of the team. In consideration of the elements of consent, the professional who is obtaining consent must be able to describe the treatment, provide relevant information about the treatment and its alternatives and answer questions from the client or the substitute decision-maker. The professional who is recommending or ordering the treatment is often in the best position to obtain consent.

For more information about consent to treatment see:

CDO Guidelines: *Health Care Consent Act (HCCA)*, (n.d.) Available at www.cdo.on.ca > Resource Room > Publications > Guidelines

CDO Code of Ethics Interpretive Guide, at www.cdo.on.ca > Resource Room > Publications-> Professional Practice.

R. Steinecke & CDO: "Consent to Treatment". *Jurisprudence Handbook for RDs in Ontario*, Chapter 5, pp. 51-63.

R. Steinecke. "The Circle of Care & Consent to Treatment." *résumé*, Winter 2005, p. 9.

Legislation

Links to the legislation listed below are available at www.cdo.on.ca > Resource Room > Legislation.

Dietetics Act, 1991, Amended to O. Reg. 302/01, Professional Misconduct.

Ontario's Health Care Consent Act, addresses consent to treatment, admission to care facilities and personal assistance services.

Personal Health Information Protection Act deals with consent for the collection, use and disclosure of health information.

Substitute Decisions Act focuses on the transfer of decision making through Power of Attorney for property and personal care.

Dietitian a protected professional title

We wish to thank the Registered Dietitians who have brought to our attention individuals and organizations inappropriately using the dietitian title in Ontario. Here is a sampling of the RD protection cases at issue this year.

The Yellow Pages Group

Last year we reported on our work with the *Yellow Pages Group* in *résumé*, Winter 2006. As promised, the College is continuing its work with the *Yellow Pages Group* to ensure that only Registered Dietitians are listed under the headings of *dietitian* or *Registered Dietitian*. Last September, the College conducted an electronic search of www.YellowPages.ca and found that there were still many inappropriate listings appearing under the dietitian headings. As a result of this search, letters of warning about the misuse of the title were sent to individuals inappropriately listed. Results were surprising:

1. One person resigned from the clinic where she worked part-time and retired from her work as a dietitian as a result of receiving the letter. She had not realized that she needed a *Certificate of Registration* from the College to practice. She thought that being a member of *Dietitians of Canada* was sufficient. A Registered Dietitian will now be hired to fill this position.

2. During our investigation, we discovered that the hard copy of the directory does not mirror the online YellowPages.ca. On the internet, the Yellow Pages search engine clusters the search categories related to health and nutrition such as dietitian, registered dietitian, nutritionist, registered nutritionist, weight loss, kinesiology, health and wellness centres, fitness centres, health foods, etc. For example, when someone asks to be classified under the nutritionist heading, the search engine may automatically link them to a dietitian heading (also under the incorrect spelling of dietician). As a result, listings appear under various headings online that are not requested by clients in hard copy.

Many of the individuals who received the College letter did not realize that their listing appeared both in

continued...