College of Medical Laboratory Technologists of Ontario

Professional Practice Learning Program

Consent to treatment

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Introduction

This resource describes the underlying principles of consent to treatment and the important role medical laboratory technologists (MLTs) have in ensuring patients make informed decisions regarding their medical treatment[3]. This module provides a comprehensive overview of implied and informed consent, age of consent, and substitute decision-makers.

Health Care Consent Act, 1996

The Health Care Consent Act, 1996 (HCCA) applies to all MLTs and their professional practice. The HCCA is intended to provide guidance with respect to consent to treatment, define capacity, enhance patient authority and autonomy related to medical treatments, and promote effective communication between healthcare professionals[1]. The HCCA concepts that MLTs should know are:

1. Patients have the right to decide their treatment.
2. No treatment should be given to a patient without first obtaining consent, except in an emergency.
3. Consent must be informed and may be expressed or implied.
4. Consent can be withdrawn by the patient at any time.
5. Patients must be capable, in order to consent to their own treatment.
6. If a patient is incapable, treatment decisions may be made by a substitute decision-maker.
7. Healthcare professionals should involve the incapable patient, to the extent possible, in discussions with the substitute decision-maker.

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Consent to treatment

Under the HCCA, it is every healthcare professional's responsibility to obtain informed consent from patients. This means patients are given information about and to understand the following:

Key Concepts

Treatment

Anything done for a therapeutic, preventative, palliative, diagnostic, cosmetic, or other health-related purpose, and includes a course of treatment, plan of treatment, or community treatment plan[2].

Consent

The following elements are required for consent to treatment:

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

1. The nature of the treatment[2].
2. The expected benefits of the treatment[2].
3. The material risks of the treatment[2].
4. The material side effects of the treatment[2].
5. Alternative courses of action[2].
6. The likely consequences of not having the treatment[2].

Health practitioners who order laboratory tests are responsible for obtaining patient consent for sample collection and analysis[4]. MLTs can assume when a patient presents a requisition, they provided consent to have the relevant sample collected and tested by an MLT [4]. This is referred to as **implied consent**.

Every healthcare professional who provides care is responsible for ensuring consent is maintained, which includes answering any questions patients may have. A patient can withdraw consent at any time. **If a patient withdraws their consent, then treatment is immediately stopped.**

In specific circumstances outlined in the HCCA, healthcare professionals are permitted to administer treatment without a patient's consent. This includes situations such as when police obtain a warrant for a blood test to be

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performed, prioritizing a patient's urgent medical needs, or instances where patients lack decision-making capacity. These exceptions ensure that necessary medical treatments can be promptly provided to protect patients' well-being.

Effective communication and collaboration amongst healthcare professionals is essential for ensuring that patient needs are met, and their legal rights are respected[3]. MLTs should seek guidance if they are uncertain about consent, this may include engaging with colleagues, management, employer privacy officer, or the CMLTO.

Substitute decision-maker

A substitute decision-maker is a designated person who may make treatment decisions for a patient who is deemed incapable. A person may designate a substitute decision-maker in a Power of Attorney for Personal Care or consent may be given or refused on the person's behalf. Individuals can include:

- Guardian of the person (*Substitute Decisions Act, 1992*)
- Attorney for personal care appointed by the patient when capable
- Representative appointed by Consent and Capacity Board
- Spouse or partner
- Their child (over 16 years of age)
- Parent, including parent who only has right of access
- Brother or sister
- Any other relative
- Public Guardian and Trustee

The Office of the Public Guardian and Trustee (OPGT) under Ontario's Ministry of the Attorney General is responsible for protecting mentally incapable people. If there are no substitute decision-makers available, the OPGT's Treatment Decisions Unit will assist in making a decision. Additionally, the OPGT may be involved in a decision if there is a conflict between two or more

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persons who disagree whether to give or refuse consent on behalf of an incapable person.

A patient's ability to provide consent may vary over time or may be dependent on the treatment they are provided[8]. Thus, a patient could provide consent to one treatment, but incapable of providing consent to another[1].

Age of consent

If an individual is capable of making their own treatment decisions, they may consent to their own healthcare. This means they can understand the information that is relevant to making a treatment decision and appreciate the consequences of a decision or lack of a decision.

The HCCA does not set out a particular age of consent.

For example, a 15-year-old patient visits their doctor and receives a lab requisition was deemed capable to consent to their own medical treatment by the practitioner. As a result, no parental consent was required to proceed with testing. By contrast, if a child goes for a blood test with their parent, it was likely the parent who consented to the treatment. The child's reluctance to provide a blood sample does not affect the valid consent.

Key Concepts

Emergency

If the person "is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm[2]."

Capable

If the person is able to understand the information that is relevant to making a decision about the treatment, and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision. A patient's capability is not tied to their age as there is no minimum age of consent.

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If there is any doubt about whether a patient is capable of consenting to their own treatment or consent was withdrawn, the MLT should contact the ordering practitioner for more information.

Conclusion

MLTs must apply the principles of consent throughout their practice. While a patient's consent for laboratory testing may be obtained by an ordering practitioner, it is the MLT's responsibility to understand consent can be withdrawn at any time. Additionally, MLTs must recognize that there is no set age of consent and to understand the hierarchy of substitute decision-makers. These practices ensure that MLTs adhere and comply to the consent requirements outlined in the HCCA.

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