PRACTICE SUPPORT DOCUMENT ON INFORMED CONSENT AND ASSENT

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One of the cornerstones of psychological services is the practice of ensuring clients have been provided with sufficient information to be able to give their fully informed consent to receive the service in question. While there are core issues that will likely be part of any informed consent process, there may also be issues specific to a circumstance that need to be addressed, and each registrant is responsible for ensuring that their informed consent process is adequate for the specific circumstances of each client engagement.

Consent versus Assent

Consent and assent reflect different capacities of the client to accept or reject a service rather than reflecting the content or process of obtaining an agreement with the client. "Consent" applies when the client: (1) has been informed regarding, and understands, all relevant significant information that might influence their decision to accept or reject the service; (2) has the legal capacity to make the decision; and (3) has not been unduly influenced in their decision-making. Consent would also apply in the case where an individual has the legal authority to provide consent on behalf of another individual (e.g., a child). "Assent" is sought when the client lacks legal capacity to decide, is compelled by law to accept the service, or lacks the capacity to understand all relevant significant information that might influence their decision. A registrant seeking assent is expected to inform the client of relevant information to the fullest extent possible and appropriate, and thus in the case of someone who lacks legal but not cognitive capacity, the informed assent process will contain essentially the same information as informed consent. "Informed assent" in this case signifies the conditions under which the client agrees to the service.

The following questions are intended to assist registrants in considering issues relevant to identifying from whom informed consent must be sought and in taking the necessary steps to do so, and in considering what content should be included in the informed consent discussion.

Who is the client?

- Is the client, or one or more of the clients in the situation, a child?
    - If so, have you considered whether they are a mature minor who is able to give consent? ○ If you have determined the child is a mature minor, what are the implications for who you need consent from and who you will or will not share information with?
    - If the client is a minor who is unable to provide consent, from which party or parties do you need to obtain consent and what information will you share with whom?
    - If you are seeing the child over an extended period of time and you determine the child becomes a mature minor at some point during the period of your service delivery, what are the implications of this for how you will or will not share information from that point? Should you consider this issue in advance as part of your informed consent process? With whom might you need to revisit informed consent?
    - If the child was a minor at the time of the service and not the provider of consent, and later as a mature minor or adult seeks release of their file information, how will you handle this? What do you need to cover as part of your initial informed consent process to be prepared for this possibility?
    - What information should you be including as part of your informed consent and informed assent processes in order to ensure you are covering foreseeable circumstances such as those listed above?
- Is the client an adult but not legally capable of giving an informed consent?
    - On what basis have I determined that the individual lacks capacity to consent? Does this involve lack of legal capacity or lack of cognitive capacity?
    - What issues do you need to cover as part of your informed assent process with the individual?
    - What consequences does the individual need to be made aware of if they decide to proceed with your service?
    - What consequences does the individual need to be made aware of if they decide not to proceed with your service?
- Is there more than one client? If so, have you clarified your relationship with each client and how information will be handled?
    - If you are providing a service to more than one individual, such as providing therapy to a couple or family registrants, will you ever see one client without the other(s)? If so, what information do you need to provide to clients about how you will handle information arising in the solo context, including regarding your charting and confidentiality between individual and joint sessions?

    - What do you need to explain to clients regarding how you will respond in the event one client wishes to continue with your services and one does not?
    - What do you need to explain to your clients regarding how you will handle any future requests for file information, including when information release is requested and consented to by only one of the client parties?
    - Are you considering providing individual services to clients who know each other? If so, what do you need to consider regarding client welfare and whether you should agree to see more than your original client? If you consider proceeding with more than one of the individuals, what are the implications for information you need to cover to ensure the consent of each party is fully informed? If one potential client does not know about the other, what issues pertaining to protecting confidentiality need to be considered as you contemplate informed consent?
    - What agreement to preserve confidentiality might you seek from clients regarding information that is disclosed by others during a group session?
- Is the party who is paying for the service different than the recipient of the service?
    - If so, what do you need to consider in order to ensure consent is fully informed?
    - What information under what circumstances must be shared with the paying party as a condition of them paying?
    - Is there anything else in your agreement with the payor that needs to be disclosed to the service recipient as part of obtaining their informed consent to proceed? (e.g.s, Limits on coverage, who pays for a missed session, etc.)
- Is the service you are providing a file review on behalf of an organizational client?
    - Will you obtain the informed consent, or assent as relevant, of the person who is the subject of the file review or document why this is not possible or necessary in the circumstance?
    - Have you taken steps to clarify your professional obligations with respect to informed consent of subjects of your service with the sponsoring agency and, if necessary, made efforts to help the agency develop policies and processes that support your professional obligations?
    - What specific information do you need to ensure you cover as part of your informed consent and/or assent process in this circumstance?

What information do you need to provide to ensure consent and/or assent is fully informed?

- What specific information do you need to provide about the service?
- Are your fees clearly specified, including how you will handle missed or late-cancelled appointments, overdue accounts, and bill collection?
- Have you fully explained how you will handle confidential information, including who will have access to the information and how you will handle any requests for release of information?
- Have you considered the full range of possible future requests for release of information that should be considered as part of obtaining informed consent?
- If appropriate, have you disclosed collateral information you will have available to you (for example, when conducting an assessment at the request of a third party)?

- If appropriate, have you explained the limits of an assessment or therapy service you are undertaking (for example, when you have been contracted to address only specific assessment questions or to treat only a specific condition)?
- Have you fully and clearly explained the limits to confidentiality for the particular circumstance in which you are seeing the client, including all legal requirements for disclosing information, any contractual requirements you may have, and any other limits specific to your circumstance?
- If you work in a group or multidisciplinary setting where others potentially have access to your records (for example, a collaborative multidisciplinary group practice, hospital, or correctional facility), have you explained this to the client?
- Have you identified and disclosed any potential risks of the service, as appropriate, particularly if the service is innovative or novel?
- Have you provided information about alternative services, as appropriate?
- If you are offering services to a client at the direction of an organization (for example, an insurance company, hospital, or correctional facility), have you explained to the client their right to decline the service and any implications of proceeding or declining in order to ensure they are fully informed regarding the consequences of proceeding or declining to proceed?
- If the service is one you are supervising, has the supervised nature of the service, the identity of the supervisee, and your identity as the registrant who is responsible for the service been made clear to the client and, where applicable, to the third-party payer, as part of your informed consent process?
- If you are offering a service on behalf of a third-party payer, are there contractual or other considerations in this circumstance that affect how you will respond to a request for release of information that need to be included in your informed consent discussion?
- Have you explained your record keeping obligations, including for how long your client record will be kept and in the case of institutional records how the client can access their record?
- Have you informed the client that they can revoke consent and what this would mean in the circumstance? For example, what happens if a client wishes to revoke consent at some point during an assessment being conducted for a third party?

Has something changed since you entered into the professional relationship with the client?

- Has the client requested a change to the service?
- Has the client requested that information be released?
- Has a third party requested release of information?
- Has any other change arisen that requires you to revisit informed consent?

How are you documenting informed consent?

- Does your practice record include clear documentation regarding your informed consent process, including any signed releases executed by the client?

- Does your practice record include appropriate documentation of any times informed consent has been revisited with your client?
- Does your practice record contain documentation related to informed consent for any release (or withholding) of information, including specifically what is to be released and to whom, and any communication needed to clarify a request for release of information?
- Does your practice record contain documentation related to informed assent where applicable?
- If applicable, does your practice record contain documentation regarding action(s) you deemed necessary in the absence of informed consent? Is your decision-making related to proceeding without informed consent clear in your record?

Checklist

The following action checklist is intended further to assist registrants in developing appropriate informed consent and assent processes.

□ I have identified all relevant parties from whom I must seek consent and/or assent, including determining any issues of parental status and rights in any case involving children.

□ I have determined which of my potential clients have both the legal and cognitive capacity to consent, and have also considered whether they are free of undue influence. I will seek to obtain informed consent from those who are capable and are free of undue influence, and informed assent from those who are not.

□ I have determined all exceptions to the right of confidentiality in the specific circumstances of this client, the context, and my role.

□ I recognize that genuine informed consent involves not just getting a client to sign a form, but is the result of respectfully reaching an agreement with a client regarding the services they are seeking and my role in providing those services, and my informed consent process reflects this understanding.

□ If my informed consent process involves use of a form, I review the contents of that form with clients in order to ensure they understand the information it contains and have an opportunity to ask questions.

□ I have carefully considered the relevant information a client will need to be aware of in the circumstance in order to make a fully informed decision, and have a plan to convey this information in a fashion that is clear and understandable to the client, including using translation services or other communication aides as required.

- □ I have reviewed all legislation relevant to my practice in order to inform my identification of the information I provide in the process of obtaining informed consent, including issues related to confidentiality and its limits, record creation and maintenance, access to records, release of information, and from whom I must obtain consent.

- □ I maintain awareness of any changes to legislation relevant to my practice, consistent with my responsibility for keeping abreast of legal developments that affect my practice.

- □ My informed consent process includes the following elements:
    - □ a review of the proposed service, including any supervised elements and my responsibility for those elements, any innovative elements of the service, anticipated risks and benefits, alternative services, and any other elements of the service that could reasonably influence a person's decision to provide consent;
    - □ the limits of and exceptions to confidentiality, including any expected or intended uses of information obtained, how I will handle confidentiality issues involving multiple clients and/or third parties, and any legal exceptions to confidentiality;
    - □ how I will handle requests for release of information, including in what, if any, circumstances I will not seek the client's informed consent prior to releasing information;
    - □ any confidentiality issues related to common filing systems;
    - □ other relevant record keeping information, including how the client can access their record;
    - □ the client's right to ask any questions about the service and my training and experience;
    - □ the client's right to withdraw consent and/or to end service at any time and to request referral elsewhere;
    - □ my fees and any other charges, including interest charges on overdue accounts and my policy on responding to overdue accounts;
    - □ my policy regarding missed and late-cancelled sessions;
    - □ a statement that as part of routine practice I may occasionally consult with colleagues regarding my practices, and that if I do it will be for the purpose of benefiting the client and client confidentiality will be preserved;
    - □ my status as a registrant of the College, the College's role in regulating the profession, and how to contact the College in the event of any concerns;
    - □ a statement confirming the client has reviewed and understood the information about the service and has had an opportunity to ask any questions;
    - □ clear documentation in my practice record of the informed consent, including where possible the signed consent of the client(s);
    - □ the date on which the informed consent was obtained; and

- □ the date on which the consent will no longer be in effect.

□ In those cases in which a client lacks the legal capacity to accept or reject the service, is compelled or unduly influenced to accept the service, or lacks the capacity to understand all relevant significant information that might influence their decision to accept the service, I will seek their informed assent to proceed. My informed assent process includes the following:

- □ informing the client to the fullest extent possible regarding relevant significant information that might influence their decision to accept the service. "Fullest extent possible" means that my informed assent process will be the same as my informed consent process in those cases in which the client has the capacity to understand the information and there are no other impediments to my reviewing this information with them. Where a client has limited capacity, my process of obtaining their assent will be modified based on their cognitive capacity, but will endeavour to provide the fullest information possible;
- □ a clear description of what information will and will not be shared with specified others;
- □ any exceptions to expectations of confidentiality; and
- □ any other elements of informed consent deemed appropriate to review with the client in the circumstance and consistent with the cognitive capacity of the client.

□ In the event that I have determined I need to proceed without informed consent or assent, I will carefully document any steps I took to try to obtain consent or assent, and my rationale for proceeding without either.

□ I recognize that consent may need to be revisited over time as new circumstances arise in the professional relationship, such as a client request to alter a service, a request to release information, or a request to engage in something not initially agreed upon (e.g.s, consultation with another professional, responding to a lawyer's request for information, preparing a treatment summary, providing court testimony, etc.).