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Client Rights

Trawsnewid Addysg; Trawsnewid Bywydau
Transforming Education; Transforming Lives



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Client Rights

- Client Rights
- Informed Consent
- Duty to inform
- Confidentiality
- Access to Records

Client Rights

- Human Rights Act (1998)
- Summary of client rights in the NHS and under social services
 - To receive care and treatment (not absolute, £)
 - To receive a reasonable standard of care and treatment
 - To give or withhold consent to treatment and/or care
 - To confidentiality
 - To access health and personal social services records
 - To complain
 - To receive rights recognised in the Human Rights Act (1998)

Client Rights: Consent and Giving Information

- Duty to give information to the patient prior to consent
 - Failure to provide sufficient information could lead to patient suing for trespass OR action for negligence.
- Actual giving of consent
 - Possibility that a trespass to the person has occurred because the patient did not give consent to the treatment

Client Rights: Trespass to the Person

- Assault
"to act in such a way that the claimant believes they are about to be attacked"
- If the individual apprehends a touching of their person
- Battery
"the intentional and direct application of force to another person"
- If the individual is actually touched and has not given consent
- Sued for compensation in the civil courts OR
- Prosecution could be sought in criminal cases
- Victim has to prove
- The touching or apprehension of touching
- (Potentially) direct interference with their person – NO HARM HAS TO HAVE OCCURRED

Client Rights: Trespass to the Person

- The only defence YOU HAVE to an action of trespass to the person is:
- **THAT CONSENT WAS GIVEN BY A MENTALLY COMPETENT PERSON**
- Other defences in law
 - Statutory authorisation (Mental Health Act, 1983)
 - The common law power to act out of necessity
 - Rarely applied in sport

Client Rights: Informed Consent

- For consent to be valid the person giving it must be:
 - Mentally competent
 - Over the age of 16 years
 - Gillick competent
- Consent must be gained without ANY
 - Duress
 - Force
 - Deceit

Client Rights: Informed Consent

- Giving consent
 - Word of mouth
 - In writing
 - Implied (!)
 - Nonverbal conduct of the patient may indicate they are giving consent (co-operation)
- Where procedures entail risk and/or where a dispute is likely over whether consent was given
OBTAIN CONSENT IN WRITING

Client Rights: Informed Consent

- Consider using templates for common treatments
 - ‘Therapeutic ultrasound (TUS) is a
 - The risks of TUS are ...
 - The benefits of TUS are ...
 - I have read and understood the information above
 - I have been given the opportunity to ask questions
 - I am happy to proceed with the treatment
 - Signed, Print Name, Date
 - Keep in the patient’s notes

Clients Rights: Withdrawal of Consent

- A person who gives consent can withdraw it at any time
- May need to get a signature against a statement where an action is contrary to clinical advice (e.g. Patient returns to sport against advice)
- Where a refusal to sign such a declaration is refused GET ANOTHER PROFESSIONAL TO WITNESS IT and a record of it should be kept with a signature from both professionals

Client Rights: Refusal to Consent

- A patient may refuse consent to perform a treatment, procedure or examination on ANY grounds.
- These must be upheld by the therapist and alternatives provided
 - Consider the patient who is unhappy with:
 - The risks
 - The environment
 - The equipment
 - Their positioning/state of undress for access
 - Your level of competency

Duty to Inform

- Part of your duty of care in the law of negligence is the duty to inform the patient of ANY risks of substantial harm which could occur if the intervention proceeded
- If harm was not explained and then harm occurs, the patient can claim that, had they known they would not have given consent
- Patient can bring an action of NEGLIGENCE

Client Rights: Confidentiality

- Your employer and your SST code of conduct both provide governance of confidentiality
- The health professional owes a duty to the patient to retain information given to them in confidence
- Anything the patient tells you is in the strictest of confidence (Spycatcher case, House of Lords)
- *Whatever, in connection with my professional service, or not in connection with it, I see or hear, in the life of men, which ought not to be spoken of abroad, I will not divulge, as reckoning that all such should be kept secret.*
 - Hippocratic Oath

Clients Rights: Exceptions to Confidentiality

- Consent of the patient
- Disclosure in the clinical care or the interests of the patient
- Court order
 - Subpoena
 - Under the supreme court act (1981) typically where therapist is the defendant
- Statutory duty to disclose (communicable diseases, births and deaths, poisonings/H&S, terrorism etc)
- Disclosure is in the public interest (psychiatry)

Client Rights: Dilemma

- A patient is HIV positive but refuses to disclose this information to his therapist.

Client Rights: Dilemma

- A patient is HIV positive but refuses to disclose this information to his therapist.
- Does this non-disclosure:
 - Determine the choice or effectiveness of treatment selected by the sports therapist?
 - Require more than the standard universal precautions for contaminated waste/transmission of infection?
- Does this mean that the therapist should disclose their HIV status to their patients?

Client Rights: Confidentiality

- Are the records securely stored with restricted access?
- If access is requested – who is requesting it?
- What are their reasons for the request?
- What is their relationship to the patient?
- Has the patient given consent?
- Is the patient under the care of a consultant?
- Has the consultant been asked to permit disclosure?
- Is there a duty in law to disclose?
- What should be recorded about the request and the response?

Client Rights: Conclusion

- To give and withdraw consent where benefits and risks have been fully explained
 - Trespass to the person
 - Assault
 - Battery
- Confidentiality