General Chiropractic Council

GCC Registrant Guidance

Consent

July 2022

Introduction

1. This guidance must be read in conjunction with the General Chiropractic Council's (GCC) **Code**, which sets out the standard of conduct, performance and ethics for chiropractors to ensure the competent and safe practice of chiropractic.
2. This guidance is not intended to cover every situation that you may face. However, it does set out broad principles to enable you to think through and act professionally to help protect patients and the public.

What principle and standards does the GCC set in relation to consent?

3. The following parts of the GCC Code are relevant to the consideration of consent:

Principle E:

Obtain informed consent for all aspects of patient care

Standards

E1:

Share with the patient accurate, relevant and clear information to enable the patient to make informed decisions about their health needs and relevant care options. You must also take into consideration a patient's capacity to understand

E2:

Obtain and record consent from a patient prior to starting their care and for the plan of care

E3:

Check with the patient that they continue to give their consent to assessments and care

E4:

Ensure the consent of a patient is voluntary and not under any form of pressure or undue influence

E5:

Seek parental consent first if a child is to be seen without someone else being present unless the child is legally competent to make their own decisions

E6:

Always obtain a patient’s consent if it becomes necessary for the purposes of examination and treatment during care, for you to adjust and/or remove items of the patient’s clothing

E7:

Obtain and record the express consent (i.e. orally or in writing) from the patient regarding sharing information from their patient record. You must not disclose personal information to third parties unless the patient has given their prior consent for this to happen

Other standards in The Code that reinforce and link to the principle above:

C7:

Follow appropriate referral procedures when making a referral or a patient has been referred to you; this must include keeping the healthcare professional making the referral informed. You must obtain consent from the patient to do this

C8:

Ensure that investigations, if undertaken, are in the patient’s best interests and minimise risk to the patient. All investigations must be consented to by the patient. You must record the rationale for, and outcomes of, all investigations. You must adhere to all regulatory standards applicable to an investigation which you perform

D3:

Explain the reason to the patient if there is a need for the patient to remove items of clothing for examination; if that needs to happen, you must offer the patient privacy to undress and the use of a gown

D4:

Consider the need, during the assessments and care, for another person to be present to act as a chaperone; particularly if the assessment or care might be considered intimate or where the patient is a child or a vulnerable adult

F3:

Involve other healthcare professionals in discussions on a patient’s care, with the patient’s consent, if this means a patient’s health needs will be met more effectively

H2:

Only disclose personal information without patient consent if required to do so by law

H3:

Ensure your patient records are kept up to date, legible, attributable, *and truly representative of your interaction with each patient*

What is consent?

4. At its heart, it is about respect for the autonomy of a patient. To impose care or treatment on people without respecting their wishes and right to self-determination is not only unethical but illegal. Consent refers to the acceptance by a patient of a proposed intervention, having been informed of all relevant factors relating to that intervention, in a way they can understand and have had the opportunity to discuss this.
5. Patients have a right to be involved in decisions about their treatment, and the process of seeking and obtaining consent from the patient is a fundamental part of respecting a patient's rights.
6. It is a general legal and ethical principle that valid consent must be obtained from a patient before starting the assessment or care of a patient.
7. A chiropractor who does not obtain valid consent from a patient may be liable both to legal action by the patient and fitness to practice proceedings from the GCC. Consent is an ongoing process, not a one-off event and it is important to note that a patient has the right to withdraw their consent at any time.

Types of consent

There are two types of consent:

8. **Explicit (or 'express') consent**: When a patient gives specific permission to do something either written or orally.
9. **Implied consent**: When a patient indirectly indicates their agreement to undergo a procedure, for example, non-verbal actions such as offering their arm in response to a proposal to carry out a blood pressure test.
10. Implied consent amounts to valid consent if the patient knows and understands what they are agreeing to. If you are unsure whether you have valid consent, you should seek explicit consent before proceeding.

Obtaining valid consent

11. For consent to be valid, you must ensure that the patient:
    - is acting voluntarily and not under any form of duress
    - has sufficient and balanced information to enable them to make an informed decision
    - is capable of using and weighing up the information provided
    - has the capacity to give consent (See paragraphs 20-38)

12. **Voluntary Consent**: You must ensure that the patient's consent is given voluntarily and not under any form of pressure or influence. Patients must not be pressured by a chiropractor, any member of their staff, patients' relatives or carers, or others to accept a particular investigation or treatment. You should be aware of this and other situations in which patients may be vulnerable. Such situations may be, for example, if they are resident in a care home or subject to mental health legislation.
13. The information you provide to the patient must be clear, accurate and presented in a way that the patient can understand. For example, when giving a patient specific information, you must consider any disabilities and be mindful of any literacy or language barriers they may have.
14. You must not make assumptions about a patient's level of knowledge nor assume that all patients can comprehend information in the same way. You must be sensitive to varying levels of ability to understand and assimilate information, and you must allow patients the opportunity to ask questions and reflect on their options.
15. Some patients may need more time to absorb the information you are providing and to reflect before making a decision. It is important you allow the patient time to do this.
16. Obtaining consent is an on-going decision-making process between you and your patient. It should be part of on-going communication and not something that happens in isolation at the start of treatment. You should ascertain that the patient has consented to all forms of assessment and care you are providing.
17. Patients must be fully informed about their care. You must not rely on a patient to ask questions about their care; the responsibility to fully inform patients lies with you. This includes making sure the patient is fully aware of any risks, as well as the benefits involved in the recommended treatment.
18. When explaining risks, you must provide the patient with clear, accurate and up-to-date evidence-based information about the risks of the proposed treatment, and the risks of any reasonable alternative options. Risks may include adverse events that occur often, those that are serious, and those that a patient is likely to think are important.
19. The patient can withdraw their consent at any time. You must acknowledge their decision and the choices exercised by the patient must be respected. You should explain the consequences of their decision, but you must make sure you do not pressure the patient to accept your advice.

Capacity

20. For consent to be valid it must be given by a patient who has the capacity to give consent.
21. Capacity refers to the ability of a patient to:
    - understand and retain the information provided
    - use and weigh up information that is relevant to their health needs
    - communicate their wishes to the chiropractic professional
22. England and Wales are governed by the Mental Capacity Act 2005[1], Scotland is governed by the Adults with Incapacity (Scotland) Act 2000[2] and Northern Ireland is governed by common law which requires that decisions must be made in a patient's best interests.

Assessing Capacity

23. You must start with the presumption that adult patients have the capacity to make their own decisions and to give consent for a service or treatment.
24. You must make an assessment of your patient's capacity on their ability to make a specific decision at the time it needs to be made.
25. You must not assume that a patient lacks the capacity to make a decision solely because of their age (see paragraphs 34-38 regarding young people and children), disability, appearance, behaviour, medical condition (including mental illness), beliefs, their apparent inability to communicate, or the fact that they make a decision that you disagree with.
26. Capacity may fluctuate over time, and you must not assume that because a patient lacks the capacity on one occasion or in relation to one type of assessment or care, they lack the capacity to make all decisions.
27. A patient's capacity to provide consent may be temporarily affected by other factors, such as illness, fatigue, shock or the effects of drugs or alcohol. However, this should not lead to an automatic assumption that the patient does not have the capacity to consent.
28. In some situations, it may be appropriate to defer any decision to proceed with assessment and care until the temporary effects subside and capacity is restored.

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[1] Mental Capacity Act 2005, Government Legislation 2005, http://www.legislation.gov.uk/ukpga/2005/9/contents

[2] Adults with Incapacity (Scotland) Act 2000 Adults with Incapacity (Scotland) Act 2000 (legislation.gov.uk)

Adults without capacity

29. You should only regard a patient as lacking capacity once it is clear that, having been given all appropriate help and support, the patient is unable to do any of the matters listed in paragraph 21 above.
30. If your patient is unable to make decisions for themselves, the law sets out the criteria and processes to be followed in the Mental Capacity Act 2005 and the Adults with Incapacity (Scotland) Act 2000. Northern Ireland is governed by common law which requires that decisions must be made in a patient's best interests.
31. If you believe a patient lacks the capacity to make decisions for themselves, you must take account of the advice on assessing capacity in the Codes of Practice that accompany the Mental Capacity Act 2005 or Adults with Incapacity (Scotland) Act 2000. These set out who can make decisions on the behalf of patients, in which situations, and how they should go about it.
32. If you are unsure about a patient's capacity, you should get advice from your employer, other senior colleagues or health and social care professionals. If you are still unsure, you should seek advice from your professional association or obtain legal advice.
33. Any advice you receive, or assessments carried out, should be recorded in the notes you keep about the patient along with the outcome.

Treatment of young people and children

34. Young people and children should be involved as much as possible in decisions about their care, even if they are not able to make decisions on their own.
35. Young people (aged 16 or 17) are presumed to have sufficient capacity to make decisions about their treatment and care unless there is significant evidence to suggest otherwise.
36. Children are not presumed to have the capacity to consent. However, children under the age of 16 can consent to their own treatment if they are believed to have enough intelligence, competence and understanding regarding the nature and implications of treatment. This is known as being *Gillick competent*. It is, however, good practice to involve the child's family in the decision-making process, if the child consents to their information being shared.
37. As a professional, you must decide whether the child is *Gillick competent*. It is therefore imperative that you assess maturity and understanding individually.
38. If you do not believe a patient of 16 or under is competent and does not have the capacity to provide consent to their treatment, you must gain consent from someone with parental responsibility for the individual, and that person must have the capacity to consent as laid out above.

Documenting Consent

39. You must ensure that the consent provided by the patient is documented before commencing any assessment or care.
40. You must use the patient's chiropractic records or a dedicated consent form to document the key elements of your discussion with the patient. Standard consent forms must document the key discussions held with the patient otherwise they are unlikely to be adequate. Keeping the patients' records up to date is important for continuity of care.
41. You should document all the information discussed, any specific requests or concerns expressed by the patient, any written, visual, audio information or other support given to the patient, and details of any decisions that were made.
42. The documenting of all information discussed applies to new patients and first appointments; after such and at each appointment thereafter you are required to update the patient's record and document all relevant and pertinent information and discussions.

Intimate examinations and/or treatment

43. For the purposes of examination and/or treatment, removal of items of the patient's clothing may be necessary.
44. Explain clearly to the patient why this is necessary and allow the patient to ask questions.
45. You must obtain the patient's consent prior to any removal of clothing and document that the patient has given it.
46. If dealing with a young person or child, you must assess their capacity to consent as set out in paragraphs 34-38.
47. You must give the patient privacy to undress and dress and offer a gown to the patient to maintain their dignity.
48. Extra care must be taken if the removal of patient clothing is necessary as part of the examination of an intimate area. Do not help the patient remove clothing unless they are unable to do this for themselves. Bear in mind that cultural differences mean that views on what constitutes an intimate examination may differ.

Chaperones

49. If assessment and/or care involves an intimate area, you should offer the patient the option of having a chaperone present wherever possible.

50. The presence of a chaperone, who is acceptable to both the chiropractor and patient, can provide emotional comfort and reassurance to the patient and be a safeguard for both patient and chiropractor.
51. It may also be appropriate to offer a chaperone in other circumstances, such as consultation with particularly vulnerable patients.
52. If either you or the patient does not want the examination to go ahead without a chaperone present, you may offer to delay the examination and/or treatment to a later date, as long as this would not negatively impact the patient's health.
53. If you do not want to go ahead without the presence of a chaperone, but the patient has declined the offer, you must explain clearly why you want a chaperone present and address any concerns they may have. If the patient still declines, you will need to decide whether or not you are happy to proceed in the absence of a chaperone.
54. You should document any discussions about chaperones. If a patient does not want a chaperone, you should document that a chaperone was offered and declined, together with a rationale for proceeding in the absence of a chaperone.

Useful Links

- Mental Capacity Act 2005, Government Legislation 2005, http://www.legislation.gov.uk/ukpga/2005/9/contents

  Mental Health (Care and Treatment) (Scotland) Act 2003, Government Legislation, 2003, http://www.legislation.gov.uk/asp/2003/13/contents
- Adults with Incapacity (Scotland) Act 2000, Adults with Incapacity (Scotland) Act 2000 (legislation.gov.uk)
- Reference Guide to Consent for Examination, Treatment or Care, Department of Health, Social Services and Public Safety, Northern Ireland, 2003, http://www.dhsspsni.gov.uk/public_health_consent
- Reference Guide to Consent for Examination, Treatment or Care, Department of Health, second edition, dh_103653__1_.pdf (publishing.service.gov.uk)
- Guide to consent for Examination and Treatment, Welsh Government 2017, Welsh Government Guide to Consent for Examination or Treatment (July 2017).pdf (wales.nhs.uk)
- Consent to Treatment – NHS, Consent to treatment - NHS (www.nhs.uk)
- GMC, 2020 Decision making and consent,
- Pharmaceutical Society NI, 2019 Guidance on Patient Consent,
- In Practice: Guidance on Consent, General Pharmaceutical Council, 2018 in_practice_guidance_on_consent_june_2018.pdf (pharmacyregulation.org)

- Supplementary Guidance on Consent, General Optical Council, 2017, **Supplementary guidance on consent (optical.org)**

Previous editions

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General Chiropractic Council
Park House
186 Kennington Park Road
London
SE11 4BT

T: +44 (0) 020 7713 5155
E: **enquiries@gcc-uk.org**
W: **www.gcc-uk.org**