PHYSIOTHERAPY PATHWAY
WAHT-TP-011

Worcestershire Acute Hospitals NHS Trust

Referrals/consent pathway – consent for therapy services

Owner:	Benjamin Thomas Physiotherapy and Orthotics Manager
Approved by	Therapies Clinical Governance Approval Group
Approval Date	20th June 2023
Review Date	20th June 2026 This is the most current document and should be used until a revised version is in place

Key Amendments

Date	Amendments	Approved by:
25th January 2023	Document extended to 30th June 2023 whilst under review.	Dr J Trevelyan/ Benjamin Thomas
20th June 2023	Minor amendment to acknowledge updated Trust Consent Policy, WHAT-CG-075.	Ben Thomas

Capacity to Consent

The patient can pass the 3-stage test i.e.

1. Understand and retain the risks and benefits of the examination /treatment.
2. Believe the information given.
3. Retain this information for sufficient time to make a reasoned judgement.

Doubts about the patient's understanding of the risks and benefits of the treatment should be recorded in the notes. The therapist should question the patient to establish their understanding of the information they have received. The result of this should also be recorded in the patient's notes. The patient should be able to reach a reasoned decision using this information even if it appears extraordinary e.g. refusal to accept Respiratory Physiotherapy treatment for a productive post-operative chest infection.

Capacity may vary during the episode of treatment.

The level of capacity required is directly proportional to the intervention proposed e.g. a patient with learning difficulties may not be able to comprehend the risks of a surgical procedure but may understand the process of dressing practice.

If a patient does not have the capacity to consent, it is good practice to involve the family or carers in the decision process, but they cannot consent on behalf of the patient. See the Consent to Examination or Treatment Policy, WHAT-CG-075 for further guidance.

Benefits and Risks:
The expected benefits of the treatment and the significant risks of that treatment should be explained to the patient in language that they understand e.g. discuss the evidence for the effectiveness of the use of high velocity thrust manipulative techniques but also highlight the small risk of injury.

Material Information:
The effect of the treatment on that individual should be discussed e.g. if the taxi driver was unable to drive for 3 days after the treatment this would be significant but irrelevant to a non-driver.

The Doctrine of Emergency:
This applies to those patients who have a short term lack of capacity to consent e.g. when a patient is under anaesthetic or unconscious. The treatment allowed during this time is to prevent death or serious deterioration in physical or mental well-being and must be in the patient's best interests. Treatment should not continue beyond the point of crisis.

The Doctrine of Necessity:
This is applied when there is long-term incapacity to consent and allows treatment that is necessary but must be in the patient's best interest.

At least two healthcare professionals and often a multidisciplinary team will discuss the treatment options, the best interest of the patient and the patient's wishes (a positive advanced directive may be considered as an indicator) to reach a Declaration of Best Interest.

The courts may be involved when the capacity to consent is unclear or if there may be disputes with the relatives, therefore the Trust lawyers should be contacted via the Litigation Department in normal working hours or the on-call manager out-of-hours.

Mental Capacity Act 2005.

Advanced Directive:
Anyone over the age of 18 years' old who has the capacity to consent may make an oral or written an 'Advanced Directive' to refuse treatment in preparation for a time when they may lack the capacity to consent. This Advanced Directive should be treatment or circumstance specific. If the 'Advance Directive' is regarding a life sustaining treatment it should be in writing, dated, signed and witnessed and must contain a phrase specific to the gravity of the situation e.g. 'even if life is at risk'. Please contact the Trust Legal Officer in these circumstances for guidance.

Lasting Power of Attorney:
A patient may give a name person the duty of giving or withholding consent on their behalf at a future time by completion of a 'Lasting Power of Attorney'.

Assistants:
Therapy assistants should write and sign the treatment notes of patients they have seen alone. When assisting a Therapist, the patient notes should contain the name of the therapist and assistant. A qualified clinician remains accountable for the patient's needs at all times, although the management of some patients may be delegated to appropriately trained assistants either by the clinician themselves or by an organisational policy that defines which groups of patients may have parts of their care delivered solely by assistants.

Interpreters:
If a patient is unable to comprehend due to language or hearing difficulties switchboard may be able to contact an official interpreter. If an interpreter is unavailable a family member or friend may act as an interpreter for low risk procedures and the reason for this recorded. Family members should never act as interpreters in Women's Health. Children should never be used as interpreters except in an emergency. Please see 'Trust policy for access and delivery of interpreting services' for further information. The name of the interpreter should be documented in the notes.

Chaperones:
Both the patient and the staff are entitled to have a chaperon whenever they wish. Chaperones should be observant. The name and role of the chaperone must be documented in the patient's notes. If the patient is offered a chaperone and declines the offer, this also must be documented. Please see the trust 'Chaperone Policy' for further information.

Friends or Relatives:
A patient may wish for a friend or relative to be present during their examination/treatment. The content of the procedure should then be explained to the patient and their consent for the friend / relative to remain in the treatment area should be verified. The Therapist should enquire the name of the friend / relative and their relationship to the patient and document in the notes.

Telephone Advice:
Any information or advice given over the telephone is considered treatment and therefore necessitates consent. A record of the telephone call, consent, the advice given and the reason for not visiting or giving an appointment should be recorded.

Students:
All entries made by a student therapist should be countersigned by a qualified therapist.

Classes:
An introduction should include the content of the class. A register of attendees and their escorts should be kept and notes on the class content. The Therapist should also explain that the information/treatment given is general only and individual problems are not taken into account.

It is recommended that written guidance should be issued to the class members.

General Information/Exercise Sheets:
These should contain a disclaimer that the information does not take into account individual patient's circumstances or conditions, which may have a bearing on the suitability of the contents to that particular person.

Patients with Mental Disorders:
The treatment of patients not covered by the Mental Health Act should be consented as any other patient. When the provisions of the Mental Health Act apply they relate only to their mental disorder. Treatment of a physical disorder is applied under common law principles.

Pregnant Women:
A child does not exist under the law until it is born, therefore only the mother's treatment decisions are taken into account, even if this may be detrimental to the foetus.

If the mother's capacity is in doubt, the courts should be approached for guidance (see Doctrine of Emergency/Necessity).

Children:
All decisions taken must be in the child's best interest.

Frazer Guideline Child or Gillick Competence is when a child regardless of age can pass the 3-stage test of capacity. These children may give consent but cannot refuse examination/treatment.
16 and 17 year old patients may consent but cannot refuse consent to examination/treatment.

People with legal parental responsibility can give and refuse consent on behalf of the child.

Therefore, if a Frazer Guideline Child gives consent but the parent refuses consent the child may be treated.

Clinicians should consult the Trust Lawyers via the Litigation Department or the on-call manager if it is believed that the parent's wishes are not in the child's best interests.

The parent's capacity to consent should be considered if they are consenting on behalf of the child.

If therapy is included in the inpatient medical the medical staff should have obtained treatment plan for child consent from the parents. It is good practice for the therapist to check with the parents where possible.

Parental Responsibility:
This is held by the

- The natural parents who are married at the time of the child's birth
- The natural mother
- The natural father who subsequently marries the natural mother
- Adoptive parents
- Those granted by the courts

Principles of consent: