

Consent – children and young people



MPS



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Valid consent is just as important when treating children and young people as it is with adults. In some situations children are able to give consent themselves, and sometimes others need to take the decision on their behalf. This factsheet sets out the basic information to enable you to obtain the appropriate consent from children and young people.

Basic principles

When caring for children, you have an overriding duty to act in the best interests of the child. When making decisions regarding treatment, the child or young person should be involved in the decision as much as possible, depending on their level of understanding. If the child is not capable of consenting themselves, you will need the consent of a person with parental responsibility or, in some circumstances, the court, in order to proceed with treatment.

Very young children, and those who are not considered to be capable of making their own decisions, cannot either give or withhold consent. Those with parental responsibility need to make the decision on their behalf.

In an emergency situation, when a person with parental responsibility is not available to consent, the doctor has to consider what the child's best interests are and then act appropriately. The treatment should be limited to what is reasonably required to deal with the particular emergency. Wherever possible, it is advisable to discuss the case with a senior colleague, if available. In all cases, it is important to document fully what decisions were made and why.

Age and capacity

Aged 16 and 17

In Northern Ireland, the legal age of capacity is 18. However, under section 4 of the Age of Majority Act (Northern Ireland) 1969, patients aged 16 or 17 can provide consent to their own medical care, if they are deemed to be capable of making informed decisions. As with adults, you must be sure that the patient understands the implications of the proposed treatment and is giving consent voluntarily, before treatment can be provided.

What happens if the child withholds consent?

If the child lacks the ability to make their own medical decisions, the parents can consent on behalf of the child, even if the child is refusing the treatment. However, you should consider carefully whether overriding the consent of a distressed child, given the clinical circumstances at the time, is necessary. Often, if sufficient time is given, the parents will be able to persuade the child that the intervention will be beneficial. You should aim to work in partnership with the parents, assuming that the child's best interests are paramount.

Younger than 16

Children under 16 can consent to medical treatment if they understand what is being proposed. It is up to the doctor to decide whether the child has the maturity and intelligence to fully understand the nature of the treatment, the options, the risks involved and the benefits. A child who is considered to have capacity in this way is sometimes referred to as being Gillick competent.

However, unlike adults, the decision of a competent young person to refuse treatment may be overruled by a court or by someone with parental responsibility, if it is deemed to be in their best interests. In the absence of definitive guidance, it has been suggested that this should occur only in circumstances where the child is at risk of suffering "grave and irreversible mental or physical harm". Given the potential impact of over-ruling the decision of a young person with capacity, consideration should be given to applying to the court for a determination before any intervention is undertaken.

Parents cannot stop a competent child from receiving medical treatment that he/she has provided consent for and which is considered to be in the child's best interests. For example, a 15-year-old boy who has been declared competent by his doctor can consent to receiving tetanus immunisation, even if his parents do not agree with it.

Is consent required from both parents?

In cases where the child is unable to make their own decision, it is normally sufficient to obtain consent from one person with parental responsibility. However, there are circumstances where the courts have held that a decision should not be taken by one person with parental responsibility in the face of an objection by another. Non-therapeutic make circumcision has been cited as an example and where disagreement occurs, it is prudent to refer the decision to the courts. Major experimental treatments might also fall into this category.

What happens if the parents withhold consent?

If a competent child refuses treatment and his/her parents agree with the decision, but you do not believe that it is in the best interests of the child, you should take legal advice on how to proceed.

The same principle applies if the parents of a non-competent child choose to withhold consent for what you believe to be necessary treatment. You are obliged to act in the child's best interests and may need to apply for a court order to proceed with treatment.

Documentation

It is important to record any decision made in the patient's notes. This should include the information that was provided to the patient and the parents and how the decision was reached.

Further information

- Medical Protection Factsheet – *Access to Health Records*.
- Medical Protection Factsheet – *Parental Responsibility*.
- GMC, *0-18 years: Guidance For All Doctors*.
- Department of Health, *Social Services and Public Safety, Reference Guide to Consent for Examination, Treatment or Care (2003)*.

For medicolegal advice please call us on:

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This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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