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Consent to medical treatment: the mature minor

Can children and young people consent to their own medical treatment? Consent issues involving children and young people are complex. This article examines the legal obligations of general practitioners when obtaining consent to medical treatment from patients who are less than 18 years of age.

Keywords: informed consent, adolescent; child

Case study

The patient, 15 years of age, asked her general practitioner if everything she said during the consultation would be kept 'secret'. The GP replied that she could not provide an absolute guarantee but, generally, any information provided to her by a patient would be kept confidential. The patient then told the GP that she had a boyfriend who was 16 years of age and she would like to start taking the oral contraceptive pill. She was adamant that she did not want her parents to know that she was sexually active and on the pill. The GP was uncertain of her legal position in treating a patient, 15 years of age, without the consent of her parents.

The age at which a person becomes an 'adult' in Australia is 18 years. Consent for the medical treatment of patients less than 18 years of age is generally provided by parents. However, there are circumstances in which patients under the age of 18 can consent to their own medical treatment.

The common law recognises that a child or young person may have the capacity to consent to medical treatment on their own behalf, and without their parents' knowledge. This common law position is based on a 1986 English House of Lords judgment, Gillick v Wisbech Area Health Authority.[1] In this case, the issue to be determined was whether a medical practitioner could provide contraceptive advice and prescribe contraceptives to a patient under the age of 16 years, without the prior knowledge or consent of her parents. The Department of Health and Social Security had issued guidance to area health services in England that medical practitioners could prescribe the oral contraceptive pill to a girl below the age of 16 years without the consent or knowledge of her parent, if acting in good faith to protect the best interests of the patient. Mrs Gillick, who was the mother of five daughters, sought a declaration from the Court that the guidance was unlawful on the basis (in part) that a health practitioner could not give advice or treatment about contraception to a person below the age of 16 years without the consent of his or her parent(s) because this would be inconsistent with parental rights. The majority of the House of Lords ultimately rejected her claim. The Court determined that there were circumstances in which a child or young person could consent to their own medical treatment. In order to do so, the child or young person must have a 'sufficient understanding and intelligence to enable him or her to fully understand what is proposed'. This is often referred to as 'Gillick competence' or the 'mature minor'.

The level of maturity required to provide consent will vary with the nature and complexity of the medical treatment. For example, the level of maturity required to provide consent for the treatment of a superficial graze will be much less than that required to provide consent for the commencement of the oral contraceptive pill. In Gillick, the judges determined that the concept of absolute authority by a parent over a child or young person was no longer acceptable. Because this absolute authority no longer existed, the House of Lords held that even though it will, in most cases, be in the patient's best interests to have parental

consent, there may be special occasions when the best interests of the child or young person may be served without it.

These principles, as established in Gillick, were endorsed as part of Australian common law in Marion's case.[2]

In another case in the United Kingdom in 2006, the High Court considered an application seeking a declaration that medical practitioners were under a positive duty to consult parents where a patient under the age of 16 years was seeking advice about contraception, abortion or sexual health issues.[3] In this case, Mrs Axon, a divorced parent with five children, made an application that a medical practitioner is under no obligation to keep confidential advice and treatment provided to patients under the age of 16 years about contraception, sexually transmitted infections and abortion, and must not provide such advice and treatment without the parents' knowledge, unless to do so would prejudice the child's physical or mental health so that it is in the child's best interests not to do so. The judge confirmed the principles established in Gillick and concluded that a medical practitioner is 'entitled to provide medical advice and treatment on sexual matters without the parents' knowledge or consent provided he or she is satisfied of the following matters:

- that the young person, although under 16 years of age, understands all aspects of the advice… that understanding includes all relevant matters and it is not limited to family and moral aspects as well as all possible adverse consequences which might follow from the advice
- that the medical professional cannot persuade the young person to inform his or her parents or to allow the medical professional to inform the parents that their child is seeking advice and/or treatment on sexual matters
- that (in any case in which the issue is whether the medical professional should advise on or treat in respect of contraception and sexually transmissible illnesses) the young person is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment or treatment for a sexually transmissible illness
- that unless the young person receives advice and treatment on the relevant sexual matters, his or her physical or mental health or both are likely to suffer, and
- that the best interests of the young person require him or her to receive advice and treatment on sexual matters without parental consent or notification'.[3]

There is also specific legislation in New South Wales (NSW) and South Australia (SA) that relates to the medical treatment of children. In NSW, the *Minors (Property and Contracts) Act* 1970 provides some guidance regarding the medical and dental treatment of children and young people. Section 49 of this Act states that a medical practitioner who provides treatment with the consent of a child 14 years or over will have a defence to any action for assault or battery. This Act does not assist a medical practitioner in a situation where there is a conflict between a child and their parent and a parent can still potentially override a child's consent to treatment. In SA, the *Consent to Medical Treatment and Palliative Care Act* 1995 outlines the legal requirements for obtaining consent by medical and dental practitioners. The Act states that a child 16 years and over can consent to their own medical treatment as validly as if an adult. Additionally, a child under the age of 16 years can consent to medical procedures if:

- the medical practitioner is of the opinion that the patient is capable of understanding the nature, consequences and risks of the treatment and the treatment is in the best interests of the health and wellbeing of the child, and
- that opinion is corroborated in writing by at least one other medical practitioner who has personally examined the child before the treatment was commenced.

Risk management strategies

It is important that general practitioners are aware of the legal position with respect to consent to medical treatment of a child or young person, especially in circumstances in which the patient requests that their parents are not informed.

Depending on the specific circumstances, consent to medical treatment of a patient less than 18 years of age may be provided by either the:

- patient
- parent or legal guardian
- court (eg. for permanent sterilisation procedures)
- other agencies (eg. in NSW the consent of the Guardianship Tribunal is required for 'special medical treatment'. Special medical treatment includes sterilisation, vasectomy or tubal occlusion).

It should be noted that no consent is required in emergency situations if it is impractical to do so. In the case of a medical emergency (where treatment is immediately necessary to save the life of a patient or to prevent serious injury to their health), and the patient is not able to consent to the required treatment at the time, a medical practitioner may perform emergency treatment.

While in many cases it is preferable to obtain the consent of both the child and the parent for medical treatment, there may be specific circumstances in which the best interests of the child or young person may be served without the parents' consent. If GPs are uncertain about their legal obligations in a particular situation involving the consent to medical treatment of a child or young person, they should seek advice from a colleague and/or their medical defence organisation.

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References

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2. Secretary, Department of Health and Community Services v JWB and SMB (1992) 175 CLR 218.
3. Axon, R (on the application of) v Secretary of State for Health [2006] EWHC 37 (Admin).

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