

Parental Healthcare Decisions

Understanding Valid Consent in Medicine

A GUIDE FOR PARENTS



PLEASE DO NOT CONSIDER ANYTHING IN THIS DOCUMENT TO BE LEGAL ADVICE. Everyone's circumstances are different and only an experienced lawyer working in the relevant field and who knows your case in detail can give you legal advice.

Valid consent is required before any medical treatment may be carried out (unless there is a court order). Valid consent has to be made voluntarily, has to be informed and has to be made by someone who is competent to make it.

Treating a patient without valid consent can open a healthcare professional to charges of battery as well as being relevant in any negligence litigation.

Informed...

means a) that patients need to be given enough information to understand the nature and purpose of the treatment in question and b) that any other relevant information has to be provided.

a) Is relevant to both criminal charges and civil action. If the information isn't provided, charges of battery are possible as well as negligence claims if the patient suffers injury from the treatment. If a) is done but not b) the practitioner is still open to charges of negligence, for example if possible complications and side-effects were not mentioned. The practitioner doesn't have to inform their patient of absolutely everything, which in any case would be impossible. They need to make them aware of material risk. Since the **UK Supreme Court case of Montgomery**, the question of what is or isn't significant is defined as follows.

"The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."

Any misrepresentation will invalidate consent.

Voluntary...

means "consent must be given **voluntarily and freely, without pressure or undue influence** being exerted on the person either to accept or refuse treatment. Such pressure can come from partners or family members, as well as health or care practitioners." (quoted from Department of Health Consent Guidelines)

What behaviour or action counts as pressure or undue influence enough to invalidate consent is a matter for the courts (or professional body) to decide in any particular case.

Competent...

means the patient consenting must have the mental capacity to make the decision. How this applies to children is explained below.

Children

For children under 18, who are deemed **not** competent to make their own decisions, parental consent is required for any treatment to take place. Whether or not a child is competent to make a decision depends on a number of factors, such as the child's maturity and the treatment in question.

Usually the consent of any one person with parental rights is sufficient. In some cases, such as vaccinations and non-therapeutic male circumcision, if one parent refuses, the consent of the other is not enough and the courts need to decide. Whether you consent to a treatment or refuse, either way your decision has to be made with the child's best interest in mind.

If the child **is** considered competent, they can consent to their own treatment, assuming the consent is informed and voluntary.

Up to the age of 16 a child is seen as competent to give consent only if they have the ability and sufficient maturity to understand what is involved and weigh up the options.

At the age of 16 and 17 a young person is assumed to be competent. However, unlike adults, the refusal of a competent person aged 16–17 may be overridden by a court if the young person's decision is likely to lead to death or serious permanent injury.

In some cases, parents and doctors cannot agree on whether to carry out a certain treatment. If the child isn't competent to give consent, doctors can only override parental refusal by applying to the courts to decide what is in the child's best interest, or in an emergency.