The Child Act, Consent Matters and Obstetrics and Gynaecology

This edition of the O&G Forum is dedicated to various aspects of Obstetrical and Gynaecological care of nadolescents.

In modern medical ethics, patient autonomy is considered a major principle in decision-making regarding one's health. Those receiving healthcare should be allowed to exercise that right consciously and freely. Healthcare providers are obligated to respect this right and allow patients to practice their autonomy in the cause of their treatment.

The consent process is more than just obtaining a signature on a form. It is a communication process that includes assessing the patient's decisional capacity, describing the proposed intervention, ensuring that the patient understands the information and can make and communicate a rational decision based on the information provided. The patient should be reminded that consent can be withdrawn at any time.

Legal capacity is determined by two components: age and decisional capacity. This discussion is limited to age, which is determined by the law. In South Africa the age of full legal capacity is 18. However, children of 12 years or older who have the maturity to understand the implications of a proposed treatment may consent on their own behalf. If a surgical procedure is being proposed, the child's consent must be accompanied by a parent or guardian's written assent.

Minors are generally presumed to lack decisional capacity. Thus, the healthcare worker must be satisfied that they have the capacity to make a particular decision before obtaining their consent. Decisional capacity is not an ''all or nothing'' concept. A patient may be able to grasp the implications of minor surgery, but unable to comprehend all the risks and benefits of major surgery. Thus consent is ''decision specific''. Also a patient's decisional capacity may fluctuate over time, even during the cause of the day.

A patient's decisional capacity cannot be judged on age, appearance, condition, or behaviour. If in doubt about a patient's decisional capacity, a full assessment by a psychologist should be carried out. In evaluating the decisional capacity, the reasoning should focus on the reasoning the patient uses to reach a decision, rather than on the decision itself.

Even though The Children's Act sets out the legal standing regarding minors, conflict with parents or guardians may arise. The principle to always bear in mind in these situations is that the child's best interests are paramount. If parental support is required, it is usually sufficient for one of them to give consent, but where decisions with profound implications are inevitable consequences are encountered, it is advisable to obtain consent from both parents, where practicable.

Table 1: The current legal situation regarding clinical treatment of minors			
Circumstances	**Age at which patient can consent**	**Relevant Act**	**Comments**
Medical treatment	12	Section 129 of the Children's Act 2005	A child of 12 or older may consent to medical treatment if mature enough
Surgical treatment	12	Section 129 of the Children's Act 2005	A child of 12 or older may consent with a parent's or guardian's assent
HIV test	12	Section 130 of the Children's Act 2005	Consent for an HIV test may be given by a child of 12 or older or by a younger child with sufficient maturity to understand the implications of the test. Child must have proper pre- and post-test counselling
Termination of pregnancy	No lower age limit	Section 5 of the Choice on Termination of Pregnancy Act 92 of 1996	5(2) "no consent other than that of the pregnant women shall be required for the termination of a pregnancy." For the purposes of this Act, "woman" means any female person of any age. If she is a minor she should be advised to consult her parent/guardian, though TOP should not be denied if she refuses

Request for contraception	12	Section 134 of the Children's Act 2005	Illegal to deny condoms/contraception to a child >12 years. If minor seeks contraception advise her confidentiality should be respected, where abuse/exploitation is suspected
Virginity test	16	Section 12 of the Children's Act 2005	It is illegal to carry out a virginity test on someone under the age of 16. If they are 16 or older, a test may be carried out only with their written consent
Sexual intercourse	16	Sections 1, 15, 16 & 57 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	Section 54 of the Act places an obligation on anyone with knowledge (or a reasonable suspicion) of a sexual offence against a child to report it to the police. There are harsh penalties for failure to report. <12 years cannot consent to sex 12 – 16 years, capable but not mature enough >16 years capable and mature enough
Minor with parental responsibility for a child	12	Section 129 of the Children's Act 2005	A child-parent of sufficient maturity may consent to medical or surgical treatment on her child's behalf. If consent for surgical treatment, the consent of child-parent's parent/guardian should also be obtained.
Sterilisation	18	The Sterilisation Act 44 of 1998 and the Sterilisation Amendment Act 3 of 2005	Minors may only be sterilised if their life would be jeopardised or their health seriously impaired by a failure to do so. In such cases, a sterilisation can be carried out if the parents/guardian have consented and an independent medical practitioner, after consulting with the child concerned, makes a written statement that the sterilisation would be in the best interests of the child.

Occasionally parents may make decisions that adversely affect the child. If there is reason to believe that a parent's refusal to consent to medical treatment may harm the child at risk, the matter should be referred to the hospital's legal department who may either petition the court or apply to the Minister of Health for consent.

Adolescents are in the process of developing their "moral-self" and their ability to firm values and religious beliefs vary. It is the state's task and responsibility to protect the sanctity of life of a minor and determine the minor's ability to exercise her right to refuse treatment. If the adolescent is determined to possess adequate maturity and is capable of appreciating the consequences of foregoing medical treatment based on religious beliefs, she has the right to do so.

The ambiguous state of self-determination of adolescence present challenges to confidentiality safeguards. Except in life-threatening situations, confidential care of adolescents is essential to their overall health, and parental involvement should not be a barrier to healthcare.

There is no simple and easy way to determine the decision making rights and abilities of an adolescent. Minors should participate in decision making regarding their medical treatment. Healthcare workers need to be aware of the special issues of confidentiality and potential conflicts in treatment choices that may arise. Fortunately, these instances are rare, and when they do occur, the best interests of the child should supersede. Respect for autonomy, self-determination and have best interests of the child should always be at the forefront.

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