

# Can children and adolescents consent to their own medical treatment?



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This article examines the legal obligations of general practitioners when obtaining consent to medical treatment from patients who are under the age of 18 years.

## Case history

A girl, 15 years of age, saw her general practitioner and requested a prescription for the oral contraceptive pill. The GP asked the patient if she had discussed her request with either of her parents. The patient said that she did not want her parents to know that she was sexually active and on the pill. The GP was not sure whether a 15 year old patient was able to legally consent to medical treatment on her own, without the knowledge of her parents.

## Medicolegal issues

Consent for medical treatment given to patients under 18 years of age is generally provided by parents. However, there are circumstances in which children under the age of 18 years can consent to their own treatment, and the common law recognises that a child 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 West Norfolk and Wisbech Area Health Authority*. [1986] 1 AC 112 (HL). In *Gillick*, the

issue to be determined was whether a medical practitioner could provide contraceptive advice and prescribe contraceptives to a child under the age of 16 years, without the prior knowledge or consent of her parents. The court determined that there were circumstances in which a child could consent to their own medical treatment. In order to do so, the child must have a sufficient understanding and intelligence to enable him or her to understand fully what is being proposed, including an understanding of the nature and effects of any procedures. This is often referred to as 'Gillick competency'. The judgment held that:

'Provided the patient, whether a boy or girl, is capable of understanding what is proposed and of expressing her or his own wishes, I see no good reason for holding that he or she lacks the capacity to express them validly and effectively and to authorise the medical man (or woman) to make the examination or give the treatment which he (or she) advises'.<sup>1</sup>

The level of maturity required 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 knee 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 adolescent 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 adolescent may be served without it. The House of Lords thought medical practitioners should not disregard the wishes of parents when it was simply convenient to do so, but suggested that when:

'the girl refuses either to tell the parents herself or to permit the doctor to do so and in such cases the doctor will, in my opinion, be justified in proceeding without the parents' consent or even knowledge provided he is satisfied on the following matters:

- that the girl (although under 16 years of age) will understand his advice
- that he cannot persuade her to inform her parents or to allow him to inform the parents that she is seeking contraceptive advice
- that she is very likely to begin or to continue having sexual intercourse with or without contraceptive treatment

- that unless she receives contraceptive advice or treatment her physical or mental health or both are likely to suffer, and
- that her best interests require him to give her contraceptive advice, treatment or both without parental consent'.<sup>1</sup>

There is also specific legislation in New South Wales and South Australia that relates to the medical treatment of children. In New South Wales, the *Minors (Property and Contracts) Act 1970*, provides some guidance regarding the medical and dental treatment of children and adolescents. 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; a parent can still potentially override a child's consent to treatment.

In South Australia, 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.

## Discussion and risk management strategies

It is important that GPs are aware of the legal position with respect to consent to medical treatment of children, especially in circumstances in which the patient requests that their parents not be informed. Depending on the specific circumstances, consent to medical treatment of a patient under the age

of 18 years may be provided by either the:

- patient
- parent or legal guardian
- court, eg. for permanent sterilisation procedures
- other agencies, eg. in New South Wales the consent of the Guardianship Board is required for 'special medical treatment'. Special medical treatment includes the prescription of long term injectable contraceptives such as Depo Provera.

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 may be served without the parents' consent.

### Summary of important points

- Consent issues involving children are complex.
- In certain circumstances, patients under the age of 18 years can consent to their own medical treatment without the knowledge or consent of their parents.
- If uncertain of your legal obligations in a particular situation involving the consent of a child to medical treatment, seek advice from a colleague and/or your medical defence organisation.

Conflict of interest: none declared.

### Reference

1. Gillick v West Norfolk and Wisbech Health Authority & Anor [1984] QB 581 [1985] 3 All ER 402.

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