

CARD 7

Children and young people

1 Who can consent to treatment where the patient is under 18?

A young person of any age can give valid consent to treatment or examination provided he or she is considered to be competent to make the decision. At the age of 16 there is a presumption that the patient is competent to give valid consent. Up to the age of 18 in England, Wales and Northern Ireland and up to the age of 16 in Scotland, where the person lacks capacity, a person or local authority with parental responsibility can give consent on behalf of the patient. In some circumstances, the courts will give consent to treatment and/ or examination. (See also Card 5 on Assessment of Competence and Card 1 list: '0-18 years', 'Children', 'Consent', 'DoH', 'MET', 'MDU', 'MPS'.)

2 Who has parental responsibility?

Not all parents have parental responsibility. In relation to children born after 1 December 2003 (England and Wales), 15 April 2002 (Northern Ireland) and 4 May 2006 (Scotland), both of a child's biological parents have parental responsibility if they are registered on a child's birth certificate. In relation to children born before these dates, both of a child's biological parents will only automatically acquire parental responsibility if they were married at the time of the child's conception or at some time thereafter. If the parents have never been married, only the mother automatically has parental

responsibility, but the father may acquire that status by order or agreement. Neither parent loses parental responsibility on divorce. Parents who do not have parental responsibility nonetheless play an essential role in determining best interests and may have a right, under the Human Rights Act, to participate in the decision-making process (see Card 1 list: '0-18 years', 'Children', 'HRA'). In some circumstances people other than parents may acquire parental responsibility, for example by the appointment of a guardian or on the order of a court. If there is any doubt about whether the person giving consent is legally entitled to do so, legal advice should be sought.

3 When is a minor competent to give valid consent?

There is no presumption of competence for those under the age of 16 and those under this age must demonstrate their competence. A young person under 16 can consent to treatment provided he or she is competent to understand the nature, purpose and possible consequences of the treatment proposed (see also Card 5 on Assessment of Competence and Card 1 list: '0-18 years', 'Children', 'Consent', 'DoH', 'MET', 'MDU', 'MPS'). Parental involvement should be encouraged, particularly for important or life-changing decisions, but a competent young person's request for confidentiality should be respected.

4 Can a competent minor refuse treatment?

In England, Wales and Northern Ireland, refusal of treatment by competent young people under the age of 18 is not necessarily binding upon doctors

since the courts have ruled that consent from people with parental responsibility, or a court, still allows doctors to provide treatment. Where a competent young person refuses treatment, the harm caused by violating a young person's choice must be balanced against the harm caused by failing to treat. In these cases the courts have said that children and young people have a right to consent to what is being proposed, but not to refuse it if this would put their health in serious jeopardy. In Scotland, it is likely that neither parents nor the courts are entitled to override a competent young patient's decision, although this matter cannot be considered settled. If a competent young person refuses treatment, it would be advisable to seek legal advice and it may be necessary to take the matter to court. (See also Card 1 list: '0-18 years', 'Children', 'Consent', 'DoH', 'MET', 'MDU', 'MPS'.)

5 Where a minor lacks capacity is it necessary to obtain the consent of both parents?

Anyone with parental responsibility can consent to treatment on behalf of a minor who lacks capacity. Where the proposed intervention is controversial, agreement between parents is desirable. If this cannot be achieved, ethical and legal advice should be sought. The courts have held that there is a small group of controversial procedures, such as male infant circumcision for non-medical reasons, which should only be carried out with the consent of both parents or the approval of a court.