THE ROYAL HOSPITALS AND DENTAL HOSPITAL HEALTH AND SOCIAL SERVICES TRUST

PROTOCOL FOR CONSENT TO TREATMENT BY CHILDREN (under 18 yrs)

Definitions

CHILD someone under 18 years

Parental responsibility - "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property" - *Children Act 1990.*

Who has parental responsibility?

(a) The mother

(b) The father if married to the mother at the time of the birth, or subsequently marries her

(c) The father can acquire it:-
- by a Parental Responsibility Order
- by a Residence Order
- by being appointed guardian
- by formal agreement with the mother "Parental Responsibility Agreement"

(d) Anyone
- by obtaining a Residence Order
- by being appointed a guardian
- by obtaining an Emergency Protection Order
- by a local authority obtaining a Care Order

Those with parental responsibility are expected to exercise their parental responsibility at all times for the welfare of their child. e.g.
if a child were visiting her father for the weekend and the child was injured that father would have the ability to consent to her treatment.
If, however, a child was living with one parent who consented to treatment and who had an estranged father who refused, the parent with whom the child had residence would have the greater say.

GILLICK Competent Children under 16 who are regarded by those in charge of treatment (the doctor) to have sufficient understanding to understand the consequences of consent or refusal.
This understanding will vary according to age, type of treatment, severity of treatment.

Partnership with parents

The Children Act encourages all professionals to work in partnership with parents; this would suggest that parents are involved whenever possible with their child's treatment. Their agreement should usually be obtained alongside the child's.

Refusal of parental consent to urgent or life-saving treatment

Where time permits, court action may be taken so that consent may be obtained from a judge. Otherwise hospital authorities should rely on the clinical judgement of the doctors concerned, normally the consultants, after a full discussion between the doctor and the parents. In such a case the doctor should obtain a written supporting opinion from a medical colleague that the patient's life is in danger if the treatment is withheld and should discuss the need to treat with the parents or guardian in the presence of a witness. The doctor should record the discussion in the clinical notes and ask the witness to countersign the record.
In these circumstances and where practicable the doctor may wish to consult his or her defence organisation. If he or she has followed the procedure set out above and has then acted in the best interests of the patient and with due professional competence and according to his or her own professional conscience, he or she is unlikely to be criticised by a court or by his or her professional body.

Re 'J' Report

This was the test case involving the 16 year old anorexic girl who refused to consent to life saving treatment. Though the parents could not overrule this refusal, it was accepted that the court had inherent jurisdiction to overrule the girl's wishes. This test case would suggest that young people aged 16-18 can consent to treatment but the court will not let them refuse to consent if it will endanger their lives.

Delegated Parental Responsibility

Parents and those with parental responsibility have the power to delegate their consent to medical treatment. This would normally involve routine treatment and minor procedures. So grandparents could consent for their grandchild if the parents were abroad or had left the child in their care.
Teachers at boarding school with signed parental consent forms could also consent to treatment. There is no need to delay urgent treatment. Every effort must, however, be made to obtain the consent of the parents for operations or other significant treatments.

Identity

It is always important to establish the exact relationship of any adult to a child who is presented for treatment. In the vast majority of cases children will be brought to hospital by their parents but some children will be living in private arrangements, or other children will be in the middle of residence and contact disputes (custody and access). Some children will be subject to Care Orders.

Children with Disabilities

The right to consent to or refuse treatment is not limited because a child has disabilities. The following guidance is from the Children Act:
"Where a child has a disability special efforts should be made to explain the purpose and outcome of treatment. Where children have communication difficulties these should be addressed."

Lone Children in Hospital

Sometimes children attend A & E departments alone, or in the company of friends or siblings. Delegated parental responsibility cannot be assumed in these cases as it is not always clear that the parents know of the visit to hospital. "Gillick competent" children can be treated. Consent cannot, however, be taken from an older sibling if it seems likely that the parent does not know of the admission. Every attempt should be made to contact the parents and obtain their consent to treatment. Urgent treatment should not be delayed, but the consultant should record in writing the reasons for agreeing consent.

We acknowledge with thanks the assistance of the Leicester Royal Infirmary in producing this document.

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