



Circumcision Consent

An introductory guide



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Circumcision Consent

An introductory guide

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First Edition

Last updated February 2018



The Inter-Circ International Circumcision Forum

is a volunteer-run pro-circumcision group. The purpose of the group is to make known the benefits of circumcision, to debate topical issues related to the subject and to offer advice both pre- and post-circumcision.

The Inter-Circ forum is located at:

<https://groups.yahoo.com/neo/groups/inter-circ/info>

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Introduction

Every country has its own legal system and thus it is virtually impossible for a basic publication such as this to cover every possible variation of the law on consent to medicine and surgery. This is therefore only a general introductory guide and must not be taken as totally authoritative on all matters and in all places. If in any doubt you must consult a suitably qualified legal professional.

Legality of Circumcision

Circumcision is legal in every country of the world not only for adult men to choose for themselves, but also for parents to decide for their sons in infancy or childhood. It may be chosen for personal, religious, cultural, curative, prophylactic or aesthetic reasons. A few countries have placed some requirements to ensure safe circumcisions but these do not prevent parental choice to have their sons medically

circumcised. Parents everywhere have an automatic right to make this decision on behalf of their sons.

Assault and Consent

Under the general principles of common law, any touching of one person by another is a common assault or trespass upon the person unless the person being touched has consented to it. However, this simplistic view has to be tempered by reason and hence many simple touches are deemed to have consent – these include such touching as the accidental contact with another in a crowded bus or train and the necessary care of a child by its parents. In other cases the consent is implied because both parties voluntarily participate, as when shaking hands, exchanging a kiss between relatives or lovers, having a haircut, or the tackles, etc of a contact sport like rugby or football.

All medical examinations involve the doctor touching the patient; and surgery involves not only touching but also cutting. In the absence of consent these are at least trespasses and could be serious assaults. The law specifically recognises the right (indeed duty) of a doctor to attempt to save life in an emergency – even when actual consent cannot be obtained; but this does not extend to non-emergency situations and so a doctor must obtain consent before normal examination and surgery. Verbal consent is acceptable but cannot easily be proven and so written consent is always sought for any invasive examination, treatment or surgery. Written consent should always be sought when the person giving consent is under 18 or is not the patient (eg is a parent or legal guardian).

For consent to be valid it must be ‘informed’ consent; that is, the person consenting must know to what they are consenting with its risks and benefits. Furthermore, consent can only be given by the patient themselves, or their legal guardian, in accordance with the principle of ‘competence’. Clearly a baby or young child cannot give their own consent to medical treatment as they are not capable of understanding the procedure, its benefits and risks. A parent or guardian must therefore give consent on their behalf when treatment is necessary or desirable.

The legal ability to give consent also carries with it the right to withhold consent. However a Court may override this and give consent in certain cases where a person is considered not able to fully understand the effect of withholding consent, or there are serious implications for the wellbeing of the wider community.

Parental Responsibility

In a free and democratic society the family is the basic unit for the procreation, education, health and general nurturing of children. Parents have an inalienable right and duty to make all reasonable decisions on how their children should be brought up. This includes choice of education and religious/moral upbringing as well as what precautions or treatment is desirable to safeguard or improve the current and future health of the child. Amongst the decisions in this latter category

are whether or not to immunise against any or all common preventable diseases and whether or not to circumcise a boy.

Clearly there will be some point at which the child becomes competent to give their own consent. In the absence of any specific legislation this does not occur until legal adulthood is achieved, after which age parents no longer have any authority, nor any right to know anything about the health care of their offspring.

Where parents have joint responsibility for the custody and upbringing of a child, they must correspondingly give joint consent to any non-urgent medical treatment for that child. If parents disagree over the desirability of circumcising a son the matter must be resolved by the Court which will consider the best interests of the boy, and may consult the boy himself if he is of suitable maturity to fully understand. It is important therefore that, when only one parent accompanies the child to his circumcision, they have the written consent of the other parent to give to the doctor. Single parents with sole responsibility may need to provide some proof of this to the doctor.

Consent cannot normally be given by anyone who is neither the patient nor has parental responsibility for the patient. However, in emergencies only, a temporary guardian such as a grandparent or even an adult sibling can give consent when the parents are not readily available. Of course, this situation is very unlikely to occur in respect of circumcision (except in cases of severe paraphimosis).

Some Definitions

Age of Majority

This is the age at which a person is regarded as an adult and is given full legal responsibility for all their actions and decisions. Until around the late 1960s the law in most countries set this at age 21. However, in most countries this is now 18 but may still be 21 in a few places.

Age of Consent

This is an imprecise term but is usually taken to mean the age of sexual consent. Unless the context makes it clear to what the consent may be given, it should always be qualified as: 'age of sexual consent' or 'age of medical consent'.

Age of Sexual Consent

This is the minimum age at which a person may legally have unrestricted sexual relations with another consenting person who has also reached this age.

Age of Medical Consent

This is the age at which a person becomes legally responsible for their own medical treatment, to which they can give their own consent without requiring any consent from a parent or guardian.

Ages of Consent

Every country is free to set its own ages for sexual and medical consent. These therefore vary from place to place. In the absence of a country having legislation giving extra-territorial control over its own Nationals when outside the country, the law relevant in the place one happens to be at any given time is the one to be followed.

Age of Sexual Consent

This tends to be in the range of 14 to 18 but may include variations for those of similar age who have not reached the general age of sexual consent. For a reasonably comprehensive list of these variations, see https://en.wikipedia.org/wiki/Age_of_consent Where a country has not set a specific age it must be assumed to coincide with the age of majority.

Age of Medical Consent

Only a few countries have legislation which specifically covers the age of medical consent. In the absence of such legislation it is reasonable to assume that the age of medical consent matches the general age of sexual consent where this is legally specified. However only legal advice in the country concerned can verify this.

It should be noted that the effective age of medical consent may be set according to the principle of 'Competence' rather than absolute age. For more detail on the principle of 'Competence' see under the UK position below.

Some National Positions

Recent legislation and case law have made significant changes to the situation in many countries. The situation in a few countries is set out here by way of example only.

The United States of America

The situation in the USA is complicated by the fact that each State sets its own ages of consent and few people outside of that State are aware of the details.

The previously referenced Wikipedia article gives more on the position in each State regarding age of sexual consent, but does not specify age of medical consent.

Canada

The situation in Canada tends very much to follow the laws regarding consent in the United Kingdom. However, responsibility for health care is given to the Provinces and Territories who can set their own age of medical consent.

In general terms, the legal age of majority has become largely irrelevant in determining when a young person may consent to his or her medical treatment. The concept of maturity has replaced chronological age. A patient need not reach the age of majority to give consent to treatment.

Some Provinces and Territories have specific laws on the age of medical consent, so in Québec, the age of consent is set at 14 years and older. In New Brunswick the age of consent is 16.

In all Canadian Provinces and Territories without specific legislation, the determining factor in a child's ability to provide or refuse consent is whether the young person's physical, mental, and emotional development allows for a full appreciation of the nature and consequences of the proposed treatment or lack of treatment – whether or not the patient has attained the age of majority.

The United Kingdom

In the United Kingdom an Act of Parliament and a later Court decision have significant effects as follows:

The Family Law Reform Act of 1969 (Part 1, Section 8, Nos. 1 & 2) (which applies only to England and Wales, and not to Scotland or Northern Ireland – although they have similar legislation) provides that:

“(1) The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.

(2) In this section ‘surgical, medical or dental treatment’ includes any procedure undertaken for the purposes of diagnosis, and this section applies to any procedure (including, in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.”

The effect of this is to allow a 16 or 17 year old to consent to their own treatment without asking their parents, but the parents would still have the right to insist on any treatment that they considered necessary or desirable and to know what treatment had been given.

Subsequently a test case was raised in Court by a Mrs Gillick regarding the provision of birth control medication and advice to young girls. The judgement in this case [*Gillick v West Norfolk and Wisbech Area Health Authority (1985) 3 All ER 402 (HL)*] provided a new framework that applies to all medical examination, treatment and advice to young people (including purely cosmetic surgery) in the UK. The key factor is now what is known as ‘Gillick Competence’ under which:

“A Child, who is under the age of 16 years old, can consent to medical treatment without parental authority but only if that child has ‘Sufficient maturity and understanding to do so.’

They may only consent to treatment if the nature, purpose and hazards of that treatment are all understood.

Health professionals also need to be satisfied that Young People understand any advice given; and the moral, social and emotional implications of that advice.

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Furthermore, if a child is 'Gillick Competent', Health Professionals can only disclose information to the parent(s) with the child's consent, regardless of Parental Responsibility."

The effect of this is, in appropriate cases, to reduce the age at which a young person can seek their own treatment and also to remove the right of parents to know all about their children's medical treatment.

The doctor must be confident that the child has the appropriate understanding and maturity. They must also be satisfied that they, themselves, can provide sufficient information about the procedure, its risks and benefits in terms that the child will understand. If they are not certain of their own and the child's competence in these matters then they can (indeed must) refuse the treatment unless and until parental consent is obtained.

As a (possibly unintended) result of the application of 'Gillick Competence', it is also now entirely possible for a 'Competent' minor to refuse treatment that his parents wish him to have, provided he is fully aware of the consequences of not having that treatment (although this situation does not seem to have yet been tested in Court).

This effectively means that parents cannot have a boy over about the age of 12 circumcised unless the boy himself consents, even if he suffers from severe phimosis, serious frenulum breve or recurrent balanitis; and thus requires circumcision for his long-term health.

The exceptions to the child's right to refuse are unlikely to apply to circumcision; they are: *"If a young person refuses treatment, and by doing so this may lead to their death or a severe permanent injury, their decision can be overruled by the Court of Protection".* [This is the UK legal body that oversees the operation of the Mental Capacity Act (2005).]

"The parents of a young person who has refused treatment may consent for them, but it is usually thought best to go through the Courts in such situations."

The principles of 'Gillick Competence' have been adopted in many countries worldwide where their legal system is historically based on that of the UK and hence now applies well outside the UK.

The NHS Choices web site (<http://www.nhs.uk/Conditions/Consent-to-treatment/Pages/Children-under-16.aspx>) confirms that:

"People aged 16 or over are entitled to consent to their own treatment, and this can only be overruled in exceptional circumstances.

Like adults, young people (aged 16 or 17) are presumed to have sufficient capacity to decide on their own medical treatment, unless there is significant evidence to suggest otherwise.

Children under the age of 16 can consent to their own treatment if they're believed to have enough intelligence, competence and understanding to fully appreciate what's involved in their treatment. This is known as being Gillick competent."

Unfortunately, despite the clear legal position, the majority of doctors in the UK still refuse to circumcise 16 or 17 year olds without requiring parental consent in addition to that of the boy himself.

South America

In many countries in Latin America, laws do not establish a minimum age for consent over medical advice and treatment. The countries that do have relevant laws generally establish an age that ranges between 16 and 18 years.

Doctor's Rights

No doctor is required to give any treatment against his clinical or moral judgement. Neither is he required to perform any treatment which is not essential for the immediate health of the patient. He may therefore refuse to provide a purely elective circumcision irrespective of whether valid consent has been, or would be, given. This applies even if he advertises a general circumcision service and does perform circumcisions for other patients of similar age and situation.

Recommended Links

Inter-Circ is not the only publisher of reliable information regarding circumcision. The Links section of the web site includes links to the following recommended sites and other sources of information. Inter-Circ has no control over the content of these external sites and does not vouch for their accuracy.

The Inter-Circ International Circumcision Forum

<https://groups.yahoo.com/neo/groups/Inter-Circ/info>

The Circumcision Helpdesk™ Web Sites

<http://www.circumcisionhelpdesk.org>

<http://www.circinfo.com>

The Circlist Web Site

<http://www.circlist.com>

The Circ-Info Web Site

<http://www.circinfo.net>

Wikipedia article on Ages of Consent

https://en.wikipedia.org/wiki/Age_of_consent



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