Assessing children’s capacity to consent: An assessment guideline

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### Background

By enabling children to consent to healthcare and treatment, access to healthcare is improved. This is especially important in a country such as South Africa where many children do not live with their biological parents due to urban migration and the effect of HIV/AIDS (Jamieson & Lake, 2012).

In South African law, valid consent must be given by a person capable to do so, must be informed, unambiguous, comprehensive and voluntary (National Health Act, 2003; Medical Protection Society (MPS), 2010). Being capable implies that the legal age of consent is reached and that the person has sufficient maturity and mental capacity to understand the benefits, risks, social and other implications of the decision. For most health related care and treatment in South Africa, the age limit is 12 years (with specific conditions). Refer to Table 1 for a summary of South African consent requirements.

### Table 1: South African consent requirements

<table>
<thead>
<tr>
<th>HEALTH INTERVENTION</th>
<th>AGE LIMIT AND CONDITIONS</th>
<th>MEDICAL TREATMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 years of age</td>
<td>Sufficiently mature &amp; mental capacity</td>
<td></td>
</tr>
<tr>
<td>Surgical Operation</td>
<td>12 Years of age</td>
<td>Pre- and post-counseling</td>
</tr>
<tr>
<td>12 Years of age</td>
<td>Sufficiently mature and mental capacity</td>
<td>Comprehensibility of issues</td>
</tr>
<tr>
<td>Mental capacity</td>
<td>Pre- and post-counseling</td>
<td></td>
</tr>
<tr>
<td>Younger than 12 years of age</td>
<td>Confidently of issues</td>
<td></td>
</tr>
<tr>
<td>CONTRAINDICATION</td>
<td>12 Years of age</td>
<td>Proper medical advice</td>
</tr>
<tr>
<td>Medical examination</td>
<td>Confidentiality of issues</td>
<td></td>
</tr>
<tr>
<td>TERMINATION OF PREGNANCY</td>
<td><strong>No limit</strong></td>
<td>Micros advised to consult with parent or guardian, family member or friend</td>
</tr>
<tr>
<td>Reporting obligations in the Act</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Purpose

To outline a guide for HCPs to assess mental capacity when obtaining consent from a child based on a literature review and preliminary findings from a Delphi study.

### Design and methods

A literature review was conducted and the first round of a Delphi study completed. Electronic databases used included ProQuest, EBSCOhost, Science Direct, Medline, Cabinet and Google Scholar. The search results were full texts articles. English language, published between January 2005 - June 2015. The search terms “Children” and “consent to treatment”. In addition, government publications, policy and guideline documents nationally and internationally were consulted.

The data from the first round of a Delphi study using open ended questions posed to experts in health care and law were analyzed and merged with the literature.

### Findings

The assessment guidelines outline include:

1. Framework wherein mental capacity should be assessed.
2. Domains of mental capacity to be assessed.
3. Process and practical considerations when assessing a child's mental capacity.

### Framework wherein mental capacity should be assessed

Assessing mental capacity of a child requires consideration for:

- Children’s rights to access health and be included in decision-making (United Nations Convention on the Rights of the Child (UNCRC), 1989).
- Information about the specific condition, treatment or investigation (informed consent) and the proposed options (National Health Act, 2003).
- Factors influencing a child’s mental capacity:
  - Parent
  - Guardian
  - Child
  - Pre-existing condition of the decision and the consent process.

### Mental capacity

Mental capacity is interchangeable with decisional capacity (MPS, 2010). Health related decisional capacity is the ability to make rational informed choices about accepting or refusing treatment (New Zealand Ministry of Health, 1998).

Children have health related decisional capacity when they understand information relevant to their level of comprehension. The understanding is appropriate to the specific nature and scope of the treatment (Hein et al., 2012). They are able to understand the implications of the decision in relation to their specific situation, not only for the moment but also in the context of their future (Health Care Provider Care process).

The four domains to decisional capacity assessment, related to treatment (Aeppliberg, 2007, Geel & Opel, 2010):

- Understanding the fundamental meaning of the condition, diagnostic investigation and potential treatment options.
- Appreciation of the consequences relative to the child’s own situation.
- Reasoning by comparing alternatives in the light of the condition and treatment.
- Communicating a choice in a consistent manner.

### Process and practical consideration

The process of assessing mental capacity should be done in a child-friendly and safe context:

- Breaking down larger decisions into smaller and linked choices.
- Using a warm, empathic and supportive manner using appropriate facilitative communication skills (Larach & Hutchinson, 2006).

The consent process is both sharing information and discussing with the child to assess each of the dimensions of mental capacity (Hein et al., 2012).

The process of obtaining consent should include:

1. Establishing and maintaining of a trusting and respectful relationship with the child.
2. Sharing information about the:
   - Nature of the condition.
   - Nature and purpose of the treatment / investigation.
   - Risks & benefits of alternate treatments.
   - Consequences and practical effects of the proposed investigation or treatment / no treatment (Aeppliberg, 2007; Geel & Opel, 2010).
   - Information should:
     - Be broken into smaller pieces.
     - Be clearly worded.
     - Use "simple" developmentally appropriate language / interpreted.
     - Be given verbally and nonverbally with tools such as picture, leaflets, toys and videos.

### Conclusions

HCPs must be able to share information and assess appropriate questions to obtain valid, informed consent. This can be done in a practical way that respects children’s capacity.

A capable decision is reasonable and not necessarily reasonable (Geel & Opel, 2010). It is essential that the HCP focuses on the reasoning of the child and not the final decision taken.

### Acknowledgment

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