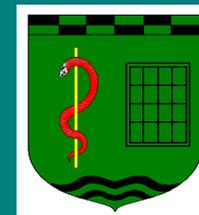




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# Immunisation Study Day Waterford, 30<sup>th</sup> August 2012

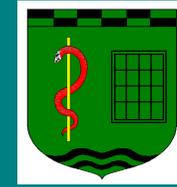
## Consent and Communication



Dr. Brett Lynam  
Senior Medical Officer  
Waterford Community Services  
Waterford LHO



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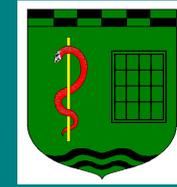
## Consent - Definition

- Consent is the process whereby a competent patient or parent/guardian signifies their *permission* to undergo a medical or surgical procedure
- Consent must always be obtained *before* the event
- Provides *sufficient information* in a way *a patient can understand*, to enable them ...to make informed decisions...including all significant or substantial risks.

Guide to Professional Conduct & Ethics for Registered Medical Practitioners, 7th Edition, 2009  
(Medical Council)



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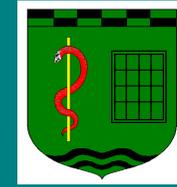
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## 3 Key Elements

- 1. *Voluntary*
- 2. Given by someone with the *capacity* (in terms of mental age and mental competence) to give it
- 3. Based on *sufficient information*



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## Key Features

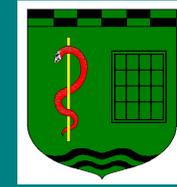
- A person who is capable of consenting is capable of withdrawing consent: *the patient has the right to be wrong!*
- Consent can be *express* (written) or *implied* (by conduct or when unconscious)

***Both equally binding*** but easier to prove if written

- Giving consent does not = valid consent if subject matter of the consent form not *understood*
- Consent can be exceeded if *necessary* (e.g. Intra-operatively) but not when it is merely *convenient*



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## “The right to be wrong!”

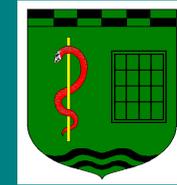
- **Role of the Family is enshrined in the Constitution in Ireland**

**Article 41.1: “the state recognises the family as the natural primary and fundamental unit group of society”**

- **In *North Western Health Board v W (H)* (2001), the parents of a young child refused to give consent for a “PKU pin prick test”**
- **Supreme Court held that the health board did not have the right to insist on the screening and upheld the parents’ wishes**



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## Verbal Consent

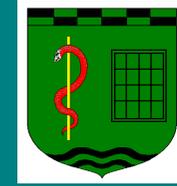
- **School scenario : consent form returned by parent/legal guardian with blank sections or completed both the Yes and No section**
- **Is telephone consent valid?**

**Guidelines for Staff: Schools Immunisation Programme 2012/2013**

<http://www.immunisation.ie/en/HealthcareProfessionals/TrainingManual/>



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## Verbal Consent

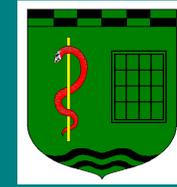
- **Clinical team member should phone parent/legal guardian**
- **Seek clarification and determine if they actually consent or not.**
- **The date and time of the phone call should be recorded on the consent form**
- **The consent *or refusal* witnessed by two members of staff.**

**Guidelines for Staff: Schools Immunisation Programme 2012/2013**

<http://www.immunisation.ie/en/HealthcareProfessionals/TrainingManual/>



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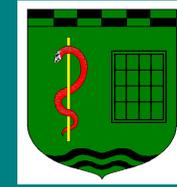


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# What is Capacity?



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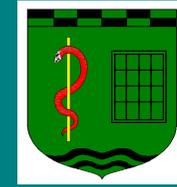
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## What is Capacity?

- **The extent of the patient's decision making power hinges on:**
  - 1. The capacity of the individual****and**
  - 2. The gravity of the decision**
- **This = “being judged on merit not status”**
- **Clinical Practice and the Law, Mills, Dr. S., Butterworths, Dublin, 2007.**



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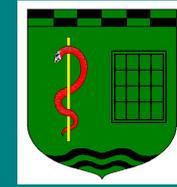
# What is Capacity?

- Capacity must be present before consent can be given
- In Ireland - "presumption of capacity"
- Can only be taken away if "proved to be lacking"
- If a person with a disability lacks capacity - a wide-ranging consultation involving parents/guardians and appropriate carers should occur

[http://www.inclusionireland.ie/documents/MakingMedicalDecisions\\_001.pdf](http://www.inclusionireland.ie/documents/MakingMedicalDecisions_001.pdf)



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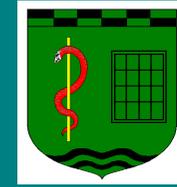


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**When valid consent is obtained, how long does it last?**



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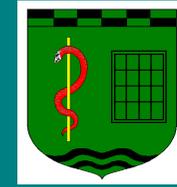
## How long does consent last?

- *There is no specific time limit on consent taken in advance, but :*
- further questions may occur to patients, or doubts about the wisdom of their decision may creep in during the interim.
- Patients' conditions may also change during the intervening period, or :
- new information about the procedure may have become available.

<http://www.medicalprotection.org/uk/guide-to-consent-in-the-uk/how-long-does-consent-last>



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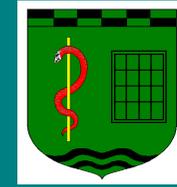
## How long does consent last?

- Hence:
- It involves a continuous process of
- Keeping patients *up to date with changes* in their condition &
- Changes to treatments or investigations

Guide to Professional Conduct & Ethics for Registered Medical Practitioners, 7th Edition, 2009 (Medical Council)



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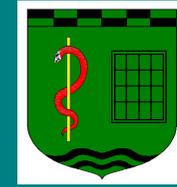


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**At what age can a *minor* consent to  
medical, surgical and dental treatment?**



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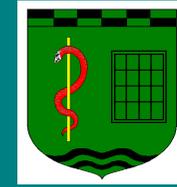
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## Consent to Medical Decisions

- **Non-Fatal Offences Against the Person Act, 1997**
- **Consent by minor over 16 years to surgical, medical and dental treatment.**
- **23.—(1) The consent of a minor who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his or her person, shall be as effective as it would be if he or she 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 or her parent or guardian.**



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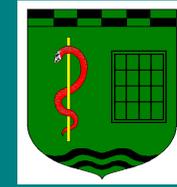
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## Consent to Medical Decisions

- **Parents of a child >16 cannot overrule their consent**
- **They can however overrule a refusal of consent for a medical treatment**



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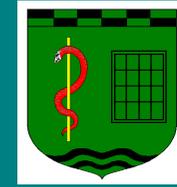
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# Gillick Competence

- ***Gillick v West Norfolk and Wisbech Area Health Authority* case in the UK in 1985**
- **Created a set of interesting guidelines requiring the doctor to make a decision based on clinical judgment, and the reasons for judging capacity are recorded in the medical notes**
- **There is *no Irish legislation on the capacity of under 16's* to consent to treatment.**
- **A potential obstacle to Irish courts agreeing with Gillick is the family within the Irish Constitution**



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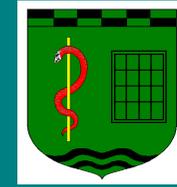


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**Is consent to sexual activity in Ireland the  
same age as medical consent ?**



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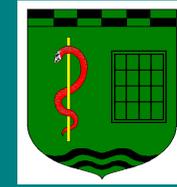
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## Sexual Offences and Children

- Defilement of a child aged under 15 years
- **The Criminal Law (Sexual Offences) Act 2006** makes it a criminal offence to engage or attempt to engage in a sexual act with a child under the age of 15 years. The maximum sentence for this offence is life imprisonment.



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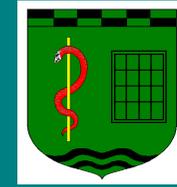
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# Sexual Offences and Children

- Defilement of a child aged under 17 years
- **Criminal Law (Sex Offences) Act 2006** as amended by **Section 5 of the Criminal Law (Sexual Offences) (Amendment) Act 2007** makes it a criminal offence to engage or attempt to engage in a sexual act with a child under 17 years. The maximum sentence is five years, ten years if the accused is a person in authority.
- The accused may argue that he or she honestly believed that the child was aged 17 years or over. It is not a defence to show that the child consented to the sexual act.



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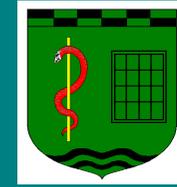
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## Sexual Offences and Children

- **A *girl* aged under 17 years who has sexual intercourse may not be convicted of an offence on that ground alone.**
- **The consent of the Director of Public Prosecutions is required for any prosecution of a child under the age of 17 years for this offence. A person who is convicted of this offence and is not more than two years older than the victim will not have their name placed on the Sex Offenders Register.**



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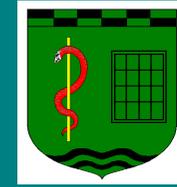


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# Marital Status?



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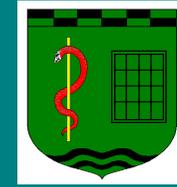
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## Marital Status?

- If the parents are unmarried, *usually* the unmarried mother is the sole legal guardian and therefore the only person who can consent to treatment on behalf of the child. *The Guardianship of Infants Act (1964)*
- However, an unmarried father who has gained guardianship rights can be eligible to consent to the child's medical treatment. I.e. a court order



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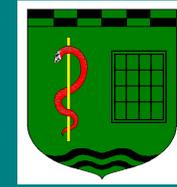
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## Parents divorced, remarried, or are living with new partners?

- **Divorced parents: either parent can consent to treatment unless a specific court directive suggests otherwise.**
- **Parental responsibility is not a defined legal entity - individual separation agreements between parents may need to be referred to occasionally!**



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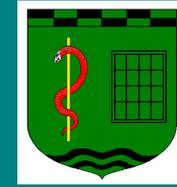


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# Who can give consent for children in care?



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## Children in the Care of the HSE

Voluntary care: consent is required from the guardian/s unless a court order has dispensed with that consent (Section 17 Child Care Act 1991)

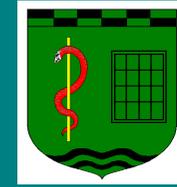
Emergency Care Order: consent required from guardian/s unless court application made (Section 17 Child Care Act 1991)

Interim Care Order: consent required from guardian/s unless court application made (Section 13)

**Care Order: the HSE is authorised to consent *however*: is good practice to seek the consent of the guardian/s (Section 18)**



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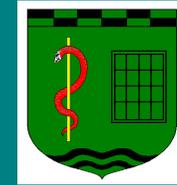


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# National HSE Publications



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1



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## **HSE Children and Family Services**

### **Staff Guidelines for Obtaining Consent for Non Emergency Treatment/Services from Parents of Children and Young People Under the Age of 18 years.**

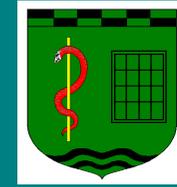
Children and Families Document  
(Ref C+F 2/2009)

*First Issued July 2009  
To be reviewed July 2010*

- <http://www.hse.ie/eng/services/Publications/services/Children/medicalconsent.pdf>



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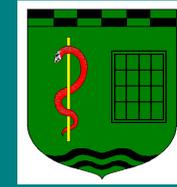


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**In an ideal world!**



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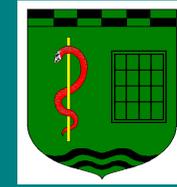
## Suggested checklist for informed consent

1. Personality/temperament/attitude of patient
2. Does the patient want information
3. Does the patient ask questions
4. Patient's level of understanding
5. Nature of proposed treatment
6. Magnitude of any possible harm
7. Likelihood of risk of harm occurring
8. General surrounding circumstances

*Informed Decisions about Medical Procedures*, Australian Law Reform Commission (1989)



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**Remember:**

**1. Voluntary**

**2. Capacity**

**3. Sufficient Information**