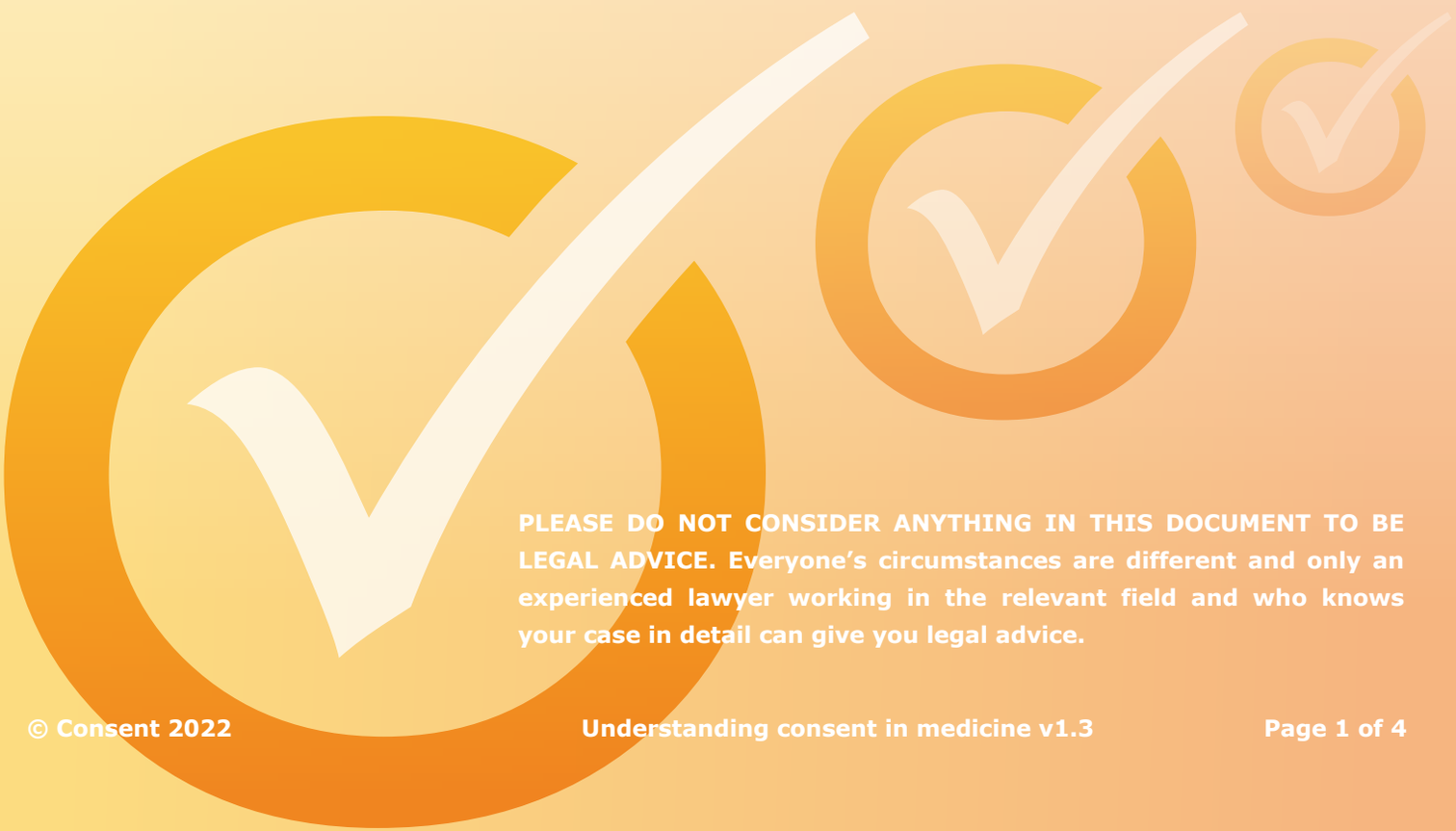
CONSENT

Parental Healthcare Decisions

Understanding Valid Consent in Medicine

A GUIDE FOR PARENTS



PLEASE DO NOT CONSIDER ANYTHING IN THIS DOCUMENT TO BE LEGAL ADVICE. Everyone's circumstances are different and only an experienced lawyer working in the relevant field and who knows your case in detail can give you legal advice.

Valid consent is required before any medical treatment may be carried out (unless there is a court order). Valid consent has to be made voluntarily, has to be informed and has to be made by someone who is competent to make it.

Treating a patient without valid consent can open a healthcare professional to charges of battery as well as being relevant in any negligence litigation.

Informed...

means a) that patients need to be given enough information to understand the nature and purpose of the treatment in question and b) that any other relevant information has to be provided.

a) Is relevant to both criminal charges and civil action. If the information isn't provided, charges of battery are possible as well as negligence claims if the patient suffers injury from the treatment. If a) is done but not b) the practitioner is still open to charges of negligence, for example if possible complications and side-effects were not mentioned. The practitioner doesn't have to inform their patient of absolutely everything, which in any case would be impossible. They need to make them aware of material risk. Since the **UK Supreme Court case of Montgomery**, the question of what is or isn't significant is defined as follows.

> "The test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."

Any misrepresentation will invalidate consent.

Voluntary...

means "consent must be given **voluntarily and freely, without pressure or undue influence** being exerted on the person either to accept or refuse treatment. Such pressure can come from partners or family members, as well as health or care practitioners." (quoted from Department of Health Consent Guidelines)
What behaviour or action counts as pressure or undue influence enough to invalidate consent is a matter for the courts (or professional body) to decide in any particular case.

Competent...

means the patient consenting must have the mental capacity to make the decision. How this applies to children is explained below.

Children

For children under 18, who are deemed **not** competent to make their own decisions, parental consent is required for any treatment to take place. Whether or not a child is competent to make a decision depends on a number of factors, such as the child's maturity and the treatment in question. They are then referred to as Gillick competent.

If the child **is** considered competent, they can consent to their own treatment, assuming the consent is informed and voluntary.

Up to the age of 16 a child is seen as competent to give consent only if they have the ability and sufficient maturity to understand what is involved and weigh up the options.

At the age of 16 and 17 a young person is *assumed* to be competent. However, unlike adults, the refusal of a competent person aged 16–17 may be overridden by a court if the young person's decision is likely to lead to death or serious permanent injury.

In some cases, parents and doctors cannot agree on whether to carry out a certain treatment. If the child isn't competent to give consent, doctors can only override parental refusal by applying to the courts to decide what is in the child's best interest, or in an emergency.

Gillick Competence

When children are mature enough to understand the medical intervention in question, to retain what they have been told, to weigh up the options and possible consequences and to articulate their answers, they are deemed competent. The term Gillick competent stems from the court case which first established this principle.

Through case law, Gillick competence has become well established. The principle is sound. As children grow up, they are increasingly allowed to make their own decisions. In practice, however, parents may well encounter a cavalier attitude. Many healthcare professionals are allowed to make a Gillick decision, such as GPs or vaccination nurses at school. The competence assessment is often not recorded at all or else consist of a tick-box form. Contact with parents is not always attempted and medical interventions routinely go ahead with no knowledge of the child's medical history.

Vaccinations

If the medical intervention in questions is a vaccination, the same principles outlined above still apply in general. However, there are specific situations where this isn't the case and they mainly relate to cases where people with parental rights disagree. There used to be case law which said that everyone with parental rights had to agree to a vaccination being given or else a court had to decide. Vaccines were considered a major medical intervention. This is no longer the case. Recent courts have disagreed that vaccines come under this category and have sometimes even gone to the opposite extreme, wondering if vaccines should be considered a medical treatment at all. Certainly no healthcare professional needs to worry as long as one parent has given consent and for children in care, local authorities do not need to obtain the permission of parents.

Covid-19 has also had an impact on vaccinations and consent. This area is still evolving and it is difficult to give guidance. Laws may mandate vaccinations in the future, potentially even for children. Short of that, legal restrictions may mean vaccinations are consented to for no medical reason at all but in order to travel, to gather, etc. This poses interesting questions for the validity of consent and the "best interest" test applied by the courts.