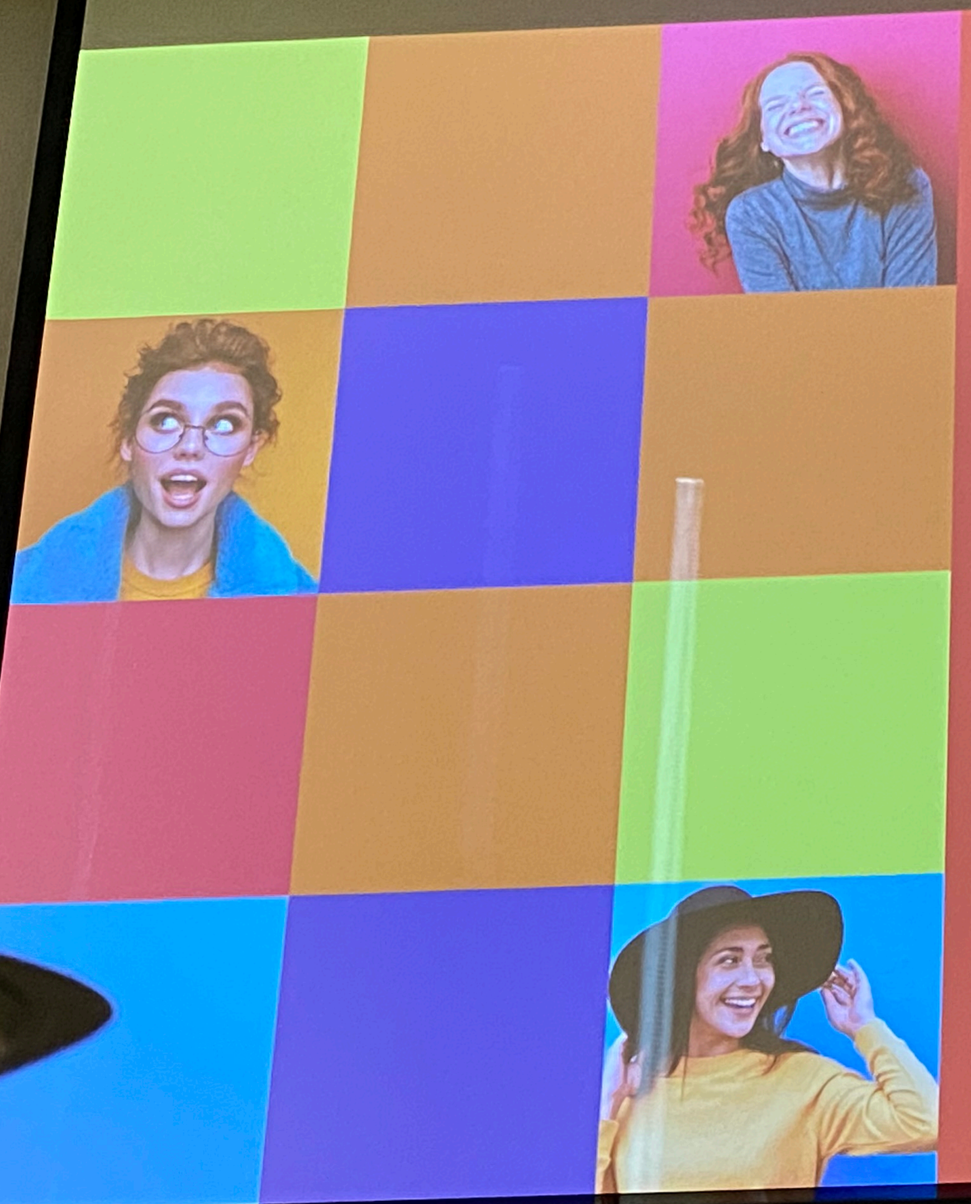


Consent

Not quite as simple as Yes or No

Dr Ben Gaunt

Clinical Medicolegal advisor, ECDOH



Outline

- What is consent?
- Components of consent
  - Capacity
  - Information
  - Voluntariness
- Documentation
- Some other things



What is consent?

Fundamentally, it is an **agreement** to **suspend** the usual laws relating to **bodily integrity.**

Components of consent

1

Capacity

2

Information

3

Voluntariness

Capacity

- Age
- Decision making ability



<12
- TOP
- HIV test

≥12
- Medical treatment
- Contraception
- Surgery (w assist)
- As child-parent

≥16
- Male circumcision
- Virginity testing
- Sexual intercourse

≥18
- Sterilisation

Age

Age

<12
- TOP
- HIV test

≥12
- Medical treatment
- Contraception
- Surgery (w assist)
- As child-parent

≥16
- Male circumcision
- Virginity testing
- Sexual intercourse

≥18
- Sterilisation

Table 1: The current legal situation regarding clinical treatment of minors

Circumstance	Age at which patient can consent	Relevant Act	Comments
Medical treatment	12	Section 129 of the Children's Act 2005	A child of 12 or older may consent to medical treatment.
Surgical treatment	12	Section 129 of the Children's Act 2005	A child of 12 or older may consent with a parent's or guardian's assent
HIV test	12	Section 130 of the Children's Act 2005	Consent for an HIV test may be given by a child of 12 or older, or by a younger child with sufficient maturity to understand the implications of the test.
Termination of pregnancy	No lower age limit.	Section 5 of the Choice on Termination of Pregnancy Act 92 of 1996	5(2) "no consent other than that of the pregnant woman shall be required for the termination of a pregnancy." For the purposes of this Act, "woman" means any female person of any age.
Request for contraception	12	Section 134 of the Children's Act 2005	Came into force in July 2007.
Virginity test	16	Section 12 of the Children's Act 2005	It is illegal to carry out a virginity test on someone under the age of 16. If they are 16 or older, a test may be carried out only with their written consent.
Circumcision	16 (males only)	Section 12 of the Children's Act 2005	Female circumcision is illegal at any age. Male circumcision is permissible under specific circumstances (see page 16)
Sexual intercourse	16	Sections 1, 15, 16 & 57 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	Section 54 of the Act places an obligation on anyone with knowledge (or a reasonable suspicion) of a sexual offence against a child to report it to the police. There are harsh penalties for failure to report.
Minor with parental responsibility for a child	12	Section 129 of the Children's Act 2005.	A child-parent of sufficient maturity may consent to medical or surgical treatment on her child's behalf.
Sterilisation	18	The Sterilisation Act 44 of 1998 and the Sterilisation Amendment Act 3 of 2005.	

Age

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Decision making capacity

Adults (>18)

- Presumed YES

<18

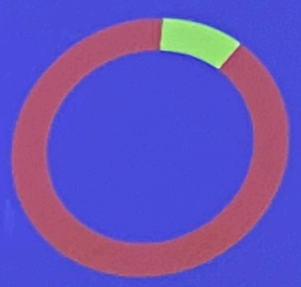
- Must be "mature"
  - Understand info
  - Appreciate consequences
  - Reason re treatment

- Decision specific
- May fluctuate

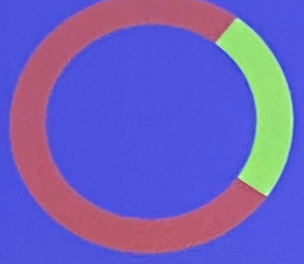
Special circumstances



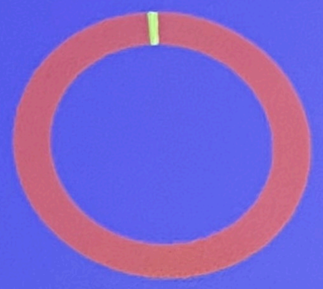
Cognitive impairment



Communication difficulty



Broad terms & Simple language



"Wrong" decisions

Hierarchy of surrogates for consent

1. Advance directive
2. A proxy mandated in writing by the patient to make decisions on his or her behalf.
3. A person authorised by law or a court order.
4. The patient's spouse or partner
5. Parent.
6. Grandparent.
7. Adult child.
8. Brother or sister
9. Health Care Worker
   i. Acting in "best interests"
   ii. Not previously refused
   iii. Cannot be delayed

- Which parent?
- Caregivers?
- Emergencies?
- When HCW and parents disagree?
- Child consent for surgery – Form 34

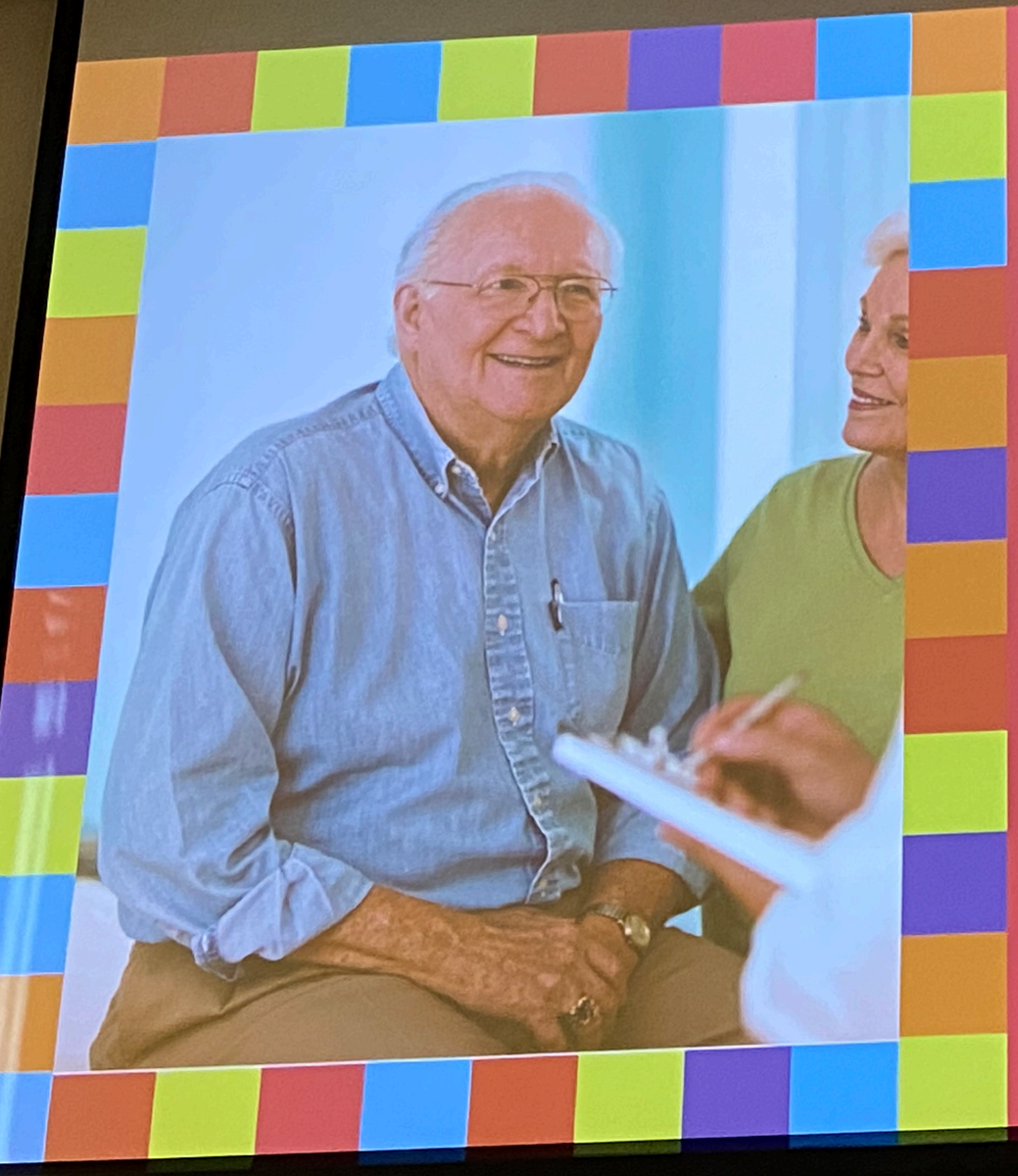
Children



What information

All patients are entitled to “full and accurate” information about:

- The nature of one’s illness
- Diagnostic procedures
- Proposed treatment
- Costs



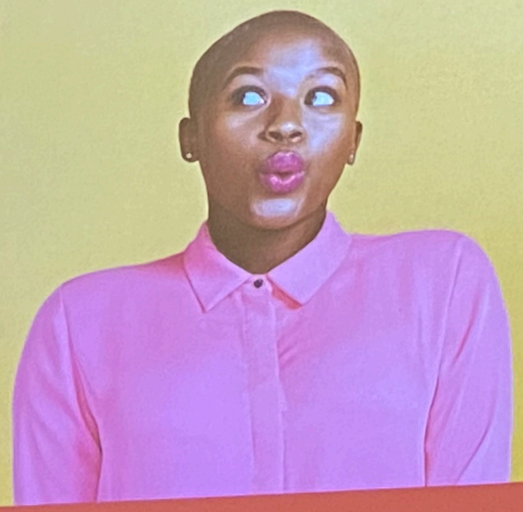
Context matters

- Culture, Beliefs
- Education level
- Personality
- Occupation
- Language matters
- Don’t make assumptions

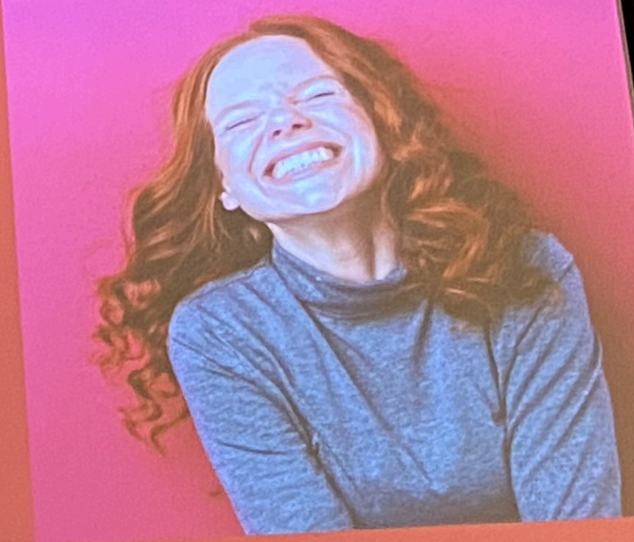
"A patient may make an unbalanced judgement because he is deprived of adequate information. A patient may also make an unbalanced judgement if he is provided with too much information and is made aware of possibilities which he is not capable of assessing because of his lack of medical training, his prejudices or his personality"

Lord Templeman in Sidaway (1985) 1AC 871 at 904, as cited by Lord Woolf in Pierce

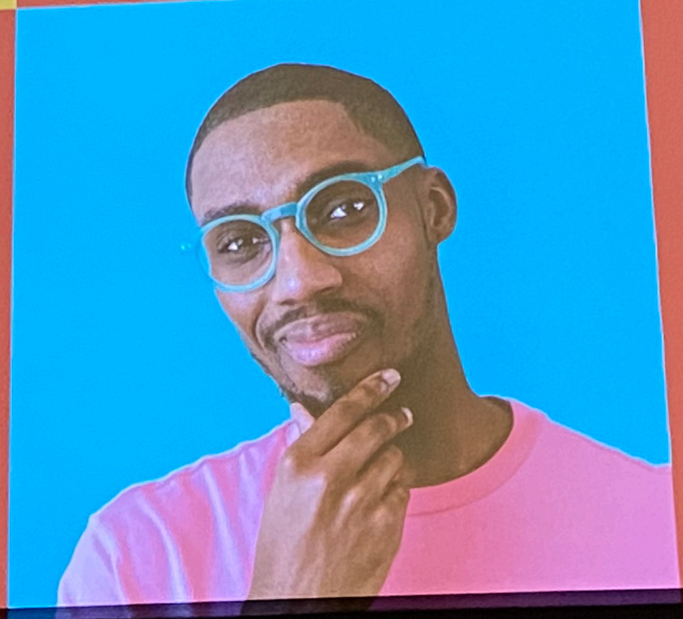
Ensuring voluntariness



No coercion



Mental health patients



Vulnerable groups:
detainees, immigrants…

- Take written consent when:
  - Treatment is **complex**, or involves significant **risk** or **side effects**
  - There may be consequences for patient's work, social or personal life
  - When primary goal is not clinical
  - For research
- Document refusal or withdrawal of consent
- Process as important as outcome

Implied vs Express consent

- HIV
  - When others are at risk
  - Testing without consent
- Public health issues
  - Infectious diseases
- End of life care
  - Advance directives
  - Futility
  - DNR orders

"Usual practice"

Information leaflets

If you're not sure, ASK

Some other things

- HIV
  - When others are at risk
  - Testing without consent
- Public health issues
  - Infectious diseases
- End of life care
  - Advance directives
  - Futility
  - DNR orders

"Usual practice"

Information leaflets

If you're not sure, ASK

Some other things

Key takeaways

Consent is a contract to "break the law"

Make sure you know the "rules" and when they apply

Respect the person

Document it appropriately



Final thought

The medicolegal realities should not cause us to cower in fear, but provide an opportunity for us to explore ways of providing better care

Thank you

Dr Ben Gaunt

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