

Seeking consent: delegation and responsibility

Guidance from the BMA's Medical Ethics Committee

Concerns have been expressed by some of our members that junior doctors are frequently asked to gain consent from patients for procedures that they are not able themselves to perform, or for procedures of which they have limited knowledge.

In order to address this concern, the Medical Ethics Committee has produced this brief guidance clarifying the clinical, legal and professional responsibilities of those who carry out medical procedures and those who are asked to seek consent for them. This guidance focuses on delegation and responsibility alone and should be read in conjunction with our existing, more general, guidance on consent which can be found at: www.bma.org.uk/ethics and in our handbook of medical law and ethics, *Medical Ethics Today*.¹

The need for valid consent

Where patients have capacity, consent to any proposed treatment is both a legal and ethical requirement. Consent is a process involving the provision of information and discussion of options frequently, in the case of clinical procedures, resulting in the signing of a consent form to indicate that this process has taken place. If patients are not provided with the information they need – including information about risks and reasonable alternatives – or their questions are not answered satisfactorily, any consent they give will not be valid.² Proceeding with treatment without valid consent may put the patient at risk of harm. It also leaves the doctor who is carrying out the procedure and, where different, the doctor who sought consent at risk of criticism and, potentially, legal and/or regulatory sanctions.

Responsibilities of those who carry out clinical procedures/interventions

Clinical, legal and professional responsibility for ensuring that valid consent has been obtained before treatment is provided rests with the person carrying out the procedure.

The GMC's (General Medical Council) guidance states:

26. *If you are the doctor undertaking an investigation or providing treatment, it is your responsibility to discuss it with the patient. If this is not practical, you can delegate the responsibility to someone else, provided you make sure that the person you delegate to:*
- is suitably trained and qualified*
 - has sufficient knowledge of the proposed investigation or treatment, and understands the risks involved*
 - understands, and agrees to act in accordance with, the [GMC's guidance].*
27. *If you delegate, you are still responsible for making sure that the patient has been given enough time and information to make an informed decision, and has given their consent, before you start any investigation or treatment.*³

In some cases, the treating doctor may be informed by the individual tasked with seeking consent that he or she does not have the necessary knowledge or skills to comply with the request. In such circumstances, the doctor carrying out the procedure is responsible for making alternative arrangements to ensure that valid consent is obtained from the patient before the treatment is provided. If doctors delegate responsibility for seeking consent to someone who does not have the necessary knowledge and skills, they must accept overall responsibility for any failings in the consent process.



Responsibilities of those who seek consent to clinical procedures/ interventions

All doctors have a responsibility to ensure they are familiar with common procedures within the specialty in which they are working, such that they are able to provide information and answer basic questions from patients, as part of the consent process. Where the doctor is not familiar with the procedure required, or there are complexities with the case, or the patient asks questions which go beyond the expertise of the doctor seeking consent, advice should be sought from the doctor who will be carrying out the procedure or overseeing the treatment or another senior colleague.

If a doctor does not feel competent to provide information and seek consent, whether for a particular procedure or in an individual case, he or she must inform the person who is carrying out the procedure, so that alternative arrangements can be made. Having done this, a doctor should not comply with the request to provide information and seek consent unless the necessary support is provided to ensure that valid consent is obtained. Doctors who comply with a request to seek consent from a patient, despite being unable to provide the appropriate information or to answer the patient's questions, and without raising these concerns with the person providing the treatment, must accept some responsibility for any failings in the consent process.

Good practice guidelines

Those who delegate the process of seeking consent for treatment should:

- ensure those to whom they delegate the task of providing information and seeking consent have the necessary knowledge and skills;
- make alternative arrangements, or offer appropriate support, where the person to whom the task is delegated raises concerns about their competence to comply with the request;
- make arrangements for training to be provided if it is common practice for other doctors to seek consent for the procedure.

Those who are asked to seek consent should:

- ensure they have sufficient knowledge and expertise to provide information, answer questions and seek consent for common procedures in the specialty within which they are working;
- inform the person who will be carrying out the procedure if they do not feel they have the knowledge or skills to seek consent for a particular procedure or for a particular patient;
- not comply with a request to seek consent if, having raised these concerns, appropriate support is not provided.

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- 1 British Medical Association (2012) *Medical Ethics Today. The BMA's handbook of medical law and ethics, Third edition*. Wiley Blackwell.
- 2 See our summary of the case of *Montgomery v Lanarkshire Health Board* relating to the validity of consent. This can be found at: www.bma.org.uk/ethics.
- 3 General Medical Council (2008) *Consent: patients and doctors making decisions together*. GMC: London: paras 26-27.

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