Consent for anaesthesia

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Declarations

• Board member, AAGBI
• Chair, AAGBI Consent Working Party 2015-17
• Member, AAGBI Consent Working Party 2005
• Member, GMC Consent Working Group 2006-08
• Expert witness reports
Consent for anaesthesia

- The consenting process
- Legal developments
- AAGBI guidelines

Two important points:
- anaesthetists are in a difficult position
  - ‘enabling’ not ‘treating’
  - multiple components
  - (limited access)
- the AAGBI doesn’t make the law
Consent for anaesthesia

• Respect for autonomy
  • the right of individuals to determine what happens to them
  • the right of individuals to make their own decisions
  • the right of individuals to decide whether to have treatment, and to choose which treatment…
  • …and to change their mind
  • …and to have their information treated confidentially
The consenting process

- Information (disclosure)
- Capacity (competence)
- Understanding
- Voluntariness
- Authorisation

Mental Capacity Act 2005
- understand information relevant to the decision
- retain that information
- use or weigh it as part of the decision-making process
- communicate that decision

- How much to give?
- How good is it?
- When to give it?
- Who should give it?

- How to assess?
- May fluctuate
- May depend on the task
- Relatives
- Staff
- Implicit
- Verbal
- Written
Mental Capacity Act 2005 – principles

• Assume capacity unless proven otherwise
• Obligation to help decision-making
• Decisions can be ‘unwise’
• If lacking capacity then act in best interests
• Minimise restriction of rights and freedoms
Consent for anaesthesia

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- Legal developments
Legal developments

• Increasing divergence in devolved nations
  • Adults With Incapacity (Scotland) Act 2000
  • Mental Capacity Act 2005
  • Mental Capacity (Northern Ireland) Act 2016
• & Ireland
  • Assisted Decision-Making (Capacity) Act 2015
Legal developments

• Increasing divergence in devolved nations
• Change in emphasis from doctor to patient
  • ‘reasonable doctor’
  • ‘reasonable patient’
  • ‘that particular patient’

GMC (2008):
“You must…share with patients the information they want or need in order to make decisions”
Legal developments

- Increasing divergence in devolved nations
- Change in emphasis from doctor to patient
  - ‘reasonable doctor’
  - ‘reasonable patient’
  - ‘that particular patient’

Montgomery (2015):
“The doctor… [must] …take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment,”

GMC (2008):
“You must...share with patients the information they want or need in order to make decisions.”
Legal developments

- Increasing divergence in devolved nations
- Change in emphasis from doctor to patient
  - ‘reasonable doctor’
  - ‘reasonable patient’
  - ‘that particular patient’

Montgomery (2015):

“*The doctor… [must] …take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment,*

“*whether a reasonable person in the patient’s position would be likely to attach significance to the risk,*
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Legal developments

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Montgomery (2015): “The doctor… [must] …take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment,

“whether a reasonable person in the patient’s position would be likely to attach significance to the risk, or the doctor should reasonably be aware that the particular patient would be likely to attach significance to it”
Legal developments

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  - ‘reasonable patient’
  - ‘that particular patient’

Montgomery (2015):
“The doctor… [must] …take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments”

“whether a reasonable person in the patient’s position would be likely to attach significance to the risk, or the doctor should reasonably be aware that the particular patient would be likely to attach significance to it”
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Consent for anaesthesia

  • S.M. Yentis (AAGBI; chair > July 2015)
  • A.J. Hartle (AAGBI; chair < July 2015)
  • I.R. Barker
  • P. Barker (AAGBI)
  • D.G. Bogod
  • T.H. Clutton-Brock (RCoA)
  • A. Ruck Keene
  • S. Leifer (AAGBI; GAT)
  • A. Naughton (AAGBI; lay member)
  • E. Plunkett (AAGBI; GAT)

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Thank you