

MEDICAL INTERVENTION AND MANDATORY REPORTING

under the
Child Care and
Protection Act 3 of 2015

Gender Research & Advocacy Project
LEGAL ASSISTANCE CENTRE
Windhoek, Namibia, 2020



KEY TERMS

What is medical intervention?

This term is not defined, but the Act states that it “includes dental, physiological, psychological and psychiatric interventions”. The lack of a specific definition was intentional, as the term is too broad and general to be easily explained.

What is mandatory reporting?

Mandatory reporting is the legal obligation to report a suspicion that a child may need protective services.

What is consent?

Consent means giving permission for a medical intervention. Consent must be both voluntary and informed.

What is informed consent?

Informed consent requires an understanding and appreciation of the risks of the medical intervention, the consequences of having or not having the intervention, and information about available alternatives. A medical practitioner has an ethical duty to make sure that no patient receives any treatment without informed consent.

NON-SURGICAL MEDICAL INTERVENTIONS

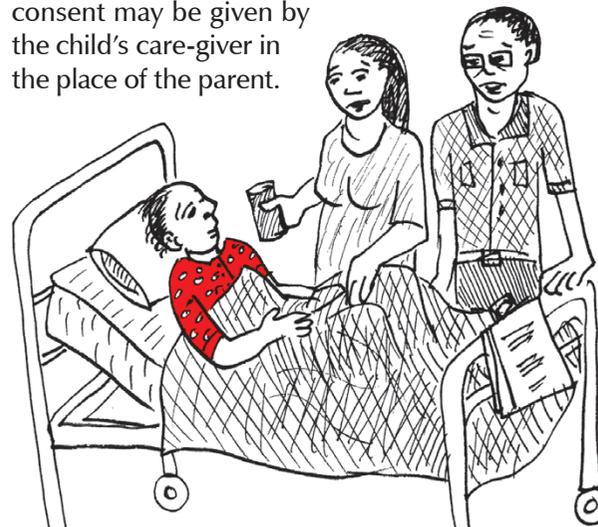
When can a child give consent?

A child may give consent to a medical intervention in respect of himself or herself if –

- 1) the child is **14 years of age** or older
AND
- 2) the medical practitioner concerned is satisfied that the child has **sufficient maturity** and the mental capacity to understand the benefits, risks and implications of the intervention.

If the child is not competent to give independent consent, then consent to medical intervention may be given by the child's parent or guardian.

If the child has no parent or guardian, consent may be given by the child's care-giver in the place of the parent.



SURGICAL OPERATIONS

When can a child give consent?

A child may give consent to a surgical operation in respect of himself or herself if –

- 1) the child is **14 years of age** or older
AND
- 2) the medical practitioner concerned is satisfied that the child has **sufficient maturity** and the mental capacity to understand the benefits, risks and implications of the surgical operation
AND
- 3) the child is **duly assisted by a parent or guardian** OR (if the child does not have a parent or guardian) the child's care-giver.

EMERGENCIES

Who can give consent in an emergency?

- ⊕ superintendent or acting superintendent of a State hospital
- ⊕ regional director or acting regional director of a State clinic
- ⊕ equivalent official in a private health facility.

This child was hit by a car. The motorist involved in the accident called the ambulance. We do not even know the child's name. But if I don't operate right away, she could lose her leg. Get her into theatre right now while I arrange the superintendent's consent.



What is an emergency?

An emergency is when a medical intervention or surgical operation that is necessary to preserve the life of the child or to save a child from serious or lasting physical harm or disability AND the situation is so urgent that the medical intervention or surgical operation should not be delayed in order to obtain the usual consent.



MEDICAL COUNSELLING AND ADVICE

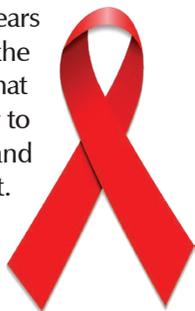
Any child who has sufficient maturity to understand the benefits, risks and implications of a medical intervention may access confidential medical counselling and advice without parental consent. This applies regardless of the child's age, where this is in the best interests of the child.

HIV TESTING

When can a child give consent?

A child may give independent consent to HIV testing in respect of himself or herself if –

- 1) the child is 14 years of age or older
- OR
- 2) the child is under the age of 14 years BUT the person who conducts the pre-test counselling is satisfied that the child is of sufficient maturity to understand the benefits, risks and social implications of an HIV test.



HIV testing of a child is possible without anyone's consent when ...

- ⦿ it is necessary to establish whether a person in a health care setting may have been exposed to HIV
- ⦿ it is necessary to establish whether a person in some other context may have been exposed to HIV AND the test is authorised by a court
- ⦿ the child is pregnant (to facilitate prevention of mother-to-child transmission).

No matter what circumstances lead to an HIV test: the child must receive **pre- and post-test counselling** UNLESS the child is too young to benefit. The child's parent, guardian or care-giver must also receive pre- and post-test counselling where he or she has knowledge of the test.

Disclosure of HIV results with consent:

A child may give independent consent to disclose his or her own HIV positive status if –

- 1) the child is 14 years of age or older
- OR
- 2) the child is under the age of 14 years BUT the person who conducts the pre-test or post-test counselling is satisfied that the child is of sufficient maturity to understand the benefits, risks and social implications of disclosure.

Disclosure of HIV results without consent:

Disclosure by a person of a child's HIV-positive status WITHOUT anyone's consent is permissible ONLY in very limited circumstances:

- 1) Disclosure is within the scope of the person's powers and duties in terms of the Child Care and Protection Act or any other law.
- 2) Disclosure is necessary for the purpose of carrying out the provisions of the Child Care and Protection Act.
- 3) Disclosure is for the purpose of legal proceedings.
- 4) Disclosure is made in terms of a court order.

Unlawful disclosure of a child's HIV-positive status is a **crime** punishable by a fine of up to N\$20 000 or imprisonment for up to five years, or both.



EXAMINATION AND TREATMENT OF ABUSED OR NEGLECTED CHILDREN

There is an exception to the general rules on consent if the parent or care-giver may be responsible for child abuse or neglect, or may want to protect some other person who was responsible.

This exception applies when a health practitioner suspects that a child has been abused or neglected.

It allows a health practitioner to:

- 1) assess the child
- AND
- 2) provide reasonable medical interventions WITHOUT CONSENT from a parent, guardian or care-giver, regardless of the age of the child.

MANDATORY REPORTING DUTY

People who perform professional or official duties involving children are required to make a report if, during the course of their duties, they come across "information that gives rise to a suspicion that a child is or may be in need of protective services". In such a case, they **must** alert **police** or any **State-employed social worker**.

Failure to report is a **crime** punishable by a fine of up to N\$20 000 or imprisonment for up to five years, or both

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