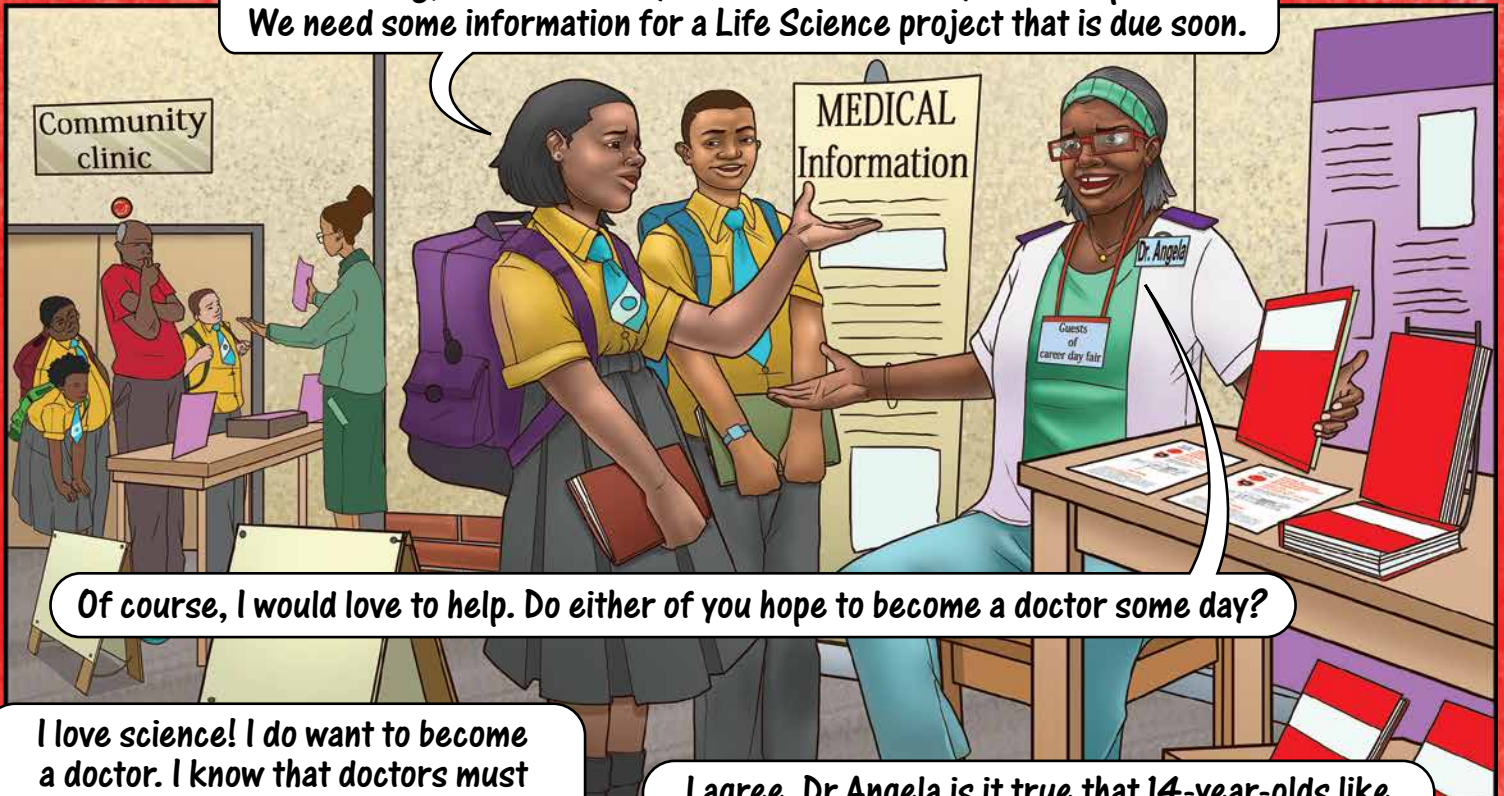


My body, my decision:

Children and medical interventions

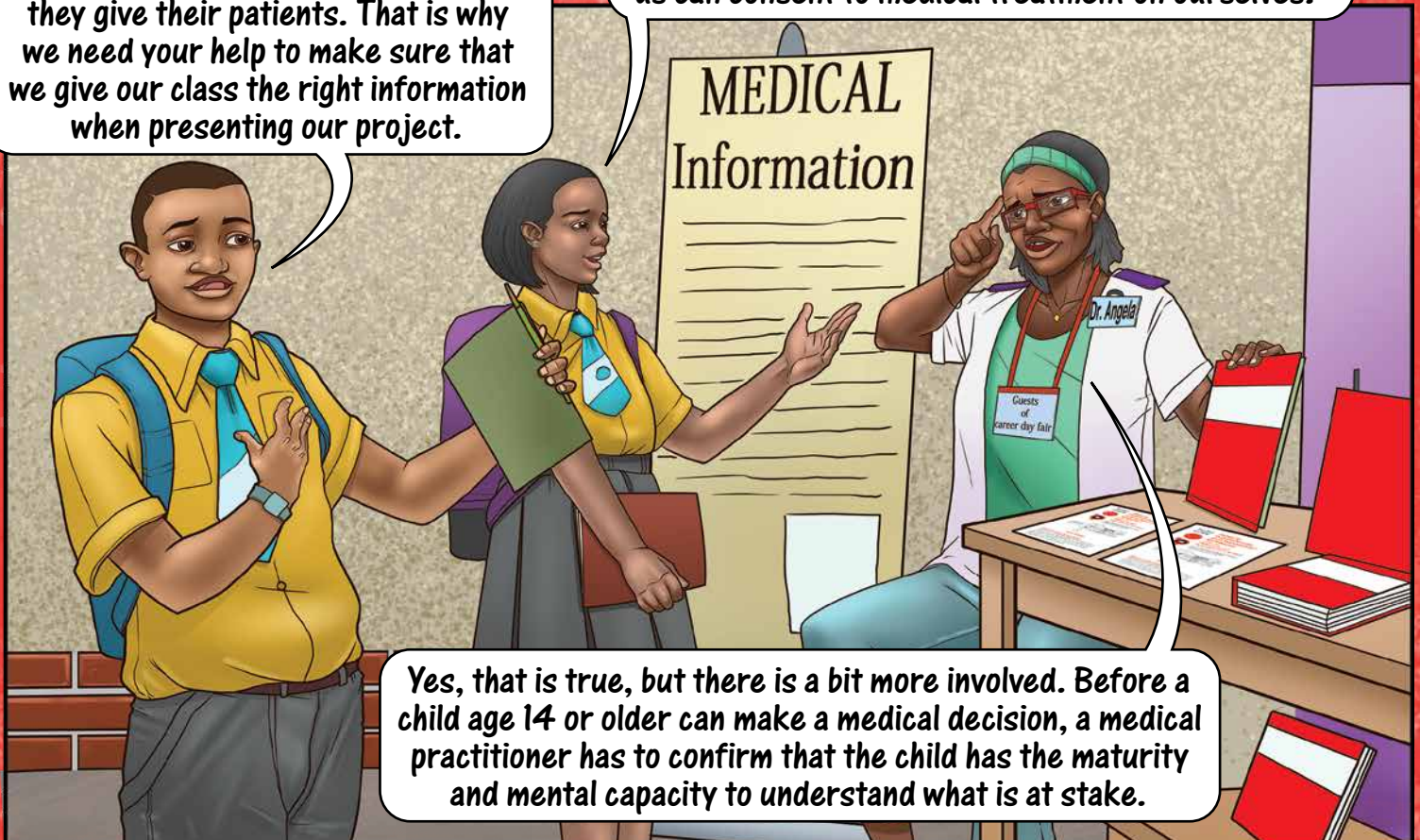
Good morning, doctor. Would you mind if we asked you a few questions? We need some information for a Life Science project that is due soon.



Of course, I would love to help. Do either of you hope to become a doctor some day?

I love science! I do want to become a doctor. I know that doctors must always be certain about the information they give their patients. That is why we need your help to make sure that we give our class the right information when presenting our project.

I agree. Dr Angela is it true that 14-year-olds like us can consent to medical treatment on ourselves?



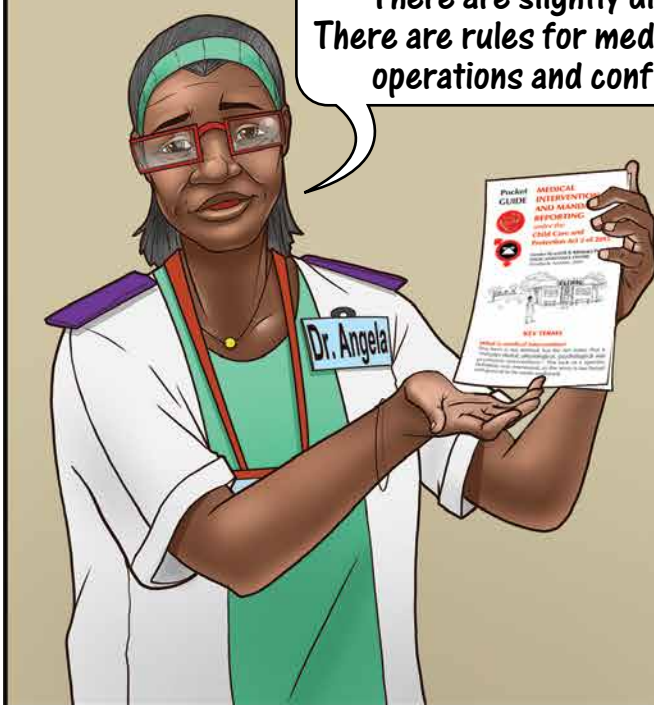
Yes, that is true, but there is a bit more involved. Before a child age 14 or older can make a medical decision, a medical practitioner has to confirm that the child has the maturity and mental capacity to understand what is at stake.

I wanted to have my tonsils removed last month after my friend had his tonsils out, but our family doctor said it is not a good idea unless the tonsils have been causing problems. So then my parents said no. Dr Angela, I thought I was old enough to decide for myself about medical treatment.



Surgery is different, because it often has more risks than other kinds of medical interventions. When it comes to surgery, children under age 18 must be involved in the decision, but they also need a parent or guardian to agree.

There are slightly different rules for different types of health decisions. There are rules for medical intervention in general, and special rules for surgical operations and confidential medical counselling. Take a look at this flyer.



Health decision	Consent requirements
Medical intervention age 14 PLUS sufficient maturity	Child age 14 or older assessed by medical practitioner as having sufficient maturity and mental capacity to understand the benefits, risks and implications of the medical intervention
Surgical operations age 14 PLUS sufficient maturity PLUS assisted by parent	Child age 14 or older assessed by medical practitioner as having sufficient maturity and mental capacity to understand the benefits, risks and implications of the surgical operation AND assisted by parent or guardian
Confidential medical counselling sufficient maturity	Child of any age with sufficient maturity and mental capacity to understand the benefits, risks and implications of the medical intervention (no parental consent required)

Medical intervention is not defined in the law, but it would include all kinds of medical tests and treatment by nurses, doctors, dentists, psychologists and psychiatrists.

Consent means giving permission to a medical intervention freely, after being informed of the pros, cons and alternatives.

Sufficient maturity and mental capacity means having the ability to understand the pros, cons and alternatives, and to weigh them up in a reasonable way.



Your parent or guardian would have to assist you to make a decision about surgery, but any child with sufficient maturity can get confidential medical counselling. For example, this means that anyone who is mature enough can get information about family planning.

Who can give consent on behalf of a child who is too young to decide alone, Dr Angela?



Great question! When a child lacks decision-making capacity, the parent or guardian can give consent on behalf of the child after considering the child's views. If there is no parent or guardian, then the person who takes care of the child can decide. If there is no one to give consent – or if consent is unreasonably refused – then the Minister of Gender Equality or the Children's Court can give consent on the child's behalf. If you had a problem like this, you could ask the Ministry of Gender Equality or a social worker to help you.

Thank you for helping us, Dr Angela. We will be sure to read through the pamphlets you have given us to find out more about medical intervention. I see that it also has information about who can give consent for medical treatment for a child in an emergency.



I have learned a lot today! Thank you, Dr Angela.

NON-EMERGENCIES

Lack of consent by parent, guardian or care-giver

- ⦿ unreasonably refuses consent
- ⦿ incapable of giving consent
- ⦿ cannot readily be traced
- ⦿ deceased

Lack of consent by child

- ⦿ unreasonably refuses consent
- ⦿ is unable to give consent (for example, because he or she is unconscious)

Any person with an interest in the Child's well-being can ask the **Minister** to give consent.

If the Minister refuses, any person with an interest in the child's well-being can apply to the **children's court** for consent.

EMERGENCIES

Who can give consent in an emergency?

In emergencies, consent for medical intervention or surgery can be given by the senior official of a health facility.

Note that a parent cannot refuse consent to medical intervention on a child on the grounds of religious or other beliefs **UNLESS** that parent, guardian or caregiver can show that there is a **medically accepted alternative**. A parent cannot impose his or her personal beliefs on a child in a way that is contrary to the child's best interests, or in a way that might violate the child's constitutional right to life.

Meanwhile ... Albertina and Joseph are discussing visiting the new family clinic but Joseph is scared.



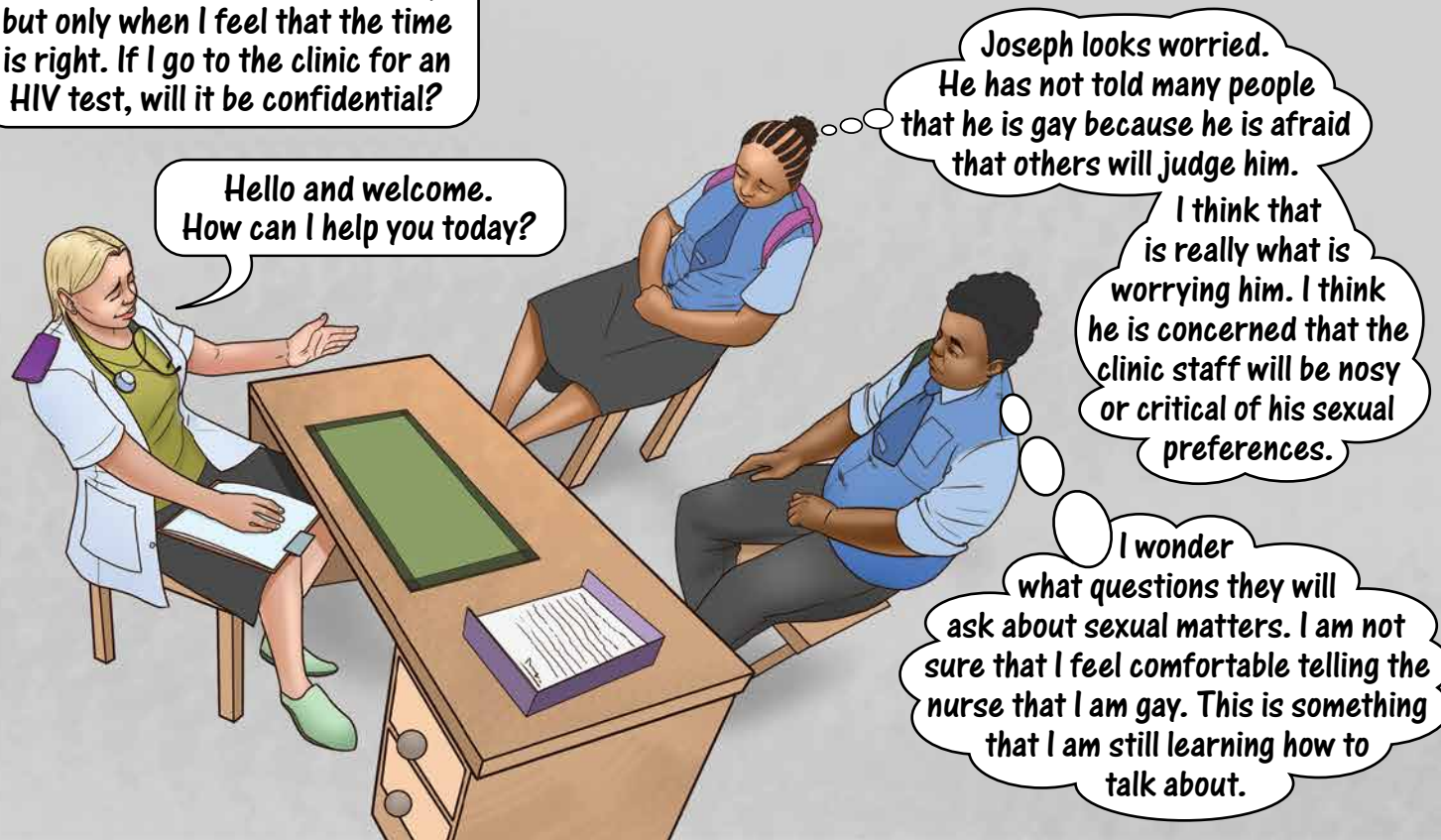
I am so glad we have a new family clinic in our community Albertina. Do they provide services to teenagers like us?

They do! I was there last month to get advice on family planning now that my boyfriend and I are thinking about going to the next level. Clinics are really not as scary as you think. They offer many medical services - such as pregnancy testing and testing for HIV or other sexually-transmitted infections. The nurses are very friendly too.



I would also like to find out about my HIV status, but I am not ready to tell my parents that I am sexually active. I want to talk about sexual issues with them, but only when I feel that the time is right. If I go to the clinic for an HIV test, will it be confidential?

Yes! We can discuss HIV testing with the medical staff at the clinic privately, without our parents, and your visit and your test results will all be confidential! It is important that everyone knows their HIV status. I can go with you to the clinic if it will make you feel better.



Hello and welcome. How can I help you today?

Joseph looks worried. He has not told many people that he is gay because he is afraid that others will judge him.

I think that is really what is worrying him. I think he is concerned that the clinic staff will be nosy or critical of his sexual preferences.

I wonder what questions they will ask about sexual matters. I am not sure that I feel comfortable telling the nurse that I am gay. This is something that I am still learning how to talk about.

Nurse, we are here because my friend Joseph wants to have an HIV test – but I think that he is feeling nervous about it.

As a first step, you will sit down with our counsellor for pre-testing counselling. We will talk about how you are feeling, and about HIV issues in general. We want to make sure you feel prepared for any result. We also want to make sure you understand the basic facts about HIV and how you can have safer sexual activities. Make yourself comfortable, Joseph, I will be right back with the counsellor.

Albertina, look at that poster on the wall. It says that medical people must not discriminate against anyone on all sorts of grounds – and the list includes gender and sexuality.

PATIENT CHARTER – Core Values

- **Confidentiality:**
 - To keep patients/clients' information confidential and use it only for the purpose of treatment, unless legally obliged to do otherwise.
 - Not to divulge information relating to client organizations to a third party without consent.
- **Empathy and Caring:**
 - Treat patients/clients equally.
 - Provide care and support to clients as if they were members of one's own family.
- **Honesty, Integrity and Dignity:**
 - All patients/clients have the right to:
 - Be treated with respect at all times
 - Have their values, culture, religion, and dignity respected at all times
 - Be listened to and be heard
 - Privacy during consultation, physical examination and treatment.
- **Impartiality:**
 - Treat all patients/clients equally, irrespective of status, religion, political belief, race, colour, gender and sexuality.

I told you that it would be okay.

Nurse, that poster says that information about patients is confidential. Albertina and I are only 17 years old, so we are not adults yet. Does that apply to us too?

Yes, it does! Children of any age can get confidential medical information, and any child who has the maturity to understand HIV can get an HIV test. I will not tell anyone else about what we discuss today, unless I discover you are being harmed or abused by someone. Then I would have a legal duty to tell someone who can protect you. But otherwise, anything you tell me is just between us.

After Joseph's HIV test ...

I will be back in a few minutes when your test results are ready, Joseph. Then you will need to speak to a counsellor again, about dealing with HIV if the test is positive or about how to continue to protect yourself if the test is negative.

I am glad that I can get an HIV test and information about safer sex, and still choose when I am ready to talk with my parents about being gay and sexually active.

Joseph looks happier now. I am glad that he can speak openly to the nurse without any fear that she will tell someone else what they have discussed. Teens like us need a safe space to find out about illnesses and sexual issues.

HIV TESTING

Health decision	Consent requirements
HIV-testing age 14 OR sufficient maturity	<ul style="list-style-type: none">☉ Child age 14 or older☉ Younger child assessed by pre-test counsellor as having sufficient maturity to understand the benefits, risks and social implications of an HIV test
Disclosure of HIV-positive status age 14 OR sufficient maturity	<ul style="list-style-type: none">☉ Child age 14 or older☉ Younger child assessed by pre-test or post-test counsellor as having sufficient maturity to understand the benefits, risks and social implications of disclosure.

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.

I will be happy to discuss my test results with the counsellor, Nurse. You and your team have made me feel very comfortable.

Meanwhile, at the hospital where Dr Angela works, one of her medical interns is consulting a young child brought in by his aunt.

Good morning Ma'am. My name is Liz, and I am a medical intern here at the hospital. What seems to be the problem? How can I help?

Well Liz, this morning I noticed these strange bruises on my nephew's arms and stomach. He cried every time I started to touch him. I take care of him while his parents are at work, and I have never seen injuries like this before. I could be wrong, but I am worried that this could be a sign of abuse.

You have done the right thing by coming to us. It is also important for your nephew to be examined by a doctor to see if he may have other injuries that are not visible. Please give me a few minutes - I need to talk to my supervisor because this is a sensitive and serious situation.

Alfons and Justine reminded me how important it is to share clear information. These pocket guides can be very helpful to anyone dealing with abused children. My fellow doctors will also find them useful when examining such patients. I will put some pocket guides at the entrance for everyone to see.

Dr Angela, I need your help with a case involving possible abuse of a toddler. Aren't we required by the new children's law to report any suspicion of child abuse?

Yes, medical practitioners must report suspected child abuse to police or to a government social worker. I will attend to the patient and contact a social worker who can do a further investigation to find out if there is a problem at home. In the meantime, please read through one of these flyers. The information will be helpful if you are faced with such a case again in the future.

EXAMINATION AND TREATMENT OF ABUSED OR NEGLECTED CHILD



Who can
utilise the
exception?

Medical, dental,
social work,
psychology,
nursing or allied
health practitioner
who is acting
within the scope of
his or her duty

When does
the exception
apply?

When the health
practitioner
suspects that a
child has been
abused or
neglected



What does the
exception
allow?

Health practitioner may

- assess the child
- provide reasonable medical interventions

WITHOUT CONSENT from parent, guardian or care-giver – regardless of age of child

BUT no anaesthetic without consent



Mandatory reporting duty

People who perform **professional** or **official duties** involving children are **required to report** any suspicion that a child is or may be in need of protective services.

- must **alert police** or a 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

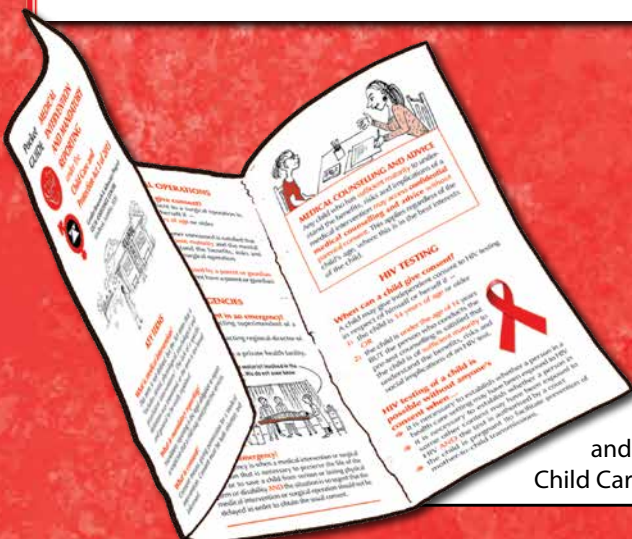


Guidelines for the examination of an abused or neglected child

- ✓ address the child in a language which the child understands
- ✓ allow the child to be accompanied by a support person
- ✓ treat the child with empathy, care and understanding
- ✓ respect child's right to privacy and confidentiality
- ✓ examine the child in a child-friendly environment
- ✓ conduct assessment or examination in private
- ✓ respect the child's dignity

SUMMARY

- ⑤ The Child Care and Protection Act applies the principle of **child participation** to **medical interventions, surgical operations** and **HIV testing**. This means allowing children to make their own decisions when they are old enough and mature enough, and considering their views even when they are not able to decide on their own.
- ⑤ The Child Care and Protection Act sets criteria based on **age and maturity** for determining when a child can make **independent decisions on medical issues**. The medical practitioner who is treating the child will decide on the child's maturity.
- ⑤ The Child Care and Protection Act also sets out special rules for **consent to medical examinations of children who may have been abused or neglected**.



A PowerPoint presentation on "Medical Interventions and HIV Testing" and a **Pocket Guide to Medical Intervention and Mandatory Reporting** under the Child Care and Protection Act are available on the LAC website: **www.lac.org.na**.

For more information about medical interventions and HIV testing for children, contact the Legal Assistance Centre:
SMS: 081 600 0098

We would like to hear your FEEDBACK about this comic.

An **electronic version (PDF)** of this publication is available on the LAC website: **www.lac.org.na**

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Text: Celine Engelbrecht, Yolande Engelbrecht & Dianne Hubbard
Illustrations, design & layout: Taty Tang Arts and Perri Caplan

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