

INFORMED CONSENT & MANAGEMENT OF THE UNCOOPERATIVE FRIGHTENED CHILD FROM A LEGAL PERSPECTIVE

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Summary

- General legal framework for minors
- Synthesis and application

Application of patients' rights

- Individuals aged 0 to 18 are minors and are represented by their parents (art. 372 et seq. old Civil Code)
 - ✓ Parents make the decisions regarding the person and the goods of their children
 - ✓ Joint exercise of parental authority
 - ✓ With regard to bona fide third parties: the consent of one parent is sufficient.
 - ✓ Parental authority is purpose related – best interests of the child
- For patients' rights, a specific regulation applies (art. 12 Law on Patients' Rights):

“§ 1. In case the patient is a minor, the rights as established by this Law shall be exercised by the parents having the parental authority over the minor or by his guardian.

§ 2. The patient shall be involved in the exercise of his rights taking into account his age and maturity. The rights enumerated in this Law may be exercised independently by the minor patient who can be considered capable of a reasonable assessment of his interests.”

Application of patients' rights (cont.)

- So there are no age limits and 3 phases for exercising patient rights:

Phase 1:

The minor is incompetent and cannot be involved in decisions (e.g. newborn baby). The parents decide entirely on their own

Phase 2:

The minor is incompetent but can be involved in decisions (e.g. 7 years old). The parents decide, but this time with involvement of the minor

Phase 3:

The minor is competent and decides for himself/herself, possibly with the involvement of the parents as persons of trust

Specifically: the right to qualitative services

- Every patient has the right to qualitative services (art. 5 Law on Patients' Rights)
 - ✓ Taking into account the specific situation of minors
 - ✓ Bv. Charter European Association for Children in Hospital
 - ✓ Children in hospital shall have the right to have their parents or parent substitute with them at all times
 - ✓ Steps should be taken to mitigate physical and emotional stress
 - ✓ Children shall be cared for by staff whose training and skills enable them to respond to the physical, emotional and developmental needs of children and families
 - ✓ Bv. Council of Europe guidelines on child-friendly health care
 - ✓ Children, by reason of their physical and mental immaturity, need special safeguards and care
 - ✓ Children are entitled to special care and assistance, and that children in difficult conditions need special consideration
 - ✓ All children should be treated with care, sensitivity, fairness and respect throughout any health care intervention, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity

The right to information and informed consent

- The medical practitioner must inform the minor and/or the parents in advance of the state of health and the medical intervention (art. 7 and 8 Law on Patients' Rights)
 - ✓ Essential for a good understanding of the situation and the medical intervention
 - ✓ During a verbal conversation - not on paper
 - ✓ By the anesthesiologist himself (or the surgeon, if necessary by appointment)
- The medical practitioner must also obtain prior informed consent from the minor or the parent(s) (art. 8 Law on Patients' Rights)
 - ✓ No medical intervention can take place without informed consent!
 - ✓ If the minor is capable of giving informed consent and refuses, the intervention cannot take place
 - ✓ If the parents decide to refuse, there is still an escape clause (art. 15, §2 Law on Patients' Rights - only in case of danger to life or serious threat to health)
 - ✓ If the minor is incompetent (and therefore the parents decide) and resists, there is a grey area - avoid coercion as much as possible, only if the situation is urgent and there is a risk of serious harm

Case law on liability of (veterinary) practitioners

- The medical practitioner must anticipate to possible anxiety and nervousness of the patient that may interfere with medical procedure
- Accidents are not attributed to the patient, but to the (veterinary) surgeon
- (Veterinary) surgeon must take measures to prevent (foreseeable) accidents
- Prior duty of investigation and information
- The individual act must be performed immediately and smoothly
- Alternative modes of anesthesia or postponement

Synthesis and application

- Consider the specific/weak position of minors
- Do not start the procedure unprepared, but inform the minor and/or parents(s) in advance and discuss possible scenarios (e.g. how to deal with fear or nervousness, how to avoid it, possible postponement, alternative methods of anaesthesia, etc.)
- Possibly drawing up and following of a checklist
- Act promptly and competently during the procedure itself
- If there is a problem situation
 - ✓ Act in accordance with what was discussed beforehand
 - ✓ Even if parents agree, avoid coercion as much as possible
 - ✓ If parents do not agree, no medical intervention, unless there is an escape clause



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