

# Guideline to parents, caregivers, legal guardians and children on

## CHILDREN AND HEALTHCARE

### **The 2005 Children's Act**

In 2005 South Africa got a new Children's Act. Regulations were made in 2010. This law now tells us how we have to deal with children and healthcare. If you have any questions about this law, please contact your legal advisor or a social worker for advice and assistance. This law spells out who can consent to the child accessing healthcare or surgery, and what must be done in those cases. As a health facility (hospital) we have to adhere to this law. If we find that the law is not applied, or there are different views between parents and children on an operation, we will ask a social worker to get involved to facilitate the process.

### **Children's consent to healthcare**

If your child is 12 years of age, the Children's Act awards him/her certain rights. This does not mean that you as a parent, caregiver or guardian should not be involved and in normal circumstances children would want their parents involved.

**Surgery:** In the case of surgery, the forms must be signed according to the regulations by the child, and the parent(s), caregiver or legal guardian have to confirm that you have supported and assisted the child in consenting to the surgery. We have copies of these forms available, should you want to look at it.

**Treatment:** A child of 12 to 18 years can, without the parents knowing, access treatment (i.e. go for a consultation, receive medical advice and medicine, etc.) if the doctor feels that the child is mature enough to understand the implications of the treatment. If the child is younger than 12, or not mature enough to understand the implications, the parent(s), caregiver or legal guardian of the child can consent to the treatment.

**Cost:** The parent(s), caregiver or legal guardian however remains liable for all costs of healthcare of their children, irrespective of whether they were involved or not.

Any of a child's parents can consent, or both can consent jointly. If one parent consented, that is still a valid consent and that parent remains liable for the costs of the treatment and/or operation. If there are specific agreements between parents, they have to sort that out between themselves – the hospital and doctor cannot be held liable for such agreements or the enforcement of it.

### **What if parent(s), caregiver or legal guardians unreasonably refuse to consent or, cannot be tracked, are deceased or cannot consent?**

In all emergencies, or where the treatment or surgery cannot be postponed, the superintendent / person in charge of the hospital may consent instead of the parent(s), caregiver or legal guardian. In all cases, the Minister of Social Development consents through a process facilitated by the social worker.

### **What if the child or parent(s), caregiver or legal guardian unreasonably refuses consent?**

The Minister of Social Development may consent through a process facilitated by a social worker.

### **What if consent is withheld on religious or cultural grounds?**

This can only happen if the parent(s), caregiver or legal guardian can show that there are alternative treatments. The courts can override the refusal if it is in the best interest of the child. Also in this case a social worker will be involved.

### **Child's right to confidentiality**

The child who can consent without his/her parent(s), caregiver or legal guardian knowing (i.e 12 to 18 years if they are mature), has a right to his/her healthcare information being held in confidence by the hospital and doctors. If the child agrees to the information being shared with the parents or others, the child must sign a written consent to such a disclosure.

### **Suspected abuse or neglect**

The Children's Act places a legal duty on all healthcare workers to report suspected abuse or neglect. This must be reported to the SA Police Service, or to a social worker to take the matter further. There are special forms in the regulations for this purpose.