Assisted Decision Making (Capacity) Act 2015

Consent

#hello my name is...

Marie Tighe

Human Rights

Background

- Autonomy is a fundamental principle in ethics
- **Autonomy:** autonomy relates to being human and worthy of respect. In a practical sense, it is the ability of an individual to direct how he or she lives on a day-to-day basis according to personal values, beliefs and preferences. In health and social care, this involves the person who uses services making informed decisions about the care, support or treatment that he or she receives. The ability to be autonomous, and make decisions, can be supported and developed. (HIQA)
- One's actions and decisions are one's own and should be respected.
- Respect the right to consent/refuse treatment or care.

IHREC

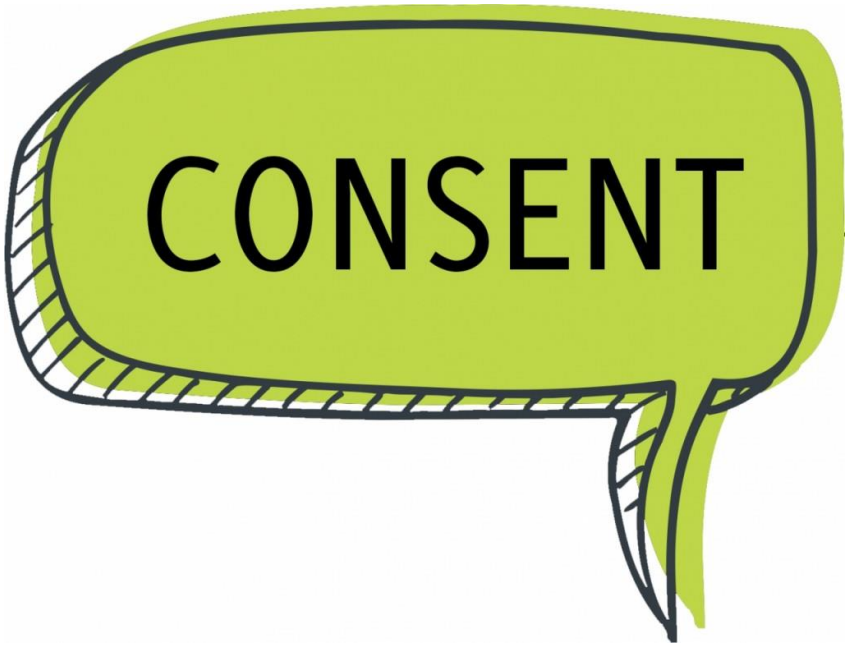
- **Irish Human Rights and Equality Commission**
  - promote and protect human rights and equality in Irel
  - build a culture of respect for human rights, equality ar intercultural understanding.

- All public bodies in Ireland have responsibility to promote equality, prevent discrimination and protect the human rig their employees, customers, service users and everyone af by their policies and plans

- Legal obligation - called the Public Sector Equality and Hun Rights Duty,
  - originated in Section 42 of the [Irish Human Rights and Equality Act 2014.]

What is consent?

"Consent is the giving of permission or agreement for an intervention, receipt or use of a health and social care service or participation in research following a process of communication about the proposed intervention"



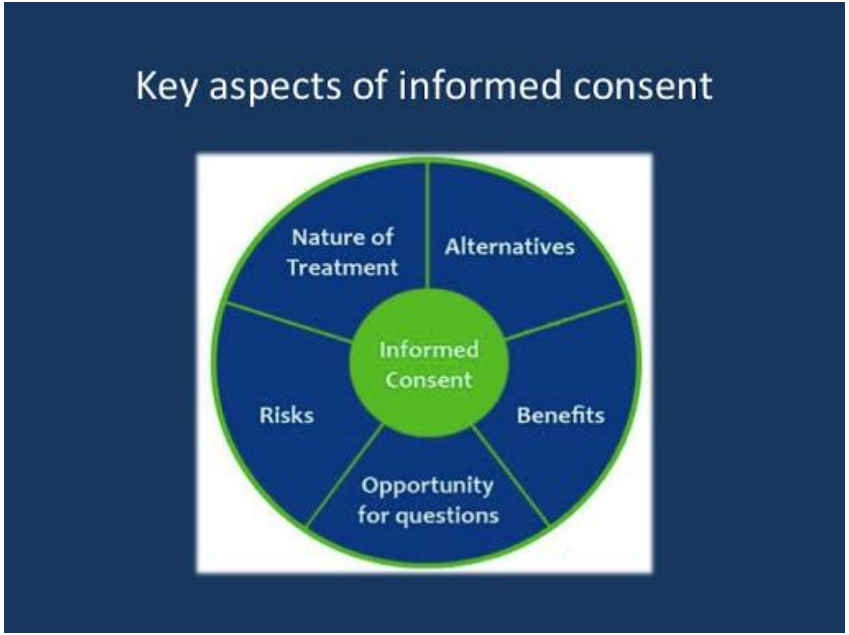
What is valid and informed consent?

The person must have:-

- Have received sufficient information in a **comprehensible** way about the nature, purpose, benefits and risks of intervention
- Make a voluntary choice.
  - People must not be put under undue pressure to make a particular choice
  - They must understand they have a choice

- Have capacity to make that particular decision (understand relevant information, retain it long enough to make a choice, use or weigh it in making the decision and communicate decision by any means)

*Presumption of capacity unless the contrary is shown



National Consent Policy QPSD-D-026-1, V.1
Tús Áite do Shábháilteacht Othar
Patient Safety First
Quality and Patient Safety Directorate
National Consent Policy
This is a controlled document and may be subject to change at any time

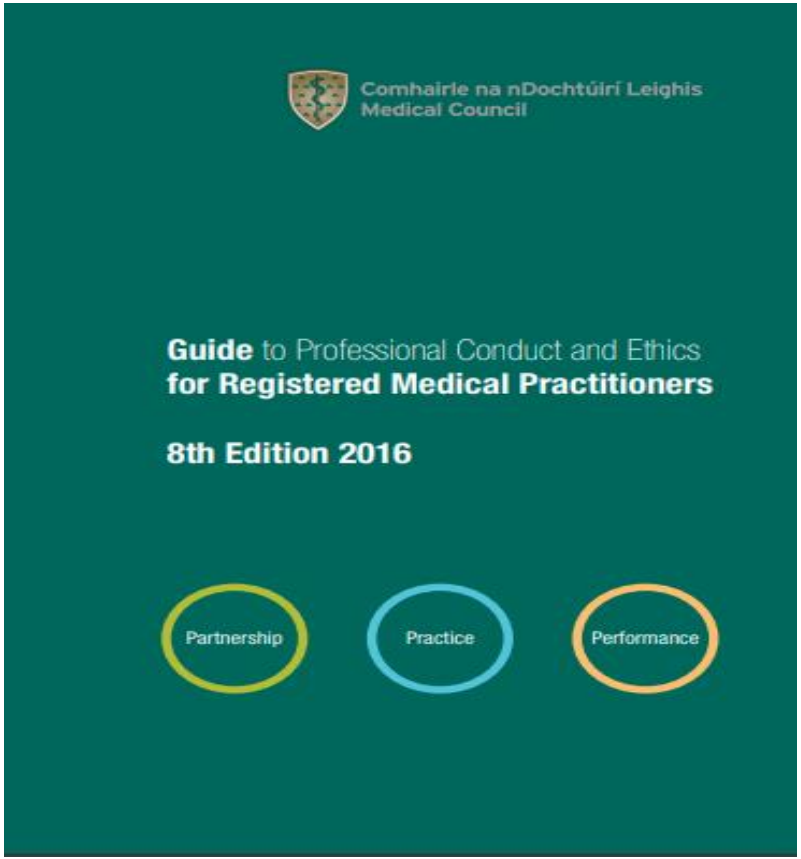
HSE National Consent Policy

5.6.1 Role of the family

No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service[6] on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so[7].

However, it may be helpful to include those who have a close, ongoing, personal relationship with the service user, in particular anyone chosen by the service user to be involved in treatment decisions, in the discussion and decision-making process pertaining to health and social care interventions.

Their role in such situations is not to make the final decision, but rather to provide greater insight into his/her previously expressed views and preferences and to outline what they believe the individual would have wanted. In some cases, involvement of those close to the service user will facilitate the service user in reaching a decision in conjunction with health/social care providers.


Comhairle na nDochtúirí Leighis
Medical Council
Guide to Professional Conduct and Ethics
for Registered Medical Practitioners
8th Edition 2016
Partnership
Practice
Performance

The Guide to Professional Conduct and Ethics for Registered Medical Practitioners 8th Edition

10.5 If an adult patient lacks capacity to make a healthcare decision, you must take reasonable steps to find out if anyone else has the legal authority to make decisions on the patient's behalf. If so, you should seek that person's consent to the proposed treatment.

10.6 If there is no-one with legal authority to make decisions on the patient's behalf, you will have to decide what is in the patient's best interests. In doing so, you should consider:

- which treatment option would give the best clinical benefit to the patient;
- the patient's past and present wishes, if they are known;
- whether the patient is likely to regain capacity to make the decision;
- the views of other people close to the patient who may be familiar with the patient's preferences, beliefs and values; and
- the views of other health professionals involved in the patient's care.

Who has “specific legal authority”?

- In practice, almost nobody!!
- Wards of Court - court
- Enduring Power of Attorney made under current law does not include a healthcare decision

What Is An Enduring Power Of Attorney (1996 Act)?

- A legal document which allows an individual to choose to appoint a specific individual (usually a close family member) to look after both:-
  - your person (personal care decisions)
  - financial affairs
- Main purpose of an enduring power of attorney is to enable somebody of your choosing to have the entitlement to manage your financial and personal affairs for you if you lose your mental capacity at some future date.
- Comes into effect when its registered in HC

What Is An Enduring Power Of Attorney (1996 Act)?

- A personal care decision is a decision concerning one or more of the following:
  - Where and with whom you should live
  - Whom you should see and not see
  - What training and rehabilitation you should get
  - Your diet and dress
  - Inspection of your personal papers
  - Housing, social welfare and other benefits
- The list does not include health care decisions, although the borderline between personal care and health care decisions is not always clear. However, it seems clear that the attorney does not have the power to make a decision as to whether or not a person suffering from dementia should undergo surgery.

Next of Kin

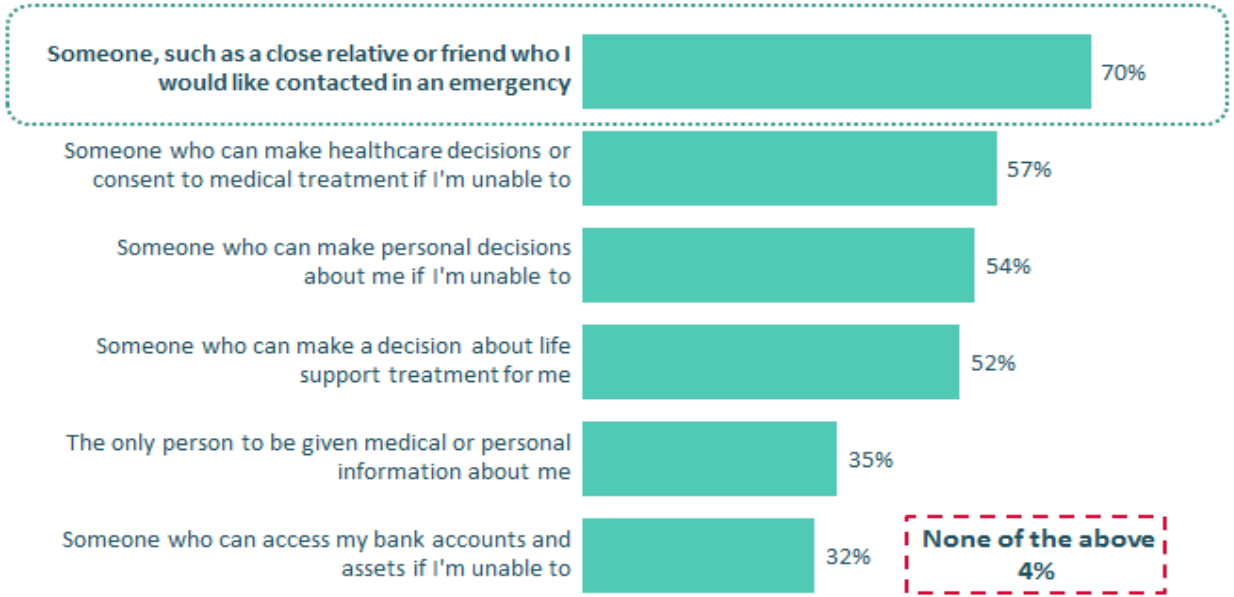
"If you order the chili, I need to know your next of kin."

Next of Kin

No Legal Authority to consent or refuse treatment on behalf of another

Which of the following do you feel is the role of your 'Next of Kin'?

(Base: All Adults; n=1,020)



7 in 10 believe that **'Next of Kin'** is somebody to be contacted in an emergency. More than half believe **'Next of Kin'** is associated with making healthcare or personal decisions on their behalf, if they are unable to do some themselves. Only 4% do not associate the role of **'Next of Kin'** with any of the statements.

REDC (Q.1)

Current evidence of this in practice:

Next of Kin- Forms

- Pervasive use of the term next of kin on forms and in practice
- Next of kin are consenting and signing for treatment
- On occasions intervention/procedure will not be carried out without next of kin/third party consent signing forms.

Next of Kin- Forms

DATE: .....

I ..... hereby consent to undergo
Patient Name

or

I ..... Parent/Guardian/Next of Kin* of.....
Name **delete as appropiate* *Patient Name*

hereby consent to my ..... to undergo
(State relationship to patient)

the operation/procedure of

.....

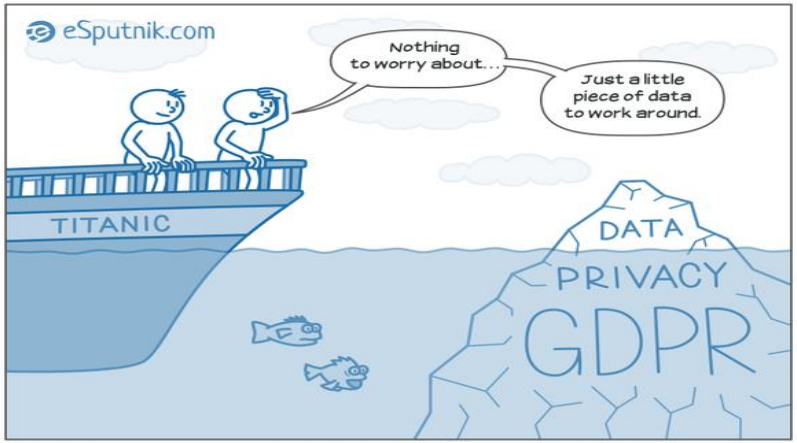
the nature and purpose of which have been explained to me by

*Dr./Mr./Ms./Prof .....

Health Records and Personal Data

- Next of kin accessing health records and data

- Disclosure of information to next of kin without consent of *the* person



Consequences

- Prevailing view that Next of Kin have decision making rights
- Practices and procedures have reinforced this view
- Very challenging for staff to address this
- Challenging for ‘Next of Kin’ to accept this

- “Why should I have to become an ‘intervener’ when I have already (de facto) been doing this for years?”

Next of kin should change to……

Nominated person

And ‘those with legal authority’…

What does it mean for the person?

"Because to take away a man's freedom of choice, even his freedom to make the wrong choice is to manipulate him as though he were a puppet and not a person." Madeline L'Engle

Champion
Partner
Enable
Demonstrate

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