Association of Anaesthetist response to the General Medical Council consultation Decision making and consent: a public consultation on our draft guidance

About the guidance, scope and application

The GMC have revised and restructured their guidance to make it easier for doctors to find the information they need and to make sure it's as clear and helpful as possible about what's expected of doctors when supporting patients to make decisions.
Revised structure

The current *Consent* guidance (published in 2008) is in three main parts: Principles; Making decisions about investigations and treatment and Capacity issues. There are now two main sections introduced by explanatory text, which doesn't form part of the main guidance, on:

- applying the principles in the guidance
- the relationship between this guidance and action against a doctor's registration
- the scope of the guidance
- the ethical and legal framework which underpins the guidance, and
- the main principles.

Part 1 of the guidance, *Supporting patient decision making*, covers the importance of supporting patients to make decisions and the steps that doctors should take to do this. The GMC have brought some of the information about maximising capacity into this section, to highlight the importance of helping all patients to make decisions, not just those whose capacity is in doubt.

Part 2 of the guidance, *Making decisions*, covers:

- where your patient is able to make the decision and give consent
- where your patient may lack the capacity to make the decision
- where you have legal authority to make a decision to protect the patient or other people
- recording decisions
- reviewing decisions.

Applying the principles and the relationship between this guidance and action against a doctor's registration

The GMC have revised and expanded the explanation of how our guidance should be applied, to confirm that our guidance is not a rulebook and doctors must use their professional judgement when applying the principles in practice.

And to clarify when the GMC will take action to investigate concerns about fitness to practise, we now explain in this section that there is no automatic link between failure to follow our guidance and a doctor's registration.

The scope of the guidance

The GMC have removed the paragraphs on *Involving children and young people in making decisions* from the body of the guidance and instead made it clear in the Scope of the guidance where to find this information. This is because many of the principles in our guidance are relevant to decision making with young people, the GMC have detailed guidance on this in *0–18 years: guidance for all doctors*.

In this section, the GMC have also confirmed that the same good practice principles apply:

Association of Anaesthetist response to the General Medical Council consultation Decision making and consent: a public consultation on our draft guidance

- in the same way to decisions about mental and physical health (to confirm the equal status of these decisions, the GMC made this explicit in our guidance)
- whether doctors communicate with patients face to face or remotely (eg by telephone or online).

The ethical and legal framework

The GMC guidance takes account of, and is consistent with, the law in all four countries of the UK. It's written to make sure doctors who follow it are acting within the law.

As the legal framework is complex, and in light of concerns about the extent of ethical and legal obligations following recent case law, we've added a section explaining the legal and ethical principles that underpin our guidance. This section is supplementary to the main guidance, so doesn't include any 'must' or 'should'' statements. It's for anyone who wants to understand the framework and our approach.

In this update the GMC have also removed references to legal cases in the guidance. Instead, we focus on explaining the principles that arise from legal cases, and what they mean for doctors. Doctors, and others who want to know the case law, can refer to the legal annex which we will also update to make sure it remains accurate and helpful.

The full Association response submitted via the online submission system is attached a appendix 1

Appendix 1

Decision making and consent: a public consultation on our draft guidance. Full questionnaire.

Page 1: About the guidance, scope and application

1. Comments on scope and application

We think the content of the guidance is clear, that it covers the appropriate areas and provides useful extra supporting information.

Page 2: Main principles of the guidance

2. Is the summary helpful?

Yes

Comments:
In the paragraph entitles ‘Respect your patients’ decisions,’ we suggest being explicit about our duty to manage resources. This is particularly pertinent to provision and management of ITU and HDU resources. We suggest adding to the end of the paragraph something on the lines of the following, so it is clear we are not expected to proceed if the patient has made the decision to go ahead with a procedure for which they will need ITU/HDU care, when this is not available. ‘It is recognised that when resources are limited, doctors must maximise the benefit of these resources fairly (distributive justice). This requires prioritisation based on complex and multifactorial decision-making based on availability, perceived benefit, burden and patient wishes.’ We have had experiences of patients who come into hospital expecting a procedure, indicating that we are failing to respect their wishes to have surgery by not having a bed available.

Page 3: How decisions are made (paragraphs 1-8)

3. Is it helpful to include these frameworks?

Yes

Comments:
It would be useful to make a reference to the emergency situation as part of paragraph b. This might be something on the lines of ‘It is recognised that obtaining a legal opinion may not be possible in some emergency situations.’ Such a high percentage of work is urgent or emergency in nature that we think it appropriate to acknowledge this as part of the basic framework

4. Is the guidance on delegation helpful?

Yes

Page 4: Part 1: Supporting patient decision making (paragraphs 9-38)

5. Is the guidance on sharing information helpful?

Yes

Comments:
It may be useful to suggest that patients should be provided with sufficient written information to enable them to be informed to the level the patient and the institution wishes, prior to discussion with the responsible doctor. There would be value in pointing out that institutions, as well as individual practitioners, have a responsibility to provide written information.

6. Do you agree with this approach?

Yes

7. Is the guidance at paragraphs 20-24 helpful?

Yes

Comments:
An explicit statement is needed that prioritisation of resources may be required to maximise benefit for all patients which may conflict with an individual patient's wishes for treatment. It is common to get requests for intensive care admission out with the resources available in the U.K., from physicians stating that the patient or family want 'everything" done.

Page 5: Continued

8. Is the guidance on benefits and harms helpful?

Yes

9. Are paragraphs 33-35 helpful?

Yes

Page 6: Part 2: Making a decision (paragraphs 39-102)

10. Is the guidance on expressions of consent helpful?

Yes

11. Is the guidance on planning future care helpful?

Yes

12. Is the guidance at paragraphs 61-65 helpful?

Yes

Page 7: Continued

13. Is the guidance on assessing capacity helpful?

Not sure

Comments:
As far as it goes the guidance is helpful. However, sometimes it is necessary to decide very quickly about capacity and intervene with acute medical care. It may be that the situation would not constitute an emergency, but that failure to proceed would be detrimental to the patient [such as decision regarding treatment of a pneumonia in a frail elderly patient with other illnesses]. The current guidance concentrates on situations where there is no time pressure. As much of today's practice concerns more urgent situations, it would be useful to provide guidance for these circumstances.

14. Should use the term 'overall benefit'?

Not sure

Comments:
To some extent this depends on how the phrase is interpreted by courts of law.

Page 8: Continued

15. Is the guidance on emergencies clear?

Not sure

Comments:
50% of the respondents say 'yes' and the rest say 'not sure'

16. Are paragraphs 92-95 helpful?

Yes

Page 9: Overall comments

17. Overall comments

Some changes are very welcome.

Page 10: Putting the principles into practice

18. Comments

There may be value in the GMC developing or signposting resources that patients can access to help them understand what we mean by consent and capacity.

There is a particular problem for those of us trying to deliver an efficient service in a time pressured and overstretched working environment, such as in anaesthesia.

The guidance states

26. If the proposed course of action carries with it a known risk of harm that you believe the patient would consider to be serious in their circumstances, you must tell the patient even if you think it is very unlikely to occur. You should also tell patients about less serious side effects or complications if they occur frequently, or if you think the patient may attach particular significance to them, and explain what the patient should do if they experience any of them.

This guidance on information provision as part of the consent process is very difficult to apply in many of our consultations, which, for anaesthesia, happen in a time pressured environment on the day of surgery. The doctor is meant to provide information on all serious risks, and to make this less detailed if the doctor judges that the patient does not wish to be informed. It is hard to gauge what the patient wants to know about in a brief consultation; we are not meant merely to provide a long list of items.

At the same time, we are meant to reassure and reduce anxiety. These two requirements are incompatible, but no guidance is provided as to how we should pick our way through these competing requirements.

It would be helpful to have some case studies showing how the GMC expects us to reconcile these competing priorities.

The document comes with the threat that ‘Serious or persistent failure to follow this guidance that poses a risk to patient safety or public trust in doctors will put your registration at risk.’ If we fail to reassure and try to reduce anxiety we are failing in our duty; if we fail to tell the patient about the common more minor side-effects and serious complications our registration will be at risk; and if we fail to run an efficient theatre list our employers and the wider NHS will fail to meet its targets. This may be of significant concern to our members and it would be useful to have case studies showing how this works in practice.

Page 12: The consultation process

20. Was the consultation questionnaire clear?

Yes

21. Was it easy to respond?

Yes

22. How did you hear about this consultation? Please select all that apply.

Another website