

SYMPOSIUM ON CIRCUMCISION

The law and ethics of male circumcision: guidance for doctors

British Medical Association

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- Children who are able to express views about circumcision should be involved in the decision making process.
- Consent for circumcision is valid only where the people (or person) giving consent have the authority to do so and understand the implications and risks.
- Both parents⁴ must give consent for non-therapeutic circumcision.
- Where people with parental responsibility for a child disagree about whether he should be circumcised, doctors should not circumcise the child without the leave of a court.
- As with all medical procedures, doctors must act in accordance with good clinical practice and provide adequate pain control and aftercare.
- Doctors must make accurate, contemporaneous notes of discussions, consent, the procedure and its aftercare.

1. AIM OF THE GUIDELINES

One of the roles of the British Medical Association (BMA) is to issue guidance to doctors on ethical and medico-legal issues. Accordingly, this guidance addresses the queries medical practitioners raise with the BMA about both therapeutic and non-therapeutic¹ male circumcision. The two procedures raise different issues. It does not cover circumcision carried out by non-medical practitioners, but we note that there may be no requirement in law for these practitioners to have proven expertise. Nor does the guidance address female genital mutilation, sometimes referred to as female circumcision.²

Circumcision of male babies and children at the request of their parents is an increasingly controversial area and strongly opposing views about circumcision are found within society and within the BMA's membership. The medical evidence about its health impact is equivocal.

As with any aspect of medical practice, doctors must use their skills in a way that promotes their patients' interests. They must act within the boundaries of the law and their own conscience, and weigh the benefits and harms of circumcision for the particular child. This guidance outlines good practice and safeguards which the BMA believes doctors should follow in the circumcision of male babies and children.

The General Medical Council (GMC) has also issued advice on circumcision,³ and advocates similar safeguards to those suggested here.

2. PRINCIPLES OF GOOD PRACTICE

- The welfare of child patients is paramount and doctors must act in the child's best interests.

3. CIRCUMCISION FOR MEDICAL PURPOSES

Unnecessarily invasive procedures should not be used where alternative, less invasive techniques are equally efficient and available. It is important that doctors keep up to date and ensure that any decisions to undertake an invasive procedure are based on the best available evidence. Therefore, to circumcise for therapeutic reasons where medical research has shown other techniques to be at least as effective and less invasive would be unethical and inappropriate.

Male circumcision in cases where there is a clear clinical need is not normally controversial. Nevertheless, normal anatomical and physiological characteristics of the infant foreskin have in the past been misinterpreted as being abnormal. The British Association of Paediatric Surgeons advises that there is rarely a clinical indication for circumcision.⁵ Doctors should be aware of this and reassure parents accordingly.

If there is doubt about whether treatment is needed, or what is the most appropriate course of management, specialist advice should be sought. It is recommended that circumcision for medical purposes must only be performed by or under the supervision of doctors trained in children's surgery in premises suitable for surgical procedures.⁶

4. NON-THERAPEUTIC CIRCUMCISION

Male circumcision that is performed for any reason other than physical clinical need is termed non-therapeutic (or sometimes "ritual") circumcision. Some people ask for non-therapeutic circumcision for religious reasons, some to incorporate a child into a community, and some want their sons to be like their fathers. Circumcision is a defining feature of some faiths.

Abbreviations: BMA, British Medical Association; GMC, General Medical Council.

There is a spectrum of views within the BMA's membership about whether non-therapeutic male circumcision is a beneficial, neutral, or harmful procedure or whether it is superfluous, and whether it should ever be done on a child who is not capable of deciding for himself. The medical harms or benefits have not been unequivocally proved except to the extent that there are clear risks of harm if the procedure is done inexpertly. The Association has no policy on these issues. Indeed, it would be difficult to formulate a policy in the absence of unambiguously clear and consistent medical data on the implications of the intervention. As a general rule, however, the BMA believes that parents should be entitled to make choices about how best to promote their children's interests, and it is for society to decide what limits should be imposed on parental choices. What those limits currently are is discussed below, together with the legal and ethical considerations for doctors asked to perform non-therapeutic circumcision.

4.1. The law

It is currently generally accepted that non-therapeutic circumcision is lawful. "Even when violence is intentionally afflicted and results in actual bodily harm, wounding or serious bodily harm the accused is entitled to be acquitted if the injury was a foreseeable incident of a lawful activity in which the person injured was participating. Surgery involves intentional violence resulting in actual or sometimes serious bodily harm but surgery is a lawful activity. Other activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm or may cause serious bodily harm. Ritual circumcision, tattooing, ear-piercing and violent sports including boxing are lawful activities".⁷

This comment was made in passing by a judge considering a case about the extent to which a person could consent to physical interference by another and was relied on by a judge in a subsequent case considering the religious circumcision of a 5 year old boy whose parents disagreed.⁸ In that case the judge concluded that "as an exercise of joint parental responsibility, male ritual circumcision is lawful". The lawfulness of the procedure is challenged by some, however, and in the mid 1990s the English Law Commission said that although in its view ritual circumcision is lawful, law reform to "put the lawfulness of ritual male circumcision beyond any doubt" would be useful.⁹ This, however, has not been forthcoming.

These legal cases were heard before the implementation of the Human Rights Act which, in 2000, incorporated Articles of the European Convention on Human Rights¹⁰ into UK law. Doctors must consider whether their decisions impact on a person's human rights and, if so, whether the interference can be justified. Rights that might be relevant to non-therapeutic circumcision include:

- Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
- Article 5(1): "Everyone has the right to liberty and security of the person."
- Article 8: "Everyone has the right to respect for his private and family life" except for the "protection of health or morals, or for the protection of the rights and freedoms of others."
- Article 9(1): "Everyone has the right to freedom of thought, conscience and religion."
- Article 9(2): "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order,

health or morals, or for the protection of the rights and freedoms of others."

Many aspects of good practice—including careful assessment of best interests, balancing conflicting rights and consulting with patients and their families—have taken on added importance as a result of the Human Rights Act, which makes them a required part of the decision making process. As yet, the full impact of the Act on medical decision making is not known, and the rights in the Act are used by commentators to both support and reject non-therapeutic circumcision. One reason why it is not clear where the balance of rights lies is that the medical evidence is equivocal. Some argue that circumcision is a relatively neutral procedure that, competently performed, carries little risk but can confer important psychosocial benefits. Others argue that circumcision has, or can have, profound and long lasting adverse effects on the person who has been circumcised. If it was shown that circumcision where there is no clinical need is prejudicial to a child's health and wellbeing, it is likely that a legal challenge on human rights grounds would be successful. Indeed, if damage to health were proved, there may be obligations on the state to proscribe it. The UN Convention on the Rights of the Child, which has been ratified by the UK, requires ratifying states to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children".¹¹ At present, however, the medical evidence is inconclusive.

4.1.1. Summary: the law

Male circumcision is generally assumed to be lawful provided that:

- it is performed competently
- it is believed to be in the child's best interests
- there is valid consent (see below).

The Human Rights Act may affect the way non-therapeutic circumcision is viewed by the courts. There has been no reported legal case involving circumcision since the Act came into force. If doctors are in any doubt about the legality of their actions, they should seek legal advice.

4.2. Consent and refusal

Consent for any procedure is valid only if the person or people giving consent understand the nature and implications of the procedure. To promote such an understanding of circumcision, parents and children should be provided with up to date written information about the risks. The BMA is concerned that they may not have easy access to up to date information, however, and has called on appropriate bodies such as the Royal College of Paediatrics and Child Health and the British Association of Paediatric Surgeons to produce an information leaflet.

4.2.1. Children's own consent

All children who are capable of expressing a view should be involved in decisions about whether they should be circumcised, and their wishes taken into account. The BMA cannot envisage a situation in which it is ethically acceptable to circumcise a competent, informed young person who consistently refuses the procedure. As with any form of medical treatment, doctors must balance the harms caused by violating

a child's refusal with the harm caused by not circumcising. Often surgery for non-medical reasons is deferred until children have sufficient maturity and understanding to participate in the decision about what happens to their bodies, and those that are competent to decide are entitled in law to give consent for themselves. When assessing competence to decide, doctors should be aware that parents can exert great influence on their child's view of treatment. That is not to say that decisions made with advice from parents are necessarily in doubt, but that it is important that the decision is the child's own independent choice.

4.2.2. Parents' consent

Where children cannot decide for themselves, their parents usually choose for them. Although they usually coincide, the interests of the child and those of the parents are not always synonymous. There are, therefore, limits on parents' rights to choose and parents are not entitled to demand medical procedures contrary to their child's best interests (see section 4.3).

The BMA and GMC have long recommended that consent should be sought from both parents. Although parents who have parental responsibility are usually allowed to take decisions for their children alone, non-therapeutic circumcision has been described by the courts as an "important and irreversible" decision that should not be taken against the wishes of a parent.¹² It follows that where a child has two parents with parental responsibility, doctors considering circumcising a child must satisfy themselves that both have given valid consent. If a child presents with only one parent, the doctor must make every effort to contact the other parent in order to seek consent. If parents disagree about having their child circumcised, the parent seeking circumcision could seek a court order authorising the procedure which would make it lawful, although doctors are advised to consider carefully whether circumcising against the wishes of one parent would be in the child's best interests. Where a child has only one parent, obviously that person can decide.

In all cases, doctors should ask parents to confirm their consent in writing by signing a consent form.

4.2.3. Summary: consent and refusal

- Competent children may decide for themselves
- The wishes that children express must be taken into account
- If parents disagree, non-therapeutic circumcision must not be carried out without the leave of a court
- Consent should be confirmed in writing

4.3. Best interests

In the past, circumcision of boys has been considered to be either medically or socially beneficial or, at least, neutral. The general perception has been that no significant harm was caused to the child and therefore with appropriate consent it could be carried out. The medical benefits previously claimed, however, have not been convincingly proved, and it is now widely accepted, including by the BMA, that this surgical procedure has medical and psychological risks (see section 4.4). It is essential that doctors perform male circumcision only where this is demonstrably in the best interests of the child. The responsibility to demonstrate that non-therapeutic circumcision is in a particular child's best interests falls to his parents.

It is important that doctors consider the child's social and cultural circumstances. Where a child is living in a culture in which circumcision is required for all males, the increased acceptance into a family or society that circumcision can confer is considered to be a strong social or cultural benefit. Exclusion may cause harm by, for example, complicating the individual's search for identity and sense of belonging. Clearly, assessment of such intangible risks and benefits is complex. On a more practical level, some people also argue that it is necessary to consider the effects of a decision not to circumcise. If there is a risk that a child will be circumcised in unhygienic or otherwise unsafe conditions, doctors may consider it better that they carry out the procedure, or refer to another practitioner, rather than allow the child to be put at risk.

On the other hand, very similar arguments are also used to try and justify very harmful cultural procedures, such as female genital mutilation or ritual scarification. Furthermore, the harm of denying a person the opportunity to choose not to be circumcised must also be taken into account, together with the damage that can be done to the individual's relationship with his parents and the medical profession if he feels harmed by the procedure.

The BMA identifies the following as relevant to an assessment of best interests in relation to non-therapeutic circumcision:

- the patient's own ascertainable wishes, feelings, and values
- the patient's ability to understand what is proposed and weigh up the alternatives
- the patient's potential to participate in the decision, if provided with additional support or explanations
- the patient's physical and emotional needs
- the risk of harm or suffering for the patient
- the views of parents and family
- the implications for the family of performing, and not-performing, the procedure
- relevant information about the patient's religious or cultural background
- the prioritising of options which maximise the patient's future opportunities and choices.¹³

The BMA is generally very supportive of allowing parents to make choices on behalf of their children, and believes that neither society nor doctors should interfere unjustifiably in the relationship between parents and their children. It is clear from the list of factors that are relevant to a child's best interests, however, that parental preference alone is not sufficient justification for performing a surgical procedure on a child.

The courts have also identified some factors that are important in a decision about circumcision. J was a 5 year old boy who lived with his mother, a non-practising Christian. His father, a non-practising Muslim, wanted him to be circumcised. Asked to decide whether J should be circumcised, the court considered all the factors relevant to J's upbringing and concluded that J should not be circumcised because of three key facts:

- he was not, and was not likely to be, brought up in the Muslim religion
- he was not likely to have such a degree of involvement with Muslims as to justify circumcising him for social reasons
- the "small but definite medical and psychological risks" of circumcision outweighed the benefits of the procedure.¹⁴

4.3.1. Summary: best interests

- Doctors must act in the best interests of the patient.
- Even where they do not decide for themselves, the views that children express are important in determining what is in their best interests.
- The BMA does not believe that parental preference alone constitutes sufficient grounds for performing a surgical procedure on a child unable to express his own view. Parental preference must be weighed in terms of the child's interests.
- The courts have confirmed that the child's lifestyle and likely upbringing are relevant factors to take into account. The particular situation of the case needs to be considered.
- Parents must explain and justify requests for circumcision, in terms of the child's interests.

4.4. Health issues

There is significant disagreement about whether circumcision is overall a beneficial, neutral, or harmful procedure. At present, the medical literature on the health, including sexual health, implications of circumcision is contradictory, and often subject to claims of bias in research. Doctors performing circumcisions must ensure that those giving consent are aware of the issues, including the risks associated with any surgical procedure: pain, bleeding, surgical mishap, and complications of anaesthesia. All appropriate steps must be taken to minimise these risks. It may be appropriate to screen patients for conditions that would substantially increase the risks of circumcision, for example haemophilia.

Doctors should ensure that any parents seeking circumcision for their son in the belief that it confers health benefits are fully informed of the lack of consensus among the profession over such benefits, and how great any potential benefits and harms are. The BMA considers that the evidence concerning health benefits from non-therapeutic circumcision is insufficient for this alone to be a justification for doing it.

4.5. Standards

Doctors unfamiliar with circumcision who are asked about it should seek advice about the physical risks from doctors experienced in conducting circumcisions. Religious and cultural organisations may be able to give advice and suggest practitioners who perform circumcisions. It may be necessary to refer a family to a paediatric surgeon, urologist, or other doctor experienced in performing the operation for advice and care.

Poorly performed circumcisions have legal implications for the doctor responsible. An action could be brought against the doctor responsible on the child's behalf if the circumcision was carried out negligently. Alternatively, the child could issue such proceedings in his own name on reaching the age of 18 and the normal time limit for starting legal proceedings would run from that birthday. However, unless the lawfulness of circumcision itself is successfully challenged, action cannot currently be taken against a doctor simply because a man is unhappy about having been circumcised at all. A valid consent from a person authorised to give it on the patient's behalf is legally sufficient in such cases. It goes without saying that a health professional who is not currently registered must never give the impression of so being even though there is no legal requirement for

non-therapeutic circumcision to be undertaken by a registered health professional.

The General Medical Council does not prohibit doctors from performing non-therapeutic circumcision, although would take action if a doctor was performing such operations incompetently. The Council explicitly advises that doctors must "have the necessary skills and experience both to perform the operation and use appropriate measures, including anaesthesia, to minimise pain and discomfort".¹⁵

4.6. Facilities

Doctors must ensure that the premises in which they are carrying out circumcision are suitable for the purpose. In particular, if general anaesthesia is used, full resuscitation facilities must be available.

4.7. Charging patients

Although circumcision is not a service which is provided free of charge, some doctors and hospitals have been willing to provide circumcision without charge rather than risk the procedure being carried out in unhygienic conditions. In such cases doctors must still be able to justify any decision to circumcise a child based on the considerations above.

4.8. Conscientious objection

Some doctors may refuse to perform non-therapeutic circumcisions for reasons of conscience. Doctors are under no obligation to comply with a request to circumcise a child. If doctors are asked to circumcise a child but have a conscientious objection, they should explain this to the child and his parents. Doctors may also explain the background to their conscientious objection if asked.

Clearly where patients or parents request a medical procedure, doctors have an obligation to refer on promptly if they themselves object to it (for example, termination of pregnancy). Where the procedure is not therapeutic but a matter of patient or parental choice, there is arguably no ethical obligation to refer on. The family is, of course, free to see another doctor and some doctors may wish to suggest an alternative practitioner.

5. USEFUL ADDRESSES

- **General Medical Council**, 178 Great Portland Street, London W1W 5JE, UK; tel: 020 7580 7642; fax: 020 7915 3641; email: gmc@gmc-uk.org; website: www.gmc-uk.org
- **Royal College of Anaesthetists**, 48–49 Russell Square, London WC1B 4JY, UK; tel: 020 7908 7300; fax: 020 7813 1876; website: www.rcoa.ac.uk
- **British Association of Paediatric Surgeons**, c/o Royal College of Surgeons of England, 35–43 Lincoln's Inn Fields, London WC2A 3PH, UK; tel: 020 7869 6915; fax: 020 7869 6919; email: adminsec@baps.org.uk; website: www.baps.org.uk
- **Royal College of Nursing**, 20 Cavendish Square, London W1M 0AB, UK; tel: 020 7409 3333; fax: 020 7647 3435; website: www.rcn.org.uk
- **Royal College of Paediatrics and Child Health**, 50 Hallam Street, London W1N 6DE, UK; tel: 020 7307 5600; fax: 020 7307 5601; website: www.rcpch.ac.uk
- **Royal College of Surgeons of England**, 35–43 Lincoln's Inn Fields, London WC2A 3PE, UK; tel: 020 7405 3474; fax: 020 7831 9438; website: www.rcseng.ac.uk

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REFERENCES

- 1 By "therapeutic" we mean that the procedure is necessary to deal specifically with a medical problem (see section 3). By "non-therapeutic" we mean that the procedure is for any other purpose than medical benefit (see section 4).
- 2 **Female genital mutilation is a separate issue.** The BMA's views on the issue are published in *Female genital mutilation. Caring for patients and child protection*. London: BMA, 2001.
- 3 **General Medical Council.** *Guidance for doctors who are asked to circumcise male children*. London: GMC, 1997.
- 4 The term "parents" is used in these guidelines to indicate holders of parental responsibility. Both of a child's parents have parental responsibility if they were married at the time of the child's conception, or at some time thereafter. Neither parent loses parental responsibility if they divorce. If the parents have never married, only the mother automatically has parental responsibility. The father may acquire it in various ways, including by entering into a parental responsibility agreement with the mother, or through a parental responsibility order made by a court. Additionally in Northern Ireland, fathers who are named on the child's birth certificate (from 15 April 2002 onwards) automatically have parental responsibility. Similar arrangements will apply in England and Wales once the relevant provisions of the Adoption and Children Act 2002 come into force. At the time of writing, there is no definite timescale for this. Scotland has also indicated its intention to introduce these arrangements. Information about any changes will be put on the BMA's website. Clearly where a child has only one parent with parental responsibility, that person is responsible for decision making, although his or her views may not be determinative.
- 5 **British Association of Paediatric Surgeons**, Royal College of Nursing, Royal College of Paediatrics and Child Health, Royal College of Surgeons of England, and Royal College of Anaesthetists. *Statement on male circumcision*. London: Royal College of Surgeons of England, March 2001.
- 6 *Ibid.*
- 7 R v Brown [1993] 2 All ER 75, HL, per Lord Templeman.
- 8 Re J (A Minor) (Prohibited Steps Order: Circumcision), sub nom Re J (Child's Religious Upbringing and Circumcision) and Re J (Specific Issue Orders: Muslim Upbringing & Circumcision) [2000] 1 FLR 571; [2000] 1 FCR 307; [2000] 52 BMLR 82.
- 9 **Law Commission.** *Consent in the criminal law. Law Commission consultation paper no 139*. London: HMSO, 1995:119, 128.
- 10 Convention for the Protection of Human Rights and Fundamental Freedoms (4. ix. 1950; TS 71; Cmnd 8969).
- 11 United Nations Convention on the Rights of the Child (20. xi. 1989; TS 44; Cm 1976) Article 24(3).
- 12 Re J (A Minor) (Prohibited Steps Order: Circumcision), *Op cit.*
- 13 Based on checklist in *British Medical Association Consent, rights and choices in health care for children and young people*. London: BMJ Books, 2001; ch 1.
- 14 Re J (A Minor) (Prohibited Steps Order: Circumcision), *Op cit.*
- 15 **General Medical Council.** *Guidance for doctors who are asked to circumcise male children*. *Op cit.*