

# Navigating care and consent issues

**Aisling Timoney provides a guide for GPs on navigating complex issues of care and consent in their daily practice**

**ASA GP** it is important that you know the legal status of a child under your care, particularly when it comes to obtaining valid consent to treatment. There are key points to be aware of as well as the different kinds of care orders which could potentially apply to children under your care.

The primary piece of legislation in this area is the Child Care Act 1991, as amended.

There are two different ways in which a child or young person can be put into care:

- *A parent may sign a voluntary agreement* which gives the child protection agency Tusla the power to decide the care arrangements for the child. In this scenario, no care order is made. In respect of children who are in voluntary care, consent is required from the child's parent/legal guardian unless a court order has been made dispensing with that person's consent
- *By court order*: Tusla can apply to the courts for a care order if, following an investigation of circumstances, it considers that a child is being harmed, or at risk of being harmed.

There are six different types of care orders which can be made by the courts and which have different consequences for a child's care. These are discussed in more detail later in this article but in summary, they are:

- Emergency care orders
- Interim care orders
- Care orders
- Interim special care orders
- Special care orders
- Supervision orders.

If there is any question as to the existence of a care order, or the nature of such an order, you must clarify the legal status of the child with Tusla before taking any steps.

You should request a copy of any care order from Tusla for your file. This will confirm who can provide consent for future treatment of the child.

As a GP you may be aware that your patient might benefit from support or assistance. Bear in mind that parents may be entitled to legal aid in respect of childcare proceedings. Similarly, if a parent has an intellectual disability or condition which may affect or impair their ability to understand childcare proceedings, they can apply for assistance from an advocate or support person.

Resources that may be helpful to refer patients to include: [Tusla.ie](http://Tusla.ie), [citizensinformation.ie](http://citizensinformation.ie), [legallaidboard.ie](http://legallaidboard.ie) and [epiconline.ie](http://epiconline.ie)

In any emergency, the paramount consideration is the child's welfare. Under the doctrine of necessity, a GP may dispense with the requirement for consent and provide treatment. It is advisable to limit treatment in such circumstances

to what is immediately necessary to save the patient's life or to preserve their health. Just like any child or young person, children in care are entitled to express their views freely on all matters affecting them. GPs should give their views due weight according to their age and maturity.

## The different types of care arrangements

### Voluntary care

In some situations, a parent may sign a voluntary agreement which gives Tusla the power to decide the care arrangements for the child. No care order is made in this scenario.

Voluntary care arrangements may arise, for example, where a parent is sick, imprisoned or unable to care for their child due to addiction or homelessness. Some voluntary care agreements are open-ended whereas others are short-term, for example, to allow a parent time to make any changes needed for their child to return home, or to complete a rehabilitation programme etc.

When there is a voluntary care agreement, Tusla is responsible for placing a child in alternative care. Tusla must consider the child's best interests and wishes, and the parents' wishes. Possible alternative care arrangements include foster care, residential care or a special care unit. The parents' wishes are to be considered by Tusla while caring for the child.

A parent can withdraw their consent to voluntary care following discussions with the social worker involved and on reasonable notice. Tusla will assess what would be in the child's best interests and if it considers that returning home to their parents would not be best for the child, it will explain the reasons for its decision to the parent. If the parent disputes Tusla's decision, Tusla may apply to Court for a care order.

In respect of children who are in voluntary care, consent is required from the child's parent/legal guardian unless a court order has been made dispensing with that person's consent. Parents who cannot care for their child but who do not wish for Tusla to take responsibility for the care arrangements can consider appointing a relative or family friend as guardian or temporary guardian to the child. Guardianship is the legal responsibility for a child's upbringing and welfare which includes the right to make decisions regarding medical treatment.

### Emergency care orders

An Garda Síochána can remove a child from their family home if they believe that there is an immediate and serious risk to the child's health or welfare. The child must then be taken into Tusla's care as soon as possible.

Tusla can apply for an emergency care order when this has

happened, and it can also make an application in respect of a child who is still in the family home.

Such applications are made on notice to the parents. An emergency care order can last for up to eight days and cannot be renewed. The court can make orders in relation to the kind of care which is required, medical care and access to the child by parents or family.

#### *Interim care orders*

The Court can make an interim care order pending a court hearing on an application for a full care order. Interim orders last up to 28 days and can be extended.

In relation to children who are subject to interim and emergency care orders, an application can be made to the District Court in respect of medical treatment.

#### *Care orders*

Tusla can apply to the courts for care orders when it believes that a child needs care and protection.

The Irish courts have long considered that it is usually in a child's best interests to be reared in their own family. Consequently, any restrictions on this are limited to exceptional cases.

Care orders can be granted if the Court is satisfied that:

- The child has been or is being ill-treated, neglected or abused or that the child's health, development or welfare has been or is likely to be impaired or neglected
- The child needs care and protection which he or she is unlikely to receive without a care order.

In relation to children who are subject to a full care order, although it is good practice to seek the consent of the parent/legal guardian, the HSE is authorised to consent to any necessary medical or psychiatric treatment, assessment or examination. Note that different procedures apply to admission and treatment under the Mental Health Act 2001 (see Section 9 of the National Consent Policy for more).

#### *Special care orders*

If a child's behaviour is a risk to his or her health, safety, development or welfare, Tusla can apply for a special care order. A High Court judge will grant a special care order if:

- The child is aged 11-17

- The child's behaviour poses a real and substantial risk to his/her health, safety, development or welfare
- The child needs special care and protection which he/she is unlikely to get without such an order.

Tusla provides special care in a therapeutic environment. Special care orders last for up to three months in the first instance but can be extended.

Pending a special care order, the Court can also grant an interim special care order lasting for up to 28 days, which can be extended.


#### *Supervision orders*

Instead of taking a child into care, Tusla can apply for a Supervision Order. This can occur where there are reasonable grounds to believe that a child has been assaulted, ill-treated or abused, or that their health, development or welfare has been or will likely be impaired or neglected.

Supervision orders allow Tusla to carry out periodic visits to monitor the child's wellbeing and to give advice to his or her parents. It can be granted for up to 12 months and can be renewed. Sometimes a court may decline to make a care order on the basis that a supervision order would be sufficient to protect the child.

Where a court makes a supervision order in respect of a child, it may give directions as to the care of the child, which may require the parents of the child or a person acting in loco parentis to bring the child for medical or psychiatric examination, treatment or assessment at a hospital, clinic or other specified place.

#### *Conclusion*

This article is intended to assist GPs navigating complex issues of care and consent in their daily practice, particularly in sensitive situations where consent may be a challenge. Correctly navigating consent is essential, as it not only protects patients but also safeguards practitioners from legal and ethical challenges. Medisec can provide members with legal advice tailored to the unique circumstances of any query. 

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## Irish College of GPs Membership Survey 2024



The College annual membership survey will be open from Tuesday, December 3 through to Tuesday, January 7, 2025 in order to give College members the opportunity to voice their views and input on College activities and to inform developments and priorities.

Your response is important so please take this chance to complete the survey.

Check on [www.irishcollegeofgps.ie](http://www.irishcollegeofgps.ie) for further information from December 3.