Сведения об авторах
Абдалла Ахмед Ибрахим Ахмед – студент
Е.Н. Богднова – старший преподаватель кафедры
Information about the authors
Abdalla Ahmed Ibrahim Ahmed – student
E.N. Bogdnova – Senior lecturer of the Department

УДК 349.3

РЕАЛИЗАЦИЯ ПРИНЦИПА НАИЛУЧШЕГО ОБЕСПЕЧЕНИЯ ИНТЕРЕСОВ РЕБЁНКА В ЗДРАВООХРАНЕНИИ

Абдельфадил Холуд Мохамед Ибрахим[1], Елена Николаевна Богданова[2]
[1,2]ФГБОУ ВО «Уральский государственный медицинский университет» Министерства здравоохранения Российской Федерации
[1]kholoudmohammed9930@gmail.com

Аннотация
Введение. Самостоятельность несовершеннолетнего пациента в принятии собственного решения – это этический принцип, который был интерпретирован в правовую концепцию согласия (статья 3 (1) Конвенции о правах ребенка). Конвенция о правах ребенка и принцип наилучшего обеспечения интересов, кодифицированный, в частности, в статье 3, играют все более важную роль в принятии решений, связанных с согласием (отказом) на лечение. В этом статье основное внимание уделено тому, имеют ли дети право, подпадающие под правовую концепцию согласия (статья 3 (1) Конвенции о правах ребенка), давать согласие на их лечение. **Цель исследования -** внести юридическую ясность в вопрос о согласии на медицинское вмешательство пациентами, которые все еще являются детьми и находятся под защитой Конвенции о правах ребенка. **Материалы и методы.** Для цели этой статьи автор использовал юридический подход, включающий толкование законов, ссылки на разрешенные дела и сравнительное правовое исследование с другими соответствующими юрисдикциями. **Результаты.** Таким образом, позволяя родителям (а не врачам или государству) делать этот выбор в области здравоохранения, косвенно определяется первостепенная роль, которую родители играют в жизни своих детей, а также то, что последствия болезни и лечения в наибольшей степени ложатся на родителей. **Обсуждение.** В США недавний опрос MSNBC, в котором приняли участие почти 80 000 человек, показал, что 55% респондентов поддерживают мнение о том, что семьям должно быть позволено, принимать собственные решения во всех аспектах медицинского обслуживания. **Выводы.** В заключение следует сказать, что очевидно, что существует правовая неопределенность и двусмысленность в отношении возраста согласия на медицинское лечение.
Ключевые слова: дети, наилучшие интересы, здравоохранение

IMPLEMENTATION OF THE PRINCIPLE OF THE BEST INTERESTS OF THE CHILD IN HEALTHCARE

Abdelfadil Holud Mohamed Ibrahim[1], Elena N. Bogdanova[2]

[1,2] Federal State Budget Educational Institution of Higher Education "Ural state medical university" of the Ministry of Health of the Russian Federation, Yekaterinburg, Russia
[1]kholoudmohammed9930@gmail.com
Abstract
Introduction. A minor patient's autonomy to make his own decision is an ethical principle that has been interpreted into the legal concept of consent (Article 3 (1) Convention on the Rights of the Child). The Convention on the Rights of the Child, and the best interests principle codified in Article 3 in particular, is playing an increasingly significant role in decisions involving the consent (refusal) for treatment. In this article the focus will be on whether children governed by the legal concept of consent (Article 3 (1) Convention on the Rights of the Child) - have the right to give consent to their medical treatment. **The aim of the study –** to give legal clarity to the issue of consent involving patients on the treatment who are still children and taken under the protective wings of the Convention on the Rights of the Child. **Material and methods.** for the purpose of this article, the author have adopted a legal approach, including interpretation of laws, references to resolved cases and comparative legal study with other relevant jurisdictions. **Results.** Therefore, allowing parents (rather than physicians or the state) to make these healthcare choices, implicitly acknowledges the primary role that parents have in the lives of their children, and also that the consequences of illness and treatment fall most heavily upon parents. **Discussions.** In the US, a recent MSNBC, poll of almost 80,000 people identified that 55% of respondents endorsed the view that families should be allowed to make their own decisions in every aspect of medical care. **Conclusions.** In conclusion it should be said that it is clear that there is a legal uncertainty and ambiguity regarding the age of consent to medical treatment.
Key words: children, best interests, healthcare

INTRODUCTION

The principle of «the best interest of the child» is implemented in Article 3 (1) Convention on the Rights of the Child (hereinafter CRC), which provides that «in all actions concerning children, whether undertaken by public or private social welfare institutions, court of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration» [1]. The principle as a substantive right obliges states to consider the best interest of a child, take it as a primary consideration when different interests are considered and that the right is implemented whenever a decision is affecting a child. However, during the debate on the wording of the CRC it was noted by a delegate that the phrase «best interests» was inherently subjective and that its interpretation would inevitably be left to the judgment of the person, institution or organization applying it.

The aim of the study - in order to give legal clarity to the issue of consent involving patients on the treatment who are still children and taken under the protective wings of the Convention on the Rights of the Child.

MATERIAL AND METHODS

For the purpose of this article, the author have adopted a legal approach, including interpretation of laws, references to resolved cases and comparative legal study with other relevant jurisdictions. The literary base of the study consisted of literary sources: Melissa Kang and Jane Sanders Medico-Legal Issues [2]; a thesis submitted to The University of Manchester for the degree of PhD in Bioethics and Medical Jurisprudence in the Faculty of Humanities Barry Lyons «Who Is Silent Gives Consent»: Power And Medical Decision-Making For Children [3]; etc.

RESULTS

The International Convention on the Right of a Child (art. 1) defines «child» as: Every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. Most countries in this world have differing systems pertaining to child patients. This is evident from the law applicable in each country. Section 6 of the Consent to Medical Treatment and Palliative Care Act 1995 (SA) provides: «A person of or over 16-years-of-age may make decisions about his or her own medical treatment as validly and effectively as an adult» [2]. In Scotland, the rights of people under the age of 16 to consent to treatment are governed by the Age of Legal Capacity (Scotland) Act 1991. This states quite clearly that a competent person under the age of 16 can consent on their own behalf to medical treatment, providing they are capable of understanding the nature and consequences of the treatment. Under the English Family Law Reform Act 1969, rights are given to children who are 16 to 17 years old to give their own consent to medical treatment. In Russia (from 01.08.2022) children do not have the right to give written consent (refusal) to treatment before the age of 18. (Article 20. The federal law. «On the basics of protecting the health of citizens in the Russian Federation», 2011). Based on this Age of Majority Act 1971 children below the age of 18 years are deemed to be incapable to give consent to medical treatment. The power to give consent lies on their parents as their legal guardian (Section 4 of the Age of Majority Act 1971/Malay: Akta Umur Dewasa 1971). The bar for independent treatment refusal (consent) thus in some countries seems to be set at 18 years of age. This raises the question as to whether this is fair.

There are a number of occasions when parents will be asked to consider healthcare options that will affect their child: they can «consent» to a procedure offered to them by medical staff, in doing so they sometimes may have to choose one option from a menu of proposed possibilities. They can refuse to «consent». They may request that a particular procedure be carried out. Therefore, allowing parents (rather than physicians or the state) to make these healthcare choices, implicitly acknowledges the primary role that parents have in the lives of their children, and also that the consequences of illness and treatment fall most heavily upon parents. Given that the parental authority of these decisions is legitimate, is there an objective limit to the risks or harms that a child might have to endure as a consequence of parental medical decision-making?

DISCUSSION

In the US, a recent MSNBC («Should parents be allowed to refuse cancer treatments for their sick children»?), poll of almost 80,000 people identified that 55% of respondents endorsed the view that «families should be allowed to make their own

decisions in every aspect of medical care». The poll was based on a widely-reported real case where parents made a decision to refuse chemotherapy for their 13 year-old child with Hodgkins Lymphoma, treatable form of cancer [3]. Breen contends that, if the principle were to work, then the 'best interests' of the child should always prevail over those of parents or society. Lord Brandon stated that treatment of incapacitated individuals could only lawfully proceed if the operation or other treatment concerned is in the best interests of such patients. The operation or other treatment will be in their best interests if, but only if, it is carried out in order either to save their lives, or to ensure improvement or prevent deterioration in their physical or mental health. Barry Lyons stated that the best interests concept has some utility. It reminds us that children have interests as individuals that must be considered in any decision-making process. The issue is not whether it is a good thing to advance a child's interests, but rather that where incompetent children are concerned, we cannot sufficiently identify what those interests are. Karl Barth, held that the idea that acts can be performed on children because «it is for their own good» seems widespread, and is particularly prominent in justifying the use of corporal punishment. The British Medical Association has held, 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 [4].

CONCLUSIONS

In conclusion it should be said that it is clear that there is a legal uncertainty and ambiguity regarding the age of consent to medical treatment.

Consent can only be given by a child patient if it does not involve a life or death situation or an irreversible procedure such as organ transplantation. In such situation parental consent should and will be, resorted to.

A child patient is allowed to give his/her own consent to treatment but this right must of course come with a proviso. Children of that specified age bracket must be presumed competent unless found to be the opposite by a psychiatric.

The courts have still tended to endorse the position advanced by the medical profession rather than parents. The nub of this is that parents are invested with the power to affect their children's lives in many ways, but the state has the capacity to limit, or even remove this power in particular situations.

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Сведения об авторах
Абдельфадил Холуд Мохамед Ибрахим – студент
Е.Н. Богданова – старший преподаватель кафедры
Information about the authors
Abdelfadil Holud Mohamed Ibrahim – student
E.N. Bogdanova – Senior lecturer of the Department

УДК: 614.2:004

ОСОБЕННОСТИ ЦИФРОВИЗАЦИИ ЗДРАВООХРАНЕНИЯ РОССИИ

Александров Леонид Андреевич[1], Лагунова Дарья Олеговна[2], Скороходова Лариса Александровна[3]
[1-3]ФГБОУ ВО «Уральский государственный медицинский университет» Минздрава России, Екатеринбург, Россия
[2]dasha.lagunova2017@yandex.ru

Аннотация
Введение. Современная система здравоохранения, в условиях распространения новой коронавирусной инфекции подвергается цифровизации все в большем количестве направлений. Эти новации привозят к изменениям общения между врачом и пациентом как на локальном, так и на законодательном уровнях. **Цель исследования -** определение современных направлений реализации инновационного проекта цифровизации здравоохранения и основных перспектив, способствующих реализации этого процесса. **Материалы и методы.** Общенаучная и частнонаучная методология, определяющая современные перспективы реализации цифровизации здравоохранения в России. **Результаты.** Реализуемые Федеральные проекты ориентированы на массовое внедрение цифровизации здравоохранения в ближайшем будущем. Авторами обозначены основные положительные стороны рассмотренного вопроса: экономические, социальные, профессиональные. Описана законодательная база реализации цифрового здравоохранения в России на примере Свердловской области. **Обсуждение.** Авторами проанализированы и описаны наиболее перспективные направления реализации цифровизации здравоохранения: подготовка специалистов, адаптация цифровых платформ, задействование малого бизнеса и других. **Выводы.** Обозначено, что