

## **Medical Ethics and the Non-therapeutic Circumcision of Male Children**

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*All infants, children and adolescents – regardless of physical or mental disability – have dignity, intrinsic value, and a claim to respect, protection, and medical treatment that serves their best interests.[1]*

– Canadian Paediatric Society

*If we as pediatricians take children's rights seriously, if we take our medical mission seriously, we have a huge responsibility on the issue of circumcision, and we still have a lot to do.*

– Christoph Kupferschmid, M.D., German Pediatric Association (BVKJ)

### **Introduction**

Non-therapeutic male circumcision permanently excises a substantial amount of healthy, functional tissue from a physically and symbolically sensitive part of the body.[2-5] As Frisch and Earp note:

The foreskin is a complex, double-layered structure, which protects the penile glans from environmental irritation, such as rubbing against diapers and clothing. This elastic, motile sleeve of tissue has a moist mucous membrane on the inside and a protective skin layer on the outside. It is rich in specialized nerve endings and sensory structures involved in the normal functionality of the penis, and it comprises up to 100 square centimeters in adult men, with reported mean values between 30 and 50 square centimeters. While the scientific literature on the 'average' sexual consequences of circumcision is inconclusive and contradictory – and granting that circumcision is likely to affect different men differently, even when it is properly performed – at least two outcomes can be known with certainty due to the inherent nature of the procedure: first, any sensation in the foreskin itself is necessarily eliminated; and, second, any sexual (e.g. masturbatory) functions that require its manipulation are also of necessity precluded.[Internal references omitted][6]

Given the non-trivial nature of removing such a significant body part (the foreskin), the medical ethics associated with circumcision must be scrutinized carefully and doctors who contemplate performing such a surgery must fully consider and adhere to proper ethical conduct.

Doctors in the United States, as opposed to physicians in most other developed countries,[7,8] are often asked to perform medically unnecessary circumcisions on minor male children. Since young minors cannot consent to any surgical procedure, and especially since non-therapeutic circumcision is carried out in the absence of penile disease or deformity, special ethical rules, pertinent to pediatrics, must be applied. One must always remember that the child is the patient. The doctor, therefore, must consider first the well-being of the patient,[9] and keep the best interests of the child-patient paramount.[10-12]

In a recent policy statement,[13] an 8-member task force of the American Academy of Pediatrics (AAP) maintained that non-therapeutic circumcision of a child is ethical insofar as the child's parents request the procedure and provide what is sometimes referred to as their "proxy" consent.[14] This pronouncement was met with considerable pushback by medical ethicists and pediatric experts from other countries, however, and is now widely seen as controversial.[15-17] As Darby states:

According to the critics, the AAP policy is flawed because it does not establish that the benefits of circumcision outweigh the risk[s] and does not justify its secondary (but unrelated) contention that the decision about whether a boy should be circumcised should be made by his parents [as opposed to the boy himself, when he reaches an age of understanding.[Internal references omitted]][18]

Darby goes on to state:

... even if it were established that the prospect of benefit outweighed the risk of harm, it does not necessarily follow that the decision about whether a boy is allowed to retain his foreskin should be taken out of his hands and made by a third party. Since he is the one who must live with the consequences, it is not clear why he should not be the appropriate person to judge whether the risks of retaining his foreskin are outweighed by its corporeal benefits and the risks of operative complications and side effects. Circumcision is not an ordinary medical procedure, and the penis is not an ordinary body part; since valuations of the foreskin are subjective and vary from one individual to another, a boy might well decide that the risks of retaining the foreskin are outweighed by the benefits of having one.[18]

This view is consistent with that of international pediatric associations, which differ from the AAP in their ethical analysis. For example, the Royal Dutch Medical Association (KNMG) states:

There is no convincing evidence that circumcision is useful or necessary in terms of prevention or hygiene. Partly in the light of the complications which can arise during or after circumcision, circumcision is not justifiable except on medical/therapeutic grounds.[19]

This means that circumcision should only be pursued when it is the most conservative and effective available treatment for an extant foreskin-related problem. Less than 0.5% of boys will

require a circumcision for this reason before the age of 18.[20] As the Royal Dutch Medical Association goes on to state:

Insofar as there are medical benefits, such as a possibly reduced risk of HIV infection, it is reasonable to put off circumcision until the age at which such a risk is relevant and the boy himself can decide about the intervention, or can opt for any available alternatives.[19]

The rest of this page will address specific aspects of the circumcision ethics controversy, beginning with a brief discussion of the human rights issues that are implicated (see also a more in-depth discussion of [human rights and circumcision](#) elsewhere on this site).

## **Human rights**

Respect for human rights is an integral part of medical ethics. Doctors have a general duty to respect the human rights of the patient.[11,21-28] Children have both [general and special human rights](#) that must be protected. As previously noted, non-therapeutic circumcision of children is increasingly being seen as a violation of the child-patient's human rights, most especially the right to physical integrity.[29-33] Both parents and professionals have a duty to respect human rights.

As the International NGO Council on Violence against Children has recently stated:

Until recently, male circumcision has generally been challenged only when carried out by non-medical personal in unhygienic settings without pain relief. But a children's rights analysis suggests that non-consensual, non-therapeutic circumcision of boys, whatever the circumstances, constitutes a gross violation of their rights, including the right to physical integrity, to freedom of thought and religion and to protection from physical and mental violence. When extreme complications arise, it may violate the right to life. It is reported that male circumcision can result in numerous [physical](#), [psychological](#), and [sexual](#) health problems during the surgery, afterwards, and throughout adulthood, including haemorrhage, panic attacks, erectile dysfunction, infection (in severe forms leading to partial or complete loss of the penis), urinary infections, necrosis, permanent injury or loss of the glans, excessive penile skin loss, external deformity, and in some cases even death.[34]

## **The cardinal principles of medical ethics**

The four generally recognized cardinal principles of medical ethics are beneficence, non-maleficence, justice, and autonomy.[35]

**Beneficence.** This concerns "doing good." The overwhelming majority of medical associations to have studied the issue formally have concluded that non-therapeutic neonatal circumcision does not provide net medical benefits to the child.[6] According to the most recent findings from

the Canadian Paediatric Society, for example, any benefits that may ensue from removing the foreskin in infancy are counterbalanced by risks and harms.[36]

As Frisch and Earp explain:

... removing the foreskin of the penis may [very well] confer certain health benefits, in much the same way that removing healthy tissue from any other part of the body could be expected to reduce the risk of medical problems affecting – or introduced via – that tissue. For example, routinely removing one testicle from every male child would almost certainly reduce the [risk of] testicular cancer; but the costs, harms, and other disadvantages ... of prophylactic testicle removal would need to be factored in to the equation, along with an array of moral considerations concerning autonomy, consent, and bodily integrity. In the case of male circumcision ... the question is not whether certain health benefits may in fact ensue from the sheer surgical removal of the foreskin, but whether, in light of alternative, less invasive, means of achieving the same desired health outcomes, the benefits are *sufficient* to outweigh the costs, harms, and other disadvantages (i.e., “risks”), some of which may be subjective in nature and therefore difficult to quantify.[Internal references omitted][6]

As noted above, the answer to this question – according to the balance of considered medical opinion to date – is that the purported benefits of circumcision are not in fact sufficient to outweigh the harms. Since there is no provable (net) benefit to the non-therapeutic circumcision of male children, then, it fails to conform to the principle of beneficence.

**Non-maleficence.** This concerns “not doing harm.” According to Earp, “the conventional bioethical (and legal) view [is] that unnecessary surgeries, and especially those that remove non-diseased, functional tissue from an individual without his consent, are in and of themselves harmful.”[37] Indeed, as a California Appeals Court recently held, “[I]t seems self-evident that unnecessary surgery is injurious and causes harm to a patient. Even if a surgery is executed flawlessly, if the surgery were unnecessary, the surgery in and of itself constitutes harm.”[38] This view suggests that medically unnecessary male circumcision is intrinsically harmful. Hence, non-therapeutic circumcision violates the principle of non-maleficence.

**Justice.** This concerns “treating patients fairly.” Non-therapeutic male circumcision inflicts needless injury on the child-patient and violates his moral and legal rights to bodily integrity. Given the fact that female children are protected from all forms of non-therapeutic genital cutting, no matter how slight, this is not fair treatment (and is in fact discriminatory on the basis of sex).[29,39-41] Therefore, non-therapeutic circumcision violates the principle of justice.

**Autonomy.** This concerns letting the patient control his/her own treatment. Since infants are too young to control their own medical treatment, consent for the circumcision of children must be given by surrogates. But it has been argued that such proxy consent is not valid in the case of circumcision, since it is not medically necessary.[14] Therefore, it is not a ‘treatment’ after all, but is rather an elective surgery. In the case of such non-therapeutic surgeries, it has been argued that the future autonomy of the child (i.e., his ability to make an informed decision about his own

body when he reaches an age of mental competence) should be preserved.[42] According to this view, non-therapeutic circumcision could be considered a violation of the principle of autonomy.

Some ethicists add a fifth principle[43]:

**Proportionality.** This concerns having benefits that are proportionate to the risks and losses, when considered against alternative modes of treatment (or prevention) that are less invasive, less risky, or more effective. Since most of the [claimed benefits of male circumcision](#) can in fact be obtained by [alternative means](#) that are less ethically problematic than non-consensual prophylactic surgery – and since they are offset by risks and losses (see above) – male non-therapeutic circumcision violates the principle of proportionality.[37,43]

### **Provision of futile, ineffective, or unnecessary treatment**

Since non-therapeutic circumcision is performed on healthy persons, there is no health problem to be solved, nothing to ‘treat’ in the first place, and the claimed prophylactic benefits of circumcision can be obtained by less invasive measures. Non-therapeutic circumcision is thus clearly unnecessary. Physicians have an ethical duty not to offer or provide futile, ineffective, or unnecessary treatment.[12,44-46]

### **Misuse of medical resources**

Physicians have an ethical duty to conserve medical resources and use them wisely.[47,48] Non-therapeutic circumcision wastes medical resources, such as physician time, hospital space, insurance money, and medical staff. Provision of medically unnecessary, non-therapeutic circumcision may consume resources needed for the medically necessary treatment of other patients. It also creates additional unwarranted costs to the health care system by creating the need for treatment of the complications it causes. Cost-benefit analyses for circumcision in the United States fail to show cost savings in the majority population of white males, even when such analyses rely on overestimations of the benefits of the procedure and underestimations of the risk of complications.[6,49]

### **Proxy consent**

The necessity for consent by a surrogate, or proxy, decision-maker poses many ethical problems. Competent adult patients have full powers to consent to treatment, but proxies have limited powers. The American Academy of Pediatrics states that the proxy is limited to providing “informed permission for diagnosis and treatment of children.”[50; see also 14] Non-therapeutic child circumcision is neither diagnosis nor treatment, and thus falls outside parental power to consent.

Both parents and physicians must act in the *best interests* of the child.[1,11,12,21,50,51] While a child’s best interests is often thought of in terms of the family’s culture and values, it is important to remember that an infant is a person whose residence in the family is temporary, and

who will one day mature into an independent adult. Therefore, according to ethics scholars Berg et al., decisions made on behalf of the child should “safeguard their future autonomy and their opportunities to make future autonomous decisions.”[52, p.94; see also 53] With regard to non-therapeutic circumcision, The British Medical Association has stated that determining the child’s best interests should include “the prioritising of options which maximize the patient’s future opportunities and choices,”[11] that is, avoiding decisions that cannot be reversed later. The best interests of the child must further include the protection of his legal right to bodily integrity, except when the presence of a clinically verifiable disease makes invasion of the child’s bodily integrity necessary.

In proxy consent for *therapeutic* (i.e., medically necessary) circumcision of a child, the necessary prerequisites are:

1. a physical complaint, followed by
2. a diagnosis by a medical doctor, followed by
3. a medical recommendation for treatment, followed by
4. a trial of conservative treatment,[11] followed by
5. a recommendation for circumcision, only after conservative treatment fails, and where circumcision is proven to be effective, followed by
6. presentation of all relevant material information, followed by
7. granting of consent by the child’s representative.

While all of these prerequisites would be present in the case of therapeutic circumcision, the first five would be absent in the case of non-therapeutic circumcision at parental request. A consent obtained without these prerequisites would lack validity. Performance of a circumcision without valid consent would be unethical.

## **Informed consent**

The doctrine of informed consent – the competent patient’s right to voluntarily give (or withhold) consent for medical treatment based on adequate disclosure of relevant material information – is one of the cornerstones of modern medical ethics.[52] Based primarily on the ethical principle of respect for autonomy, it protects the patient’s rights to bodily integrity and self-determination, and promotes the patient’s interest in rational decision-making.

Several characteristics of neonatal circumcision pose particular challenges for the practice of informed consent. These include the facts that it is an elective and non-therapeutic procedure, and that it is carried out by means of proxy consent (because the child is not considered competent). Each of these issues increases the requirement for a more exacting standard of information-giving for neonatal circumcision, out of respect for the decision-maker’s right to truly understand what is at stake with interventions that are not clearly necessary.[54-57]

Researchers and commentators have long noted the inadequacy of disclosure for the purpose of parents’ circumcision decision-making.[57-67] For example, studies show that parents are routinely told of only three (bleeding, infection, and pain – the general risks of surgery) of many

possible specific complications,[63,65] and little to nothing about the alternative of not circumcising.[67] Up to one third of parents report not having received enough information on which to make their decision about circumcision.[64,66] Consent based on inadequate disclosure is neither ethically nor legally valid.[57] Consent under circumstances of coercion or manipulation (e.g. repeated solicitation, or pressure by health professionals) is also invalid.[57]

It should be noted, however, that even if disclosure is adequate, this in itself is not sufficient to obviate the other ethical problems with non-therapeutic circumcision of non-consenting minors.[68]

### **Patient exploitation**

Some doctors may exploit the presence of the foreskin by performing a circumcision simply to collect a fee for the procedure. According to the *Boston Globe*, quoting Thomas Wiswell, M.D. (a prominent advocate of male circumcision):

“I have some good friends who are obstetricians outside the military, and they look at a foreskin and almost see a \$125 price tag on it [1987 cost],” says Wiswell. “Each one is that much money. Heck, if you do 10 a week, that's over \$1,000 a week, and they don't take that much time.”[69]

Patient exploitation is a violation of human rights and is unethical.[70]

### **Duties to child-patients**

As documented above, doctors have a duty to act in the best interests of their child-patient. Specifically, doctors have “legal and ethical duties to their child patients to render competent medical care based on what the patient needs, not what someone else expresses,”[50] and “the principal obligation of the physician is to the individual patient rather than to society...”[1].

### **Preservation of the child's right to an open future.**

Although infant boys are not competent to provide consent at birth, they will, in the vast majority of instances, be competent later. The principle of a child's “right to an open future,”[42] which is accepted by many medical ethicists, requires that parents, to whom the care of the child is entrusted, preserve the child's future choices concerning sensitive, self-affecting issues such as the state of one's own genitals.

Joel Feinberg writes:

... if the violation of a child's autonomy right-in-trust cannot always be established by checking the child's present interests, *a fortiori* it cannot be established by checking the child's present desires or preferences. It is the adult he is to become who must exercise

the choice, more exactly, the adult he will become if his basic options are kept open ... In any case, that adult does not exist yet, and perhaps he never will. But the child is *potentially* that adult, and it is that adult who is the person whose autonomy must be protected, now (and in advance).[71]

Parents and doctors, therefore, have a duty to the child to preserve the child's basic options in adult life, including the option to be circumcised (if that is what the grown individual sees as being in his own best interests, considered in the fullness of his adult circumstances) or to remain genitally intact (as the vast majority of men with unmodified genitals do, in fact, choose to do). A circumcision in childhood forecloses the child's right to opt for genital integrity in adult life, so a non-therapeutic circumcision violates the child's right to an open future.

## Summary

Child circumcision was introduced into medical practice, on spurious scientific grounds, in the nineteenth century.[72] Medical ethics have evolved over the years, especially since the recent advent of the human rights era. Non-therapeutic circumcision of children fails to meet the standards of modern medical ethics. Although non-therapeutic circumcision of children remains a common practice in the United States despite its rarity in most peer nations, under current standards of medical ethics, it is unethical and needs to cease. Accordingly, medical doctors, hospitals, and other institutions have a duty to change their practices regarding non-therapeutic circumcision of children to protect the child's genital integrity.

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