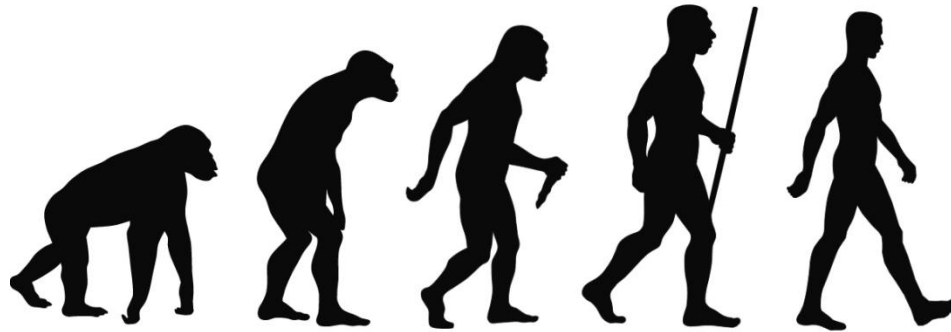


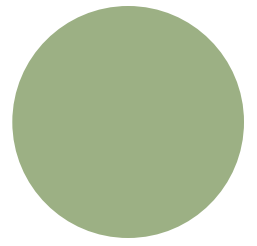
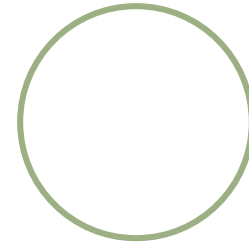
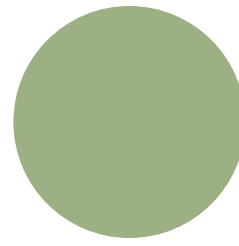
Evolution of consent



Hugo Wellesley

November 2016

Consent





Consent

- a process not an event
- BRI Inquiry 2001:

“too great a regard is paid to the symbolic act of signing a piece of paper, rather than to the real task.”



Without consent

- Battery / trespass to the person
 - *Slater v Baker & Stapleton* 1767 - # femur
 - *Chatterton v Gerson* 1981 – chronic pain

Without consent



- Battery / trespass to the person

- *Slater v Baker & Stapleton* 1767 - # femur
- *Chatterton v Gerson* 1981 – chronic pain

- Negligence

- *Chester v Afshar* 2004 – microdiscectomy

Without consent

- Battery / trespass to the person

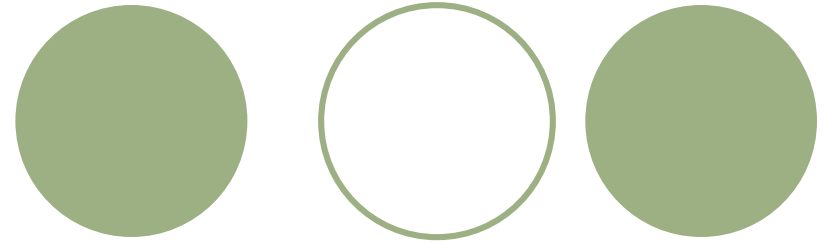
- *Slater v Baker & Stapleton* 1767 - # femur
- *Chatterton v Gerson* 1981 – chronic pain

- Negligence

- *Chester v Afshar* 2004
- ?*Lesley Ash* 2008

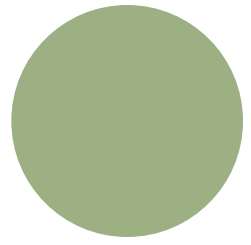
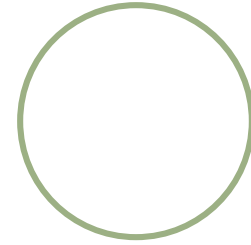
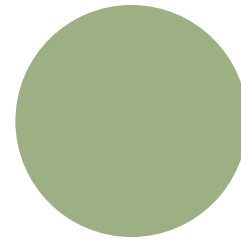


Valid consent

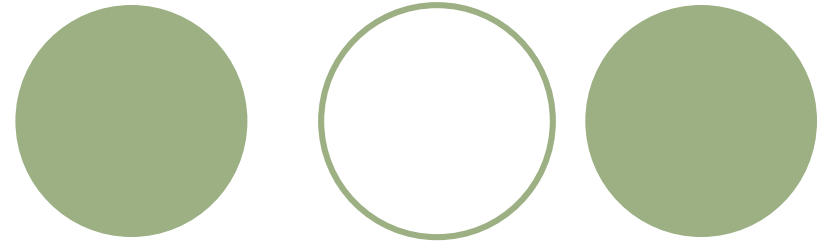


- Competent
- Freely given
- Fully informed

Which risks?



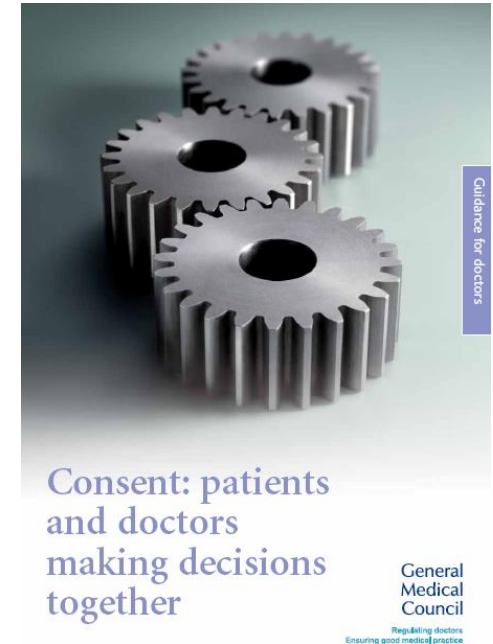
Which risks?



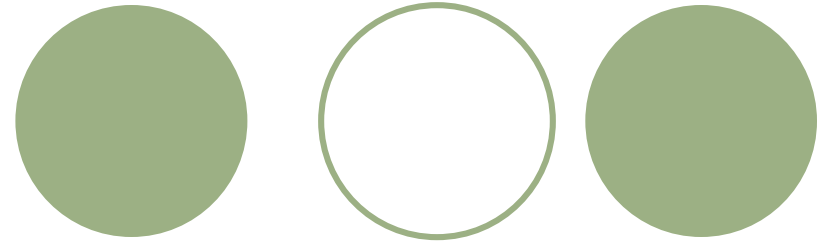
- Difficult!

- GMC 2008:

- common complications
- serious risks (even if rare)



Which risks?



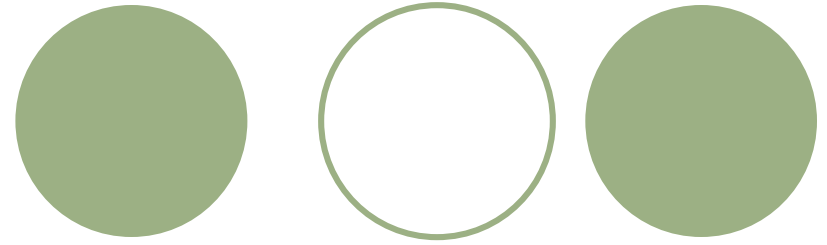
- Bolam test:

“a practice accepted as proper by a responsible body of medical men skilled in that particular art”

Bolam v Friern Management Committee 1957

Note *Bolitho v City & Hackney Health Authority* 1997

Which risks?



- Bolam test:

“a practice accepted as proper by a responsible body of medical men skilled in that particular art”

Bolam v Friern Management Committee 1957

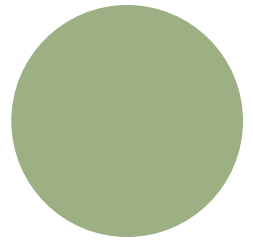
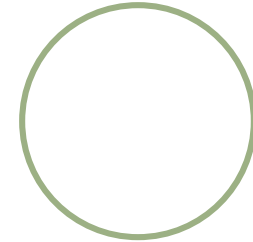
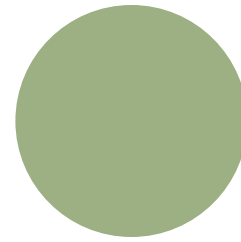
Note *Bolitho v City & Hackney Health Authority* 1997

- Reasonable patient test:

- Rejected in *Sidaway v Bethlem RHG* 1985

- Comeback: *Tina Marie Pearce v UBHT* 1999

Which risks?



- Bolam test:

“a practice accepted by a body of
responsible medical men of
ordinary skill and
Bolam v Friern N
Note *Bolitho v C*



body of

997

- Reasonable patient test:

- Rejected in *Sidaway v Bethlem RHG* 1985

- Comeback: *Tina Marie Pearce v UBHT* 1999

Which risks?

○ *Montgomery v Lanarkshire 2015*



Which risks?

○ *Montgomery v Lanarkshire* 2015

○ Material risk:

- Reasonable person likely to attach significance
- Dr should be aware for that particular patient



Consent summary

- Reasonable patient test
- True purpose - Patient choice