Throughout this handout, where I say "it seems that" or "common sense say that…" you are welcome to dispute these claims. If you do, you need to provide good evidence to support what you say.

Important concepts / distinctions

Patients' rights versus patients' best interests

- Common sense seems to say that it is *sometimes* wrong to deny patient requests even when this denial is in the patient's best interests
    - Possible examples: patients who request elective cosmetic surgery when that it not likely to make them happier, patients who request to be allowed to die, patients who refuse treatment on religious grounds, patients who unreasonably think that treatment is too risky, maybe patients who request tests for unlikely diseases
- If common sense is correct about this, then patients have some *right* against doctors to make certain treatment choices for themselves
    - This fits with the idea that it is often wrong to treat patients who have not given morally relevant consent
- Important note: if common sense is correct, then having a right to *x* does not always require that *x* is good for you
    - Another example where respecting rights does not mean doing good: There are five patients who will die without organ transplants, and one healthy patient who is a tissue match but refuses to donate. Common sense says that it would be wrong to kill the healthy patient even if doing so is the only way to save the five other lives. If that's correct, then the healthy patient's rights are morally stronger than the interests of the other five patients
- But common sense also says that it is sometimes wrong to grant patient requests when those are sufficiently against patient interests
    - Possible examples: patients who request open heart surgery for no reason, the 7 year old who asks for a tattoo (or for elective cosmetic surgery)

Freedom, autonomy, and different sorts of value

- Autonomy requires rationality; freedom does not
    - Young children can be free, but not (very) autonomous
- Neither freedom nor autonomy are binary; one can have more or less of each
- Freedom and/or autonomy are valuable, but in what way?
    - They may often be instrumentally valuable: people who are free are more able to pursue their interests, and people who are autonomous are even more able to do so
    - Is one or the other intrinsically valuable?
        - One way to determine if something is intrinsically valuable is to see if it seems good in some cases where it gives us no other good
        - The right to only be treated with your consent suggests that one of these might intrinsically valuable

Standpoints of evaluation

- What is morally wrong or permissible is sometimes different from what is legally wrong or permissible, or prudentially wrong or permissible
    - So you cannot *just say* "The law prohibits *x*, so *x* is morally wrong."
    - However, you can *argue* for that claim, if you think it is true.
- Professional ethical codes are (seemingly) a form of legal rules.
    - So you cannot *just* say, "Medical ethical codes prohibit *x*, so *x* is morally wrong for doctors to do." However, you can argue for this if you think it is true.

Morally relevant consent (MRC)

- MRC requires being informed, competent, and uncoerced
    - Some of these seem to have to do with autonomy, some with freedom.
- It's not obvious how much of each is necessary for MRC (you'll need to argue for whatever you say)
    - Common sense says that most adults can, if told about costs and benefits of treatment, give MRC to this treatment
    - Common sense says that very young people cannot give MRC to many sorts of treatments (even low stakes ones, like getting a tattoo)
- Common sense says that it sometimes permissible to treat someone even if they have not given MRC
    - E.g. in emergencies, or when treating young children, or adults who are incapable of giving MRC (those with cognitive disabilities, or those in extreme amounts of pain)
    - So, the following inference is bad, "It is permissible to administer treatment *x* to person A, so we know that person A gave MRC to *x*."
- Are the following different:
    - Treating someone who has given superficial consent, but is incapable of giving MRC
    - Treating someone who has said nothing (e.g. because incapacitated)
    - Treating someone who refuses treatment, but is not capable of giving MRC (because not fully competent)
    - Treating someone who refuses treatment and is fully informed and competent

Things to consider/address from the readings

From Lane:

- Lane argues (roughly) that any view according to which we are generally obligated to treat or prevent deafness will have to say that we are generally obligated to treat other conditions that are not disabilities in implausible ways
    - E.g. we'd be obligated to prevent females from born in very sexist societies
    - Be careful that your views don't run into the same problem:
        - E.g. if you say "If condition *x* is likely to make life harder for the patient, then doctors are obligated to treat *x*," you might be saying that doctors are obligated to treat femaleness in sexist societies.
- Might your argument be seen as saying there is an obligation to treat or prevent deafness? If so, you must address Lane's arguments.

From Davis and Mills:

- Davis talks about the importance of protecting the future freedom of minors.
- Mills argues (partly) that it is hard to meaningfully protect future freedom, because anything we do reduces freedom in some way; she also argues that it is not in a person's best interests to have too much freedom
- Does your argument address *future* freedom, or the value of freedom/autonomy? If so, talk about Mills and Davis
- Does your argument talk about protecting current best interests, at a cost to future freedom? If so, should probably address Davis and Mills

From Giordano:

- Giordano thinks that treatment of minors requires both their MRC and that treatment is in their best interests.
- If your view differs from this, you must address what she says.
- If you agree, you must think about:
    - Do you say the same thing about adults? (i.e. would you say that it is wrong to treat them when they give MRC but treatments is not in their best interests?)
        - If yes, this is an objection to your view.
        - If no, how are adults different?
    - If treatment is in minors' interest, why is MRC required? Why isn't superficial consent enough?

From Wells or Goldacre:

- Something to consider about *informed* consent:
    - A possible test for whether consent is informed: would the withheld information possibly have made a difference to the patient's decision?
    - Is this always a good test? If the patient is, e.g. racist and wouldn't want to be treated by someone of the "wrong" race, does withholding information about the race of the treating surgeon a problem for MRC?
- These papers suggest that respecting MRC is not always in the interests of patients.
- Goldacre tries to argue that not respecting MRC hurts patients in the long term; how plausible is this in light of what Wells talked about (or what we talked about in class)?