

Young People and Informed Consent

In consultation with the profession and the community, the Board has developed a new statement to clarify some of the legal, ethical and clinical issues for doctors involving Young People and Informed Consent. A hard copy of the complete policy has been distributed to the profession with this edition of the Bulletin. It is also available electronically on the Board's website at www.medicalboardvic.org.au

Summary

In Victoria the legal age of maturity is 18. Young people below this age may be legally able to consent to treatment, providing the doctor is satisfied that the young person has reached sufficient maturity and is competent to give valid consent.

Competence

In determining competence, a doctor must be satisfied that the young person has sufficient understanding and intelligence to comprehend in general terms the:

- Nature of their clinical problem
- Nature and purpose of the proposed treatment
- Effects of the treatment including side-effects
- Consequences of non-treatment
- Other treatment options, and
- Possible repercussions of the treatment, for example the consequences if parents found out.

In such cases, the doctor is entitled to accept consent from the young person without parental consent, provided that:

- The treatment is in the child's best interests, and
- The proposed treatment is not very complex or will not have serious consequences.

Assessing maturity

When determining whether a young person is competent to give consent, a doctor must make an assessment of the maturity and cognitive ability of the young person. This may be based on such factors as:

- General maturity of speech and bearing

- Ability to explain the clinical problem for which treatment is sought, through appropriate clinical history
- Level of schooling
- Level of independence from parental care
- Ability to make judgements about his or her health.

When a doctor has to make a decision about a young person's ability to consent to treatment, he/she should document the assessment of maturity in the medical record, together with the factors taken into consideration in making the decision. Competency should be tested for each new treatment being considered and should be documented. Parents cannot override the consent of a competent young person, but the Family Court may do so, if it is the Court's opinion that it is in the young person's best interests.

Refusal of treatment

The legal recognition of a competent young person's right to consent to medical treatment may not fully apply to a right to refuse all forms of medical treatment. On occasions, parents can refuse treatment for their child but this decision can be overturned by the Family Court if it deems this is in the best interests of the child. Consent for special medical procedures such as sterilisation or gender reassignment can only be given for a young person by the Family Court.

Duty of confidentiality in consultations

Medical practitioners have a legal and ethical duty to maintain the confidentiality of a competent young person. There is no clear legal position on the duty of confidentiality as it relates to the incompetent young person and the provision of information to their parents. Some young people who are not assessed as competent to consent to treatment may still be able to establish a confidential relationship with a doctor which entitles them to have what takes place in that relationship kept from their parents.

The duty of confidentiality is of crucial importance in engaging a young person in

a trusting relationship with their doctor and should not be breached lightly. There are however some legal exceptions to the duty of confidentiality in addition to those applying to an adult. These include:

- The best interests of the patient, specifically risk of self-harm or suicide
- Court proceedings
- Statutory reporting requirements.

It can be helpful to discuss the question of confidentiality with a young person early in a consultation and the circumstances in which it could be necessary to breach confidentiality. In particular, this includes risk of suicide or sexual, physical and emotional abuse and serious risk to others.

The Board acknowledges the contribution of the original document developed by the Young People and Informed Consent Project, Deakin University in consultation with the Centre for Adolescent Health, Royal Children's Hospital, Melbourne and the Australian Medical Association (Victoria).

New Forms under the Mental Health Act 1986

Amendments to the Victorian *Mental Health Act 1986* came into effect on 6 December 2004. As a result, the forms used by medical practitioners to initiate involuntary treatment under the Act will change.

New 'Request' and 'Recommendation' forms were distributed in November. Old forms will not be valid after the change date.

New forms are necessary because the criteria for involuntary treatment in section 8 of the Act have been amended to remove the emphasis on 'admission and detention'. The criteria now focus on whether a person requires involuntary treatment and whether that treatment can be provided under an Involuntary Treatment Order.