

## Position Statement

### Medical Treatment of and Advice to Minors

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***While involving parents in their children's medical treatment is important, confidentiality is vital when promoting young people's access to healthcare, particularly for sensitive issues such as sexual health.***

Early prevention or intervention is desirable when it comes to adolescent health problems, with the parents of a minor usually the most appropriate persons to give consent to medical treatment.<sup>1</sup> However, concerns about confidentiality can be a barrier to young people accessing health services, and they are more likely to seek help and disclose information when they know a service is confidential. While parental participation is important, evidence of any benefit from mandatory involvement is lacking, and focusing on the rights of parent's risks negative health outcomes for many young people. There is widespread support from Australian medical organisations and professional groups for adolescents' access to confidential medical care.<sup>2</sup>

In 1986, the landmark Gillick case in the United Kingdom established the legal precedent in Britain that an adolescent under the age of 18 years is capable of giving informed consent when he or she 'achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed.' Known as the 'mature minor principle', this was endorsed in Australia in 1992 in 'Marion's case' by the High Court of Australia, with the law now recognising the rights of mature minors to make decisions about their medical treatment and to receive confidential healthcare.<sup>2</sup>

Based on the Gillick case, FPWA finds a clinician is justified in counselling or treating a minor without parental knowledge or consent, provided the clinician is satisfied that:

- ◆ After discussion with the minor about informing their parents, the minor decides not to inform them
- ◆ The minor has sufficient maturity to understand the advice and the treatment and its implications, and so to give informed consent (see below)
- ◆ The minor's best interests require her/him to be given medical treatment, advice, or both, without parental consent.

Australian law considers that a child under the age of 18 years old is capable of giving effective consent to medical procedure if he/she fully comprehends the nature and consequences of the proposed procedure, irrespective of whether a parent consents.<sup>1</sup>

In considering guidelines for medical advice to and treatment of minors, it is important to consider what is best for the adolescent. As such, clinicians must ensure confidentiality is in the young person's best interests, and weigh up certain factors to assess maturity. The following guidelines have been established by FPWA:

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<sup>1</sup> Office of Safety and Quality, Department of Health (2006). Consent to treatment policy for the Western Australian health system.

<sup>2</sup> Sanci, L.A., Sawyer, S.M., Kang, M.S-L., Haller, D.M. & Patton, G.C. (2005). 'Confidential health care for adolescents: reconciling clinical evidence with family values', *Medical Journal Association* 183(8): 410-414

1. Where medical diagnosis, advice, treatment, prescription, or surgical intervention is sought by a person who appears or is known to be under the age of 18 years, clinicians should be aware of the need not to undermine parental responsibility and family stability.
2. The treating professional should tactfully inquire into the circumstances of the minor, and where appropriate, e.g. in the case of a minor living at home, should discuss the option of them informing their parent or guardian.
3. In making a decision about the provision of contraceptive advice and/or treatment to clients under 18 years, the doctor must consider the maturity of the client, taking into account their age, intelligence, life circumstances, and understanding of the advice or treatment and its implications.
4. Regardless of the age of the patient, informed consent to treatment must be obtained. If it appears that the client is not capable of understanding the advice or explanation given, the clinician cannot proceed without the informed consent of the parent or guardian.
5. Consultations between doctor and patient are confidential and the confidence should not be broken in the case of a minor, unless for the most exceptional reasons (NB limitations of confidentiality apply regardless of age eg any person who is at risk of harm to self or others could have their confidentiality breached).

#### Informed consent

A minor cannot give informed consent unless he/she is mature enough to understand the explanation. Furthermore, the ability to consent may be affected by the nature and seriousness of the treatment. If the minor is not able to understand the explanation, then the informed consent of the parent or guardian must be obtained unless there is an emergency or Court permission is obtained.

#### Minors seeking termination of pregnancy

The WA Abortion Law ACTS AMENDMENT (ABORTION) ACT 1998 (Clause 7 Section 9) states if the woman is under 16 years of age and supported by a parent, a custodial parent must be informed that an abortion is being considered. The parent needs to be given the opportunity to **participate** in the counselling process and in consultations between the young woman and her doctor. The final decision on how to proceed is still made by the woman.

However, a dependant minor under 16 years of age may apply to the Children's Court for an order that a custodial parent **NOT** be consulted regarding informed consent for a termination of pregnancy. This may arise for example in cases where the young woman fears she may experience physical abuse, or that she will be made to leave home against her wishes if her parents were aware she was pregnant and seeking a termination of pregnancy. It is up to the Magistrate to decide whether the parents' participation is required or not.

FPWA provides assistance to young women wishing to apply for a court order.