

Adolescents and confidentiality


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Recently the right of adolescents to confidential health care has come under threat. In 2004, the Minister for Health proposed the introduction of legislation to give parents access to all information held by Medicare Australia (formerly the Health Insurance Commission) concerning their child/ren under 16 years of age. Ultimately this legislation was withdrawn in the face of concern that it would have been detrimental to the health of adolescents. This article examines the duty of general practitioners to maintain confidentiality when treating adolescent patients.

Case histories are based on actual medical negligence claims or medicolegal referrals, however, certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

Case history

The mother of a 15 year old patient repeatedly rang the practice and demanded to know whether her daughter had consulted a general practitioner at the practice, and the reasons why, wanting to speak directly with the GP. The mother suspected that the GP had prescribed the oral contraceptive pill for her daughter. She wanted to obtain a copy of her daughter's medical records and was threatening to get her solicitor involved. The GP had now received a letter from the mother demanding a copy of her daughter's medical records 'in accordance with the Privacy Act'. The GP was uncertain about her legal obligations in this situation and contacted her medical defence organisation for advice.

The GP was informed that amendments to the *Privacy Act 1988*, introduced on 21 December 2001, give patients a right of access to their medical records, including obtaining a copy of their medical records, unless particular circumstances apply that allow the GP to deny access.

In some situations, a 'person responsible' who is acting on behalf of the patient may make a request for access.

The *Privacy Act 1988* allows for the disclosure of health information by a GP to a person responsible for an individual, if that individual is incapable of giving or communicating consent. This provision recognises that, where a child or adolescent is not competent to make their own privacy decisions, a GP can discuss the young person's health information with a parent. Where the GP considers it appropriate, this may include providing the medical records to a parent of a patient. However, in circumstances where an adolescent is capable of making their own decisions regarding their privacy, they should be allowed to do so. Where a parent seeks information about a child or young person, but the individual has specifically asked that their health information not be disclosed and they are competent to make that decision, the GP should maintain the patient's confidentiality.¹

In this case, the mother of a 15 year old patient was making a request for access to her daughter's medical records. The GP informed the medical defence organisation adviser that she had encouraged the 15 year old patient to discuss her treatment with her mother, but the patient did not want her mother involved in her care. The GP had determined that the patient was competent to make this decision and that the treatment she was requesting was in her best interests. In these circumstances, the GP was advised that the mother's request for access to her daughter's medical records should be refused. This refusal was in accordance with the GP's legal obligations under the *Privacy Act 1988*. After discussion, the GP decided that she would inform the mother that she should discuss her request for access to the medical records with her daughter. The GP also intended to offer to see both the mother and the daughter to discuss any concerns, if they wished to do so.

Discussion

The provision of confidential health care to adolescents goes hand in hand with the ability of adolescents to consent to their own medical treatment.² If an adolescent is able to consent to their own treatment, then they are medicolegally entitled to the same doctor-patient

confidentiality as an adult patient. Determining competence to consent to treatment can be complex. Consent for the medical treatment of patients under 18 years of age is generally provided by parents. However, there are circumstances in which patients under the age of 18 can consent to their own treatment. The common law recognises that a child may have the capacity to consent to medical treatment on their own behalf, and without their parents' knowledge. This common law position is based on an English House of Lords judgment, *Gillick v Wisbech Area Health Authority*.³ The issue to be determined in *Gillick* was whether a medical practitioner could provide contraceptive advice and prescribe contraceptives to a patient under the age of 16 years, without the prior knowledge or consent of her parents. The Court determined that there were circumstances in which a child could consent to their own medical treatment. In order to do so, the child must have a sufficient understanding and intelligence to enable him or her to understand fully what is being proposed, including an understanding of the nature and effects of any procedures. This is often referred to as 'Gillick competency' or a 'mature minor'.

It should also be noted that the medical duty of confidentiality is not absolute and there are exceptions to the duty of doctor-patient confidentiality. These include situations in which:

- the patient consents to the release of the information to a third party
- disclosure is made to another health professional to ensure appropriate medical care of a patient
- mandatory disclosure of information is required under law, eg. statutory requirements in regard to child abuse and infectious diseases
- there is an overriding duty in the 'public interest' to disclose information. These are usually situations in which there is a 'serious and imminent' threat to the life or health of an individual.

Risk management strategies

Research has highlighted the importance of doctor-patient confidentiality in promoting the access of adolescents to health care, particularly for sensitive issues such as mental and sexual health, and drug and alcohol problems.⁴ In

practice, GPs should encourage adolescents to inform their parents about their medical treatment, as parents are generally best placed to support their children. However, if despite encouragement, an adolescent refuses to inform his or her parents, confidential health care can be provided if the GP is satisfied that the adolescent is a 'mature minor' and that the treatment is in the best interests of the adolescent. An exception to this duty of confidentiality may arise when there is a 'serious and imminent' threat to the life or health of an individual.

General practitioners are encouraged to obtain advice from colleagues and/or their medical defence organisation in complex cases.

Conflict of interest: none.

References

1. Office of the Federal Privacy Commissioner. Guidelines on privacy in the private health sector. Available at www.privacy.gov.au.
2. Bird S. Children and adolescents: who can give consent? *Aust Fam Physician* 2007;36:165–6.
3. *Gillick v West Norfolk and Wisbech Health Authority & Anor* (1984) QB 581, (1985) 3 All ER 402.
4. Sanci LA, Sawyer SM, Kang MS-L, et al. Confidential health care for adolescents: reconciling clinical evidence with family values. *Med J Aust* 2005;183:410–4.