

# Legal and Ethical Issues Facing Adolescent Health Care Professionals

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## Abstract

This article reviews the legal standards and ethical dilemmas surrounding the provision of care to adolescent patients. Uncertainty and ambiguity in this area has contributed to the underserving of the adolescent population. Usually, the legal right to consent to treatment resides with the adolescent's parent or legal guardian; however, there are many cases in which adolescents may provide their own consent. The determination that the adolescent is "mature" is one important factor. The law generally upholds a provider's determination of maturity of a patient. Minors also have the right to confidentiality in almost all situations in which they have the right to consent. The issue of confidentiality poses legal and ethical challenges to the provider in five discussed areas. Providers should be aware of the laws specific to their state, while keeping foremost the best interest of their patients. Providers should also encourage parental involvement and communication concerning treatment, while respecting adolescents' right to confidentiality.

**Key Words:** Adolescent health, ethics, legal issues, mandated reporting, patient confidentiality.

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ADOLESCENTS AND YOUNG ADULTS are the most underserved age group in the health care system. Many physicians do not know how to apply the principle of confidentiality on behalf of their adolescent patients and may not know the types of services for which adolescents can provide their own consent. This article reviews the legal issues regarding adolescent health care and provides examples of ethical dilemmas that are commonly experienced by adolescent health care professionals. It also provides a series of recommendations to assist physicians and other health care professionals in making decisions that are legally and ethically sound. The provider must remember that the laws governing confidentiality for minors vary from state to state, and health care professionals must educate themselves as to the basic rights that are afforded to minors in their locale.

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## Consent Laws for Adolescents

### Definition of Consent

Consent occurs when a patient voluntarily agrees to medical care with full understanding of his/her condition, the nature of the proposed treatment, alternative treatments, risks that may be associated with treatment, and the risk of no treatment at all (1).

### Who May Consent to Care

For children, the right to consent to medical treatment usually resides with the parents, the legal guardian, or the foster care parent (2). If the parents are divorced or separated, the provider must not assume that both parents have the legal right to consent to care. In such cases, legal right depends on state law and court orders, especially in cases of joint custody. In these situations, it may be prudent to contact the court clerk for legal certainty. Under certain conditions, the right to consent for minors may rest with a designated proxy (2). For example, a parent may designate a proxy upon a child's enrollment in a school or summer camp, and the

name of this designated proxy is placed in the child's medical record.

### What about Adolescents?

Adolescents may consent to their own care if they are pregnant, parenting, married, or emancipated (1). An emancipated minor is one who is no longer in the custody of parents by order of a court, who is enrolled in the armed services, who is living independently, and/or who is economically independent of his/her parents. However, the determination that a minor is "mature" is the most widely used justification for reproductive health care services. Unfortunately, the definition of a "mature" minor varies from state to state (3). Typically, the provider makes an assessment when the teen independently presents for treatment. Although many states are ambiguous on the precise definition of a "mature" minor, the law has generally upheld the physician's assessment.

The legal system has recognized that most adolescents have the cognitive and mental capacity to make appropriate health care decisions; and they often do so under circumstances in which requiring parental permission might prevent them from seeking care or force them to take harmful risks (4, 5). The factors which should be considered in assessing a minor's maturity are chronological age, the risk, necessity and benefit of the proposed treatment, and the teenager's emotional and cognitive capacity for understanding treatment information (1).

### Health Conditions in Which a Minor May Consent

A person under the age of 18, or a minor, may also consent to his/her own care in certain situations defined by state law. In most states, these situations include emergency health care, pregnancy-related care, testing and treatment for sexually transmitted disease (STD), drug/alcohol abuse services and some mental health care. In some states, family planning and abortion may also be provided with only the adolescent's consent. The following is a review of specific conditions and rules that govern a minor's right to consent to treatment:

**Emergency care:** In all states, any person in need of emergency care may be treated without consent if an attempt to secure consent would delay treatment and risk the patient's life or health (2).

**STD treatment:** In most states, minors can consent to their own care for all diseases that are reportable under the state's communicable and venereal diseases reporting laws (2). Moreover, if the presence of an STD suggests a possible instance of sexual abuse of a minor, the physician must report this finding to the appropriate child protection agency.

**HIV testing:** In most states, minors can consent to HIV testing. Due to the nature of the disease and the potential for discrimination, state laws respect the adolescent's right to make decisions which promote testing (1). Although HIV test results are confidential, state law requires disclosure of test results to certain individuals or institutions. Examples of these include health care personnel who care for the tested individual, mandated government health officers, third party payers, or an authorized foster care or adoption agency (6). However, an adolescent may choose to test anonymously, where his or her name is not given or recorded, and so may be able to maintain total confidentiality of the test results.

**Family planning/reproductive health:** The unfounded fear of many parents that contraception encourages sex has led to ambiguity as to the rights of minors with regard to reproductive health care services.

Currently, federal law upholds the rights of "mature" minors to receive reproductive health care (1). In no state is parental notification required for minors to purchase nonprescription contraceptives. In addition, no state explicitly prohibits minors from receiving prescription contraception (2). Certain states do, however, allow a physician to breach confidentiality and tell parents when he/she has prescribed contraception to their minor child. Some states also explicitly state the age (e.g., sixteen years) at which an adolescent may request drugs or devices that regulate contraception, but do not penalize physicians who treat patients at younger ages. Under federal law, adolescents also retain the right to receive reproductive health information. Federal law also explicitly states that minors on public assistance, Medicaid and Title X must be provided family planning services on request (1).

**Prenatal care:** Any minor in any state who is pregnant has the right to consent to prenatal care as well as labor and delivery services (7).

**Abortion:** Consent laws regarding abortion for minors vary widely from state to state. For example, Utah prohibits nearly all abortions, but the State of New York permits a minor to

consent to abortion. Since 1976, the Supreme Court has expressed varied opinions on the rights of minors in this matter (7). In 1976, in *Planned Parenthood of Central Missouri v. Danforth*, the Court ruled that mandatory parental consent laws for teenagers were unconstitutional (8). In 1979, in *Bellotti v. Baird*, the Court ruled that a state could require parental consent if there was an alternative procedure in place for a minor to obtain authorization without parental consent (9). This procedure in most states involves a minor appearing in court to prove that she is mature and that an abortion is in her best interest. In 1990, in *Ohio v. Akron Center for Reproductive Health*, the Court upheld an Ohio law that mandated notification by the physician of parents or legal guardians of the intent to perform an abortion at least 24 hours prior to the procedure (10). However, minors can avoid parental notification if they receive official judicial authorization. And in *Hodgson v. Minnesota* (1990), the Court affirmed the view that court authorization was a viable alternative to parental notification for minors, but that it caused delay, harm and trauma for a young girl seeking to terminate her pregnancy (11).

**Sterilization:** Sterilization is against the law for all persons under the age of twenty-one (6).

**Mental health services:** Consent laws vary from state to state with regard to providing an adolescent with mental health services. Although a teenager may have consultation without parental consent, parental consent is usually required for mental health treatment. With regard to inpatient mental health services, some states have regulations that protect minors from being held longer than 72 hours without consent unless they are a threat to themselves or others, or a court petition mandates their involuntary confinement (1).

**Alcohol/drug abuse:** A minor is entitled to consent to confidential drug/alcohol treatment (2).

**Immunizations:** Although federal law clearly states that immunizations from communicable diseases are in the public interest and may therefore be administered to minors without parental consent, nearly all states have adopted legal exceptions due to pressure from religious and cultural constituencies (2). However, all states require that children attend school, and as a prerequisite for school attendance, children must be immunized for certain diseases. This requirement could be used by a

teenager to obtain such immunizations regardless of parental consent.

## Mandated Reporting

### Child Abuse/Neglect Services

A physician must report any signs of child abuse or neglect to the appropriate child welfare agency. Health care personnel should provide immediate access to appropriate health services to minors who are victims.

### Criminal Activity

Any manifestation of criminal activity involving a minor (e.g., gunshot or stabbing wounds) must be reported to a legal authority by the attending physician (2).

### An Ethical Framework for Decision-Making

The Committee on Bioethics of the American Academy of Pediatrics concludes in their position paper (7) that “the physician’s responsibility to his/her child patient exists independently of parental desires and proxy consent.” The committee suggests that the role of the health care provider to “do no harm” for the patient remains a cornerstone of the physician-patient relationship. However, controversial topics such as abortion and reproductive health care often create doubt and hesitation. For example, some providers may not pursue a complete history, including sexual/physical abuse and substance use, in order to avoid dealing with the repercussions of consent and confidentiality laws, mandatory reporting and parental reaction.

## Confidentiality and Minors

### Definition of Confidentiality

Confidentiality is the principle that information cannot be disclosed without the permission of the person who consented to care (1). In nearly all situations in which minors have the right to consent to their own care, they also have the right to confidentiality. This precludes the provider, once they provide the service, from sharing any information with the patient’s parent, legal guardian or any other person not involved in the patient’s care without the explicit agreement of the teenager. However, confidentiality can and must be breached if the

teenager is a threat to himself or herself or to the health of others, and in cases of abuse.

### Issues Surrounding Patient Confidentiality

There are five significant areas in which the right to confidentiality poses legal and ethical challenges to the health care provider. These include (a) the nature of the patient-provider relationship; (b) patient concerns; (c) parental reactions; (d) payment for care; (e) the physician's values.

Unfortunately, adolescents have few sources to turn to for confidential and sound advice in making healthy behavioral decisions. Health care providers represent one of these sources, and their effectiveness in positively influencing their patients is directly related to the trust developed in the patient-provider relationship. Consequently, a provider must discuss issues of confidentiality with adolescent patients and their parents at the beginning of the first medical encounter. This conversation should include the protections and limits of confidentiality, and reinforce the understanding of patients every time a condition or behavior that seems to call for parental notification becomes evident. Violation of the patient-provider relationship through disclosure of health information to parents, legal guardians or others without informing the adolescent patient may cause the teenager to distrust both the particular provider and the health care system as a whole.

The provider must also weigh the individual concerns of the adolescent patient. Usually a teenager makes confidentiality an issue either overtly or covertly during a routine health screening and will not disclose certain behaviors until he/she learns that they will be kept confidential. For example, one teenager may ask if a parent or grandparent will be told of what transpires during the examination, while others wait for a cue from the provider that their discussions will be confidential before they respond to important queries about sexual behavior and alcohol/drug use.

A third factor affecting confidentiality is the parent's reactions. Despite the absence of parents in the examination room, the possibility of parental objections should be anticipated by providers whenever they provide treatment and consultation to adolescents, especially if that treatment involves reproductive health care. Handling such issues may be particularly difficult if the provider has had an ongoing relationship with the parent. However, with adequate

preparation the provider can both provide confidential services that meet the adolescent's needs and help parents understand and support the provision of these confidential services. The key is to make this process and these conversations an integral part of the provider's health care delivery. Providers must explain to parents the reasons for confidentiality and include these conversations as patients move from childhood to adolescence. In addition, providers must encourage parents to keep communication open with their adolescent and to view confidential health care as a sign of responsibility and of learning how to become a good health care consumer.

The changes in health care financing pose an additional challenge to patient confidentiality. Numerous and complicated billing procedures by private insurance agencies often require that the health care provider disclose treatments in order to receive compensation (12). Because parents pay for most insurance plans, a bill can become the outlet where confidential information is breached. Physicians can attempt to minimize this by taking additional precautions to explore the billing procedure of a minor's insurance company or by providing services for a fee that the adolescent can afford, including free services when necessary. However, time and institutional pressures sometimes make these options prohibitive.

Finally, a physician's own values may affect his ability to provide care to a patient and maintain confidentiality. This is particularly the case for physicians who do not believe in the acceptability of certain behaviors or treatments and are therefore inclined to disclose information to parents, thinking it in the best interest of the adolescent's development. In this case, physicians must explain beforehand their philosophy in providing service and their ability or willingness to provide confidentiality.

Health care providers must address at least three areas of concern when they see adolescents. First, the provider must begin with what is clinically appropriate to do, given the physical, emotional, and mental health condition of the patient. Then, the provider must weigh the legal issues surrounding the proposed treatment, including the consent and confidentiality laws governing their actions in their particular state. Finally, the provider must consider other possible barriers to care for the patient. This is particularly important with adolescents who may not be able to travel to another facility or who cannot afford to pay their fees directly. In these cases, this provider may be the only per-

son available for addressing a particular health issue or, if the provider cannot offer the needed services, he or she may need to counsel the patient on alternative options elsewhere.

### Recommendations

Clearly, all health care professionals need to familiarize themselves with the rules that govern consent and confidentiality in their locale. Moreover, the health care provider should understand that in many situations a minor has the right to receive care even without parental involvement; and if New York State serves as an example, a physician has never been held liable for providing care to a minor whom he or she judged to be “mature” (1). The following additional recommendations are intended to help health care providers responsibly tackle the issues of consent and confidentiality, maintain the respect of patients who are minors, and work effectively with their parents.

- Always inquire into the feasibility of parental involvement when treating a minor and ask which other adults are important in their life, so that they might be involved in the care;
- Encourage open communication and parental involvement, whenever possible;
- Be aware of the laws in your state and respect the rights of the adolescent;
- Advocate for what you think is best for the adolescent.

### Conclusion

Providing services to adolescents is not without its ethical struggles. Providers must continuously evaluate how treatment can be administered while at the same time respecting legal mandates and the implicit will of parents

and guardians. While there are no easy solutions to the challenges of adolescent health care, there are clear and negative consequences to not acting in the interest of adolescents.

Providing health care for adolescents is a major opportunity to help them cope with the challenges in their lives, develop healthy behavior and become responsible health care consumers. A close relationship between adolescents and the people who can competently, affordably and confidentially render health care services helps adolescents become healthy, responsible adults.

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