

Teenage Confidentiality, Adolescent Health & Mandatory Reporting: A Primer for Practitioners

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Goals of this Presentation

- 1. Introduce the basic legal principles of adolescent confidentiality and teenage legal rights**
- 2. Foster discussion through case studies**
- 3. Examine the tension b/t confidential care and “best practices” for family centered treatment**
- 4. Provide a primer for mandatory reporting – re DCF and adolescents**

Principles of Confidentiality - Definitions -

Who is a minor?



**Anyone under
the age of 18,
except as
otherwise
indicated**

...definitions continued

What is informed consent?

**A minor
CANNOT give
informed
consent!**

Signed consent from a patient acknowledging that the patient has been made aware of the risks and benefits of alternative procedures and the consequences resulting from those procedures.

...definitions continued

What is the patient's right to self-determination?

A minor patient, possessing enough information to enable an intelligible choice, should be involved as much as possible in decision making concerning her medical care.

...definitions continued

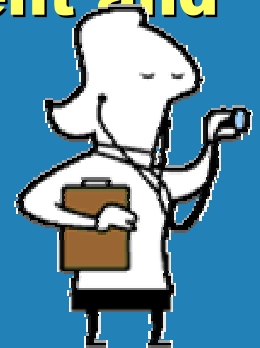
Who is a mature minor?

Connecticut courts have not recognized the mature minor doctrine in any reported case

A minor who exhibits the “maturity” of an adult and is therefore permitted to make decisions, traditionally reserved for those who have attained the age of majority, regarding her own medical care.

Types of Medical Conditions/Treatments

- **Drug and Alcohol Treatment**
- **Testing and Treatment of HIV and AIDS**
- **Medical or Surgical Treatment**
- **Mental Health Treatment – Outpatient and Inpatient**



CASE SCENARIO

Joe, age 16, comes to see you and you note that he is very depressed. His parents have recently split up and he is failing three subjects in school. He knows he needs some help to deal with his problems. You suspect he may also be using drugs or that he has an alcohol problem.

1. What are his confidentiality rights?
2. What conf. may her conf. receive?

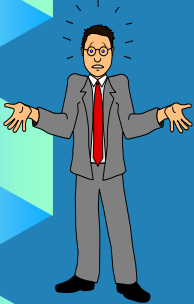
Drug and Alcohol Treatment



A minor CAN consent for drug/alcohol treatment.



A parent CANNOT be told that his/her child is receiving treatment without consent from the minor.



No reported decisions on whether a physician must report results of a drug test, done during a routine physical, to a parent.

Testing and Treatment of HIV and AIDS



A minor does not need parental consent to receive an HIV/AIDS test.



A physician may only warn a known partner if both the partner and “protected individual” are under the physician’s care.



A physician may only treat a minor without parental permission if the physician believes that notification will be detrimental to the minor’s treatment.

Medical or Surgical Treatment



Under common law, a health care provider must obtain informed consent of a parent before performing a medical or surgical procedure.



Informed consent of a parent is not required for non-emergent or routine medical care, although the AMA recommends that the minor is encouraged to consult with a parent.



Consent of the minor is recommended, but not required by law, before performing a medical treatment.

Mental Health Treatment: Outpatient



A minor CAN receive initial treatment without parental consent if:

- The consent requirement would cause the minor to reject treatment;
- The treatment is clinically indicated;
- The failure to receive treatment would be seriously detrimental to the minor's well-being;
- The minor knowingly and voluntarily sought such treatment; AND
- The provider deems the minor mature enough to participate in treatment productively.

Outpatient Treatment: continued



- A minor can only receive 6 sessions of outpatient mental health treatment without notification of parents.
- After the 6 sessions, parental consent must be secured.
- Parental consent is not necessary if the provider believes that notification would be seriously detrimental to the minor's well-being.

Mental Health Treatment: Inpatient



A minor **14 or 15 years of age** may be admitted for inpatient treatment of a mental health disorder without parental consent, but the parents must be notified within 5 days.



If a parents requests, in writing, the release of a child who admitted herself for inpatient treatment, the hospital must either release the child or commence a commitment proceeding.

Inpatient Treatment: continued

Emergency mental health treatment can be provided without parental consent as long as the condition is of an “extremely critical nature,” or “to prevent serious harm to the child.”

A minor **16 years of age or older** is treated as an adult for purposes of mental health treatment and can therefore be admitted as a “voluntary patient” without parental consent.

A minor **14 or 15 years of age** can sign herself out of a psychiatric hospital, unless she has been involuntarily committed.

Reproductive Health Care

- **Birth Control**
- **Pregnancy**
- **Counseling**
- **Abortion**
- **Sexually Transmitted Diseases**



CASE SCENARIO

Jenny, age 15, comes to your office for advice. She thinks she's pregnant but she's not sure. Her parents don't know that she is sexually active. She wonders what her confidentiality rights are if she visits the local health center.

- *What are her confidential rights?*
- *What if her "partner" is 22 y.o. – what, if any, is the obligation of the health center viz. mandatory reporting?*



Birth Control

Any person in the State of Connecticut, regardless of the person's age, can receive confidential birth control.

Pregnancy

- A minor does not need permission from a parent to receive a pregnancy test and the parents do not need to be notified of the test.
- A minor may decide whether or not to carry the pregnancy to term.
- A minor may consent to gynecological examinations without parental consent.



Counseling and Abortion Services

Any minor in Connecticut may obtain an abortion without parental consent, although an abortion, for anyone, may only be performed before the viability of the fetus, except when it is necessary to save the life or health of the mother.

Sexually Transmitted Diseases



The consultation, examination, and treatment of an STD for a minor is confidential and must not be divulged to parents – including the sending of a bill.

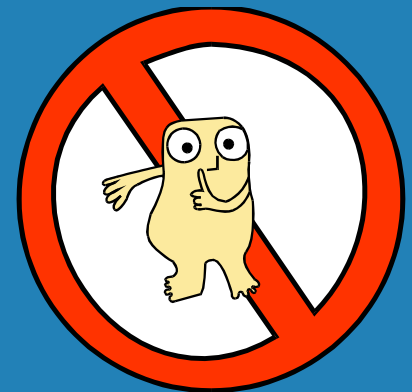


DCF must be notified of a positive STD test if the minor is **12 years of age or younger**. Care and treatment of this minor must remain confidential, although DCF may proceed with their own investigation.


Privileged Communications

A communication which cannot be divulged in a court of law, without the patient's consent, or unless it fits into the statutory exceptions:

- A claim is made against the physician
 - Abuse is involved or suspected
 - Investigation of a complaint by the Commissioner of Public Health
-
- **Physician/Patient Privilege**
 - **Psychologist/Patient Privilege**
 - **Psychiatrist/Patient Privilege**



Physician/Patient Privilege



A physician may disclose communications to other persons outside a court of law if allowed under the code of ethics for his/her profession, unless prohibited by other laws.



If a patient discloses she is suicidal, CT statutes do not address whether a physician must disclose this information. The physician must rely on his/her professional code of ethics.

Psychologist/Patient Communications

Communications may only be divulged if:

- They are made for purposes of a court-ordered examination;
- In a civil proceeding, the psychological condition is an element of the claim or defense;
- 3. The psychologist determines there is an imminent risk of injury to the patient, other persons, or property; OR
- Abuse is known or suspected.

4.

Psychiatrist/Patient Privilege

CT law permits a psychiatrist to divulge communications or records under the following circumstances:

- To another mental health facility to which the patient is admitted, if disclosure is necessary;
- When the psychiatrist determines there is **substantial risk of imminent physical injury by the patient to herself or others;**
- In a dispute over fees or claims for services provided to a patient;
- In the course of an examination made in the connection with the application for the appointment of a conservator by the Probate for a “good cause shown;”

Child Protection System



Case Example

Case Scenario #3

- ❖ 15 y.o. boy – Down Syndrome
- ❖ In DCF custody
- ❖ Living in shelter > 1 yr.
- ❖ Abdominal Pain – constipation
- ❖ Medical compliance questionable
- ❖ Unresponsive DCF social worker

What is your next move?

Whom do you call?

DCF: The "New" Mission

“The mission of the Department of Children and Families is to protect children, improve child and family well-being and support and preserve families. These efforts are accomplished by respecting and working within individual cultures and communities in Connecticut, and in partnership with others.”

What Must Be Reported?

- ❖ Abuse
- ❖ Non-accidental physical injury/injury which is at variance with the history given
- ❖ Abuse inflicted upon him by a person responsible for such child or person given access by a responsible person, or a person entrusted with the care of the child.
- ❖ Is placed at imminent risk of serious harm
- ❖ Neglect

What Must Be Reported (cont.)?



ABUSE:

- Non accidental physical injury
- Injury that conflicts with reported injury
- Condition which is the result of maltreatment such as malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment

What Must Be Reported (cont.)?

Neglect:

- Child has been abandoned
- Child is not properly cared for physically, educationally, emotionally or morally
- Child is being permitted to live under conditions, circumstances or associations injurious to well-being
- Child has been abused

Suspicion & Reasonable Cause

❖ **Suspicion**

- Certainty not required - based on observations or information gathered.

❖ **Reasonableness**

- Observations & reports & training/ experience
- Was injury was caused by neglect or by non-accidental means?

Reporting and Confidentiality: The Rules

- ❖ *When to Report*
- ❖ *Does Statutory Rape = Mandatory Report?*
- ❖ *Betrayal of Trust vs. Legal Duty*
- ❖ *What is an Adult for “Consent”*

Reporting and Confidentiality: The Rules (cont.)

- ❖ 14 y.o. girl in “relationship” w/19 y.o. “man”
- consensual
- ❖ 14 y.o. in “relationship w/22 y.o. -
consensual
- ❖ 16 y.o. in “coercive” relationship
- ❖ 12 y.o. in consensual rel. w/14
y.o.



Reporting and Confidentiality: The Rules (cont.)

DCF Reporting Guidelines:

- Child under 13 - **must report to DCF/police**
- Child b/t 13-15 engaged in consensual sexual relationship w/partner 21 & over - **must report to DCF/police**
- Child under 18 in non-consensual/coerced sexual activity - **must report to DCF/police**
- Child b/t 13-15 engaged in consensual sexual relationship w/partner under 21 - **not mandated to report *per se***
- Child under 18 engaged in sexual relations with family member – **must report to DCF**

Reaffirming Principles of Confidentiality

- **Types of Medical Conditions/Treatments (non-reproductive health care issues)**
- **Reproductive Health Care Issues**
- **Privileged Communications**
- **Emancipated Minor**

Statistical Food For Thought

- ❖ More than 66,000 children removed in 2000 – more than one in four – were later found *not to have been maltreated at all*.
- ❖ Abuse & neglect significantly more prevalent in foster care than in general population, occurring at nearly double the rate. Rate of maltreatment in foster care = 2.18% compared to rate of 1.23% in general population
- ❖ Fatal child maltreatment more prevalent in foster care. 1999 HHS data = .00721% deaths in foster care vs. .00161% in general population (@350% higher)

Resources

- ❖ DCF Web Site: www.state.ct.us/dcf
- ❖ DCF Care Line: (800) 842-2288
- ❖ Fed Govt. - Administration for Children & Families: www.acf.hhs.gov
- ❖ Center for Children's Advocacy:
www.kidscounsel.org (860) 570-5327
- ❖ *MLPP*: www.ccmckids.org/mlpp (860) 570-5327
- ❖ CCMC – SCAN Program (860) 545-9995
- ❖ Yale Child Study Center (203) 785-2513



- “In violating the trust of the adolescent patient and making the child abuse report, will the health care provider discourage this patient or others from seeking health care in the future, or from providing candid answers in a health history interview?” – Abigail English, JD