

Consent & Confidentiality in Adolescent Health Care:

A Guide for the Arizona Health Care Practitioner



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NEEDS ASSESSMENT:

The physicians of the Adolescent Subcommittee of the Arizona Medical Association's Committee on Maternal and Child Health Care have identified adolescent consent and confidentiality as an area of concern in the delivery of health care to this patient population. It is their position that lack of information in this area is a barrier to optimal health care. Recent studies have shown that many physicians who deal with these issues on a daily basis are unsure of the management guidelines established for confidential care for adolescents.

TARGET AUDIENCE:

This booklet is designed to educate all primary care practitioners and specialists, who routinely care for adolescents, regarding the federal law and Arizona legal statutes that pertain to consent and confidentiality issues for this population.

PROGRAM OBJECTIVES:

This booklet should enable the targeted audience to:

- Discuss the issues of consent and confidentiality as barriers to care of the adolescent patient.
- Combine State Statutes and Federal Regulations with ethical principles to choose the best course of action in selected patient care scenarios.
- Using samples, develop policies and procedures for consent and confidentiality in the care of the adolescent patient in the participant's own practice setting.

DISCLAIMER

This booklet is designed to promote discussion and teach the application of the appropriate law as it relates to adolescent confidentiality issues. The booklet is not intended to serve as legal or medical advice but rather as guidelines for health care practitioners.

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1 INTRODUCTION

Consent and confidentiality for adolescents in health care are too often neglected topics. Teenagers often need to obtain confidential care for personal issues like contraceptives, sexually transmitted disease and sexually transmitted infection (STD/STI) diagnosis and treatment, pregnancy and mental health. The need for parental consent in these areas can be an enormous barrier that deters adolescents from seeking appropriate health care (Cheng; AMA Council Report; Society of Adolescent Medicine Paper).

Research in the past decade consistently reveals that teens do not seek health care they need regarding sensitive issues. The most common reason for missing care is “not wanting to tell parents” (Klein et al). In addition, teens have reported their plans to stop using family planning clinics or delay their use of such services if parental notification is required (Ford and Beauman). In another study, only 1% of adolescent girls who indicated they would stop using family planning services if notification of their parents was required would also stop having intercourse (Reddy et al).

Although the legal system has addressed some adolescent consent and confidentiality issues, many physicians and practitioners are unaware of federal and state legal guidelines for provision of confidential care. In addition, there are many gray areas in the law, and law varies from state to state. Studies have shown that many primary care physicians, doctors who deal with these issues on a daily basis, and their staffs are unsure of the management guidelines

established for confidential care for teenagers (Ford, Millstein). There is also a lack of consensus about confidentiality when treating adolescent patients (Fleming, Lovett and Resnick). A study of primary care physicians indicates that physicians do not consistently discuss confidentiality with their adolescent patients and do not distinguish between unconditional and conditional confidentiality (Ford, Millstein).

For those primary care practitioners who do attempt to provide confidential services for adolescents, practical issues like reimbursement, compliance, communication of lab results and release of medical records become thorny issues. Other issues, like parental requests for drug testing a teen without his/her knowledge, raise important ethical dilemmas. From the teen's perspective, more than half of all adolescents want to discuss drugs, STD/STIs, smoking and good eating habits with their physicians (Klein and Wilson). It is clear, from this study and others, that private time is associated with increased discussions about risky behavior.

When children and teens are receiving health care, the general rule is that parental consent is needed. However, there are situations when parental consent may be a barrier to receiving health care, and many professional medical organizations, as well as the law, have determined that there are exceptions to the general rule of parental consent. The American Academy of Pediatrics (AAP), the American College of Obstetricians and Gynecologists (ACOG), the American Academy of Family Physicians (AAFP), the National Medical Association (NMA), the Society for Adolescent Health and Medicine (SAHM), and the American Medical

Association (AMA) all have policies on the provision of confidential health care for adolescents. In general, they all state that teenagers should have access to confidential services for sensitive issues, that parental participation should be encouraged when appropriate, and that the clinician's assurance of confidentiality is conditional. Of utmost importance is for the clinician to provide the best possible care for the adolescent.

This booklet is designed to educate all health care practitioners on federal law and Arizona statutes that pertain to consent and confidentiality for teenagers – when to provide confidential care. The booklet also addresses the issues from a practical standpoint – how to provide confidential care. In addition, the booklet includes ethical discussions – why provide confidential care. Case scenarios will assist in the application of the law and the “how to” of real life in a busy office or clinic. Some sample forms are provided at the back of this booklet to use as a guideline to develop your own forms as needed.

Terminology

Adolescence

Adolescence is the required passage from childhood to adulthood that is marked by major physical changes and the development of autonomy. It can be seen as a continuum from roughly age 12 to 18 (at least by legal standards). Providing confidential care to teenagers for certain personal issues is essential to providing appropriate health care and helping them develop autonomy by encouraging them to be responsible for their own health care. In addition, by providing confidential care, the practitioner can develop a trusting relationship with the teen.

Informed Consent

Informed consent means that an individual can understand the risks and benefits of the proposed treatment and treatment alternatives, and decide voluntarily whether to proceed with the physician's recommendation. Careful adherence to the usual guidelines for education and documentation of informed consent apply to adolescent self-consent. If possible, consent should be obtained from both the patient and the parents.

Implied Consent

A parent or guardian's consent may be implied consent, limited by the nature and scope of prior contacts. For example, if the parent or guardian has had contact with only one practitioner or knows that the minor is assigned a single primary practitioner, the consent will most likely be limited to treatment by that practitioner. In a clinic setting, on the other hand, if the parent or guardian has had contact with several practitioners or otherwise knows that a single primary practitioner is not assigned, then consent may include all of the clinic's practitioners. Further, consent to routine treatment may not imply consent to extraordinary care. Because the scope of implied consent is almost always uncertain, a practitioner or hospital should carefully document the nature of any consent given and should seek specific consent whenever possible.

Confidentiality

Confidential care means that the clinician does not reveal any information to anyone without the patient's consent. Confidential care for adolescents is important to encourage timely access to care for problems that are sensitive in nature. These problems include STD/STI, contraceptive care, pregnancy, mental health issues and substance abuse. Adolescents are more willing to communicate with and seek health care from physicians who assure

confidentiality (Ford, Millstein, JAMA). For this reason it is important to have some guidelines, legal and ethical, to provide confidential care to adolescents. Confidentiality may be conditional where the withholding of information could endanger the patient.

Clinical Guidelines

Ethically, consent can be looked at in three models (Grochowski and Bach).

Pediatric Model

In the Pediatric Model, the parents and practitioner make decisions for the child's benefit with little input from the child. This model portrays no autonomy. In caring for teenagers under this model, we risk violating the adolescent's emerging capacity for autonomous choice.

Adult Model

The Adult Model is characterized by individual autonomy. Treatment decisions are made by the patient and clinician, and, with few exceptions, the information is kept confidential. In the health care of adolescents, this model ignores the valid interests of the parents.

Adolescent Model

The Adolescent Model is a spectrum between the pediatric and adult models. In consent and confidentiality for adolescents, this spectrum is affected by age, emotional and intellectual maturity, the relationship between the parents and adolescent, the nature and seriousness of the medical decision, legal constraints in situations involving child abuse and problems that are sensitive in nature like STD/STIs, contraception and pregnancy. As clinicians, we

are more comfortable with providing confidential care to adolescents who are older, more mature and for which the medical situation is not very serious. Confidential care becomes more concerning in particularly serious medical circumstances.

In addition to the development of independence and maturity, adolescence is also a time of risk-taking behaviors, feelings of omnipotence, strong peer pressure and mood swings. These issues make many parents and physicians uncomfortable with providing full confidential care. Physicians need to assist teenagers and support parents as the teens forge through these difficult years. Confidential care can be given with the understanding that confidentiality will be broken if the teen has done, or is doing, something very hazardous or life threatening. Undoubtedly, each clinician will have his or her own yardstick or measure of what is life-threatening. This conditional confidentiality should be discussed with the teen and the parent prior to the provision of health care.

The Society for Adolescent Health and Medicine (SAHM), formerly the Society for Adolescent Medicine (SAM) recommends that clinicians "educate adolescent patients and their families about the meaning and importance of confidentiality, the scope of confidentiality protection, and the limits of confidentiality" (SAM Position Paper 2004). Many clinicians do this verbally. In a 1997 study on the willingness of adolescents to disclose information, Ford and Millstein indicated that "further investigation is needed to identify a confidentiality assurance statement that explains the legal and ethical limitations of confidentiality without decreasing adolescents' likelihood of seeking future health care for routine and nonreportable sensitive health concerns."

Parental involvement is usually very beneficial for an adolescent's health care and should be encouraged. Studies show that compliance with oral contracep-

tives is higher when parents know and are involved in the health care process. Teenagers should be encouraged to include their parent(s) in health care decisions, and practitioners can offer facilitation if this process is particularly difficult; but unconditional parental consent and involvement may deter teenagers from obtaining appropriate health care.

Practical Issues

Making confidential health care for adolescents a reality may be difficult in a busy office or clinic setting. Who can be notified of lab results? Who can medical records be released to? How can confidential medical information be flagged or coded in the chart to avoid inadvertent breach of confidentiality? And how can clinicians get reimbursed for appropriate medical care without parental involvement in care?

Health care practitioners need to educate their staffs about confidentiality. They should be sensitive to the needs of adolescents and understand confidentiality issues. Office policies developed specifically for consent and confidentiality in adolescent health care can enhance the staff's awareness and understanding of this issue. When the office staff, from the receptionist to the medical assistant or nurse, supports and encourages adolescents to take responsibility for their own health care, more effective health care can be provided.

Teens need to be seen alone by the clinician for at least part of the office visit for any confidential care to be provided. Visits can be structured in many ways, but it is most helpful to see the teen and his/her parent together at some time also so that interaction can be observed and confidentiality guidelines can be described.

Forms can be designed to determine who can be notified of lab results, or the clinician can indicate in the note who can receive specific lab information. It

is helpful to obtain this information from the teen alone so that he/she does not feel undue pressure to allow the parent to receive lab results. Family physicians, gynecologists and internists may be more accustomed to these issues than pediatricians since they deal with adult patients as well as adolescents.

Sensitive medical information can be written in code (i.e. SA for sexual activity) or on a different colored progress note. The presence of notes on an alternative progress sheet will alert other clinicians of sensitive information as well as alert medical records staff that release of records will need individual physician review. Some clinics use a separate "shadow" chart for the confidential information. Use of a shadow chart may be logistically difficult as all of the medical providers in the office or clinic would need to know of its existence and the medical information it contains. Legally, a shadow chart is discoverable.

With the expansion of Electronic Medical Records (EMR), new challenges arise with regard to keeping medical care and medical records confidential. As clinicians initiate use of EMRs in offices, clinics and hospitals, accommodations within each system need to be developed to ensure confidentiality for adolescents. Keeping part of a medical record confidential is challenging at best with paper charting. Developing medical release blocks on confidential aspects of an EMR or developing alternative templates for confidential information will test the limits of cutting edge EMR software.

All medical releases for adolescent patient charts should be personally reviewed by the clinician, and consent for release should be given by both the teen and his/her parent. The pertinent Arizona law will be detailed in the legal perspective section of this guide.

Reimbursement adds another dimension to the provision of confidential medical care to teenagers. Many people recommend charging adolescents pri-

vately for health care received without parental consent. This will enhance confidentiality but discourage access to health care. Using a parent's insurance for confidential care may be logistically difficult and may threaten assurances of confidentiality.

Given the limitations of confidentiality in regards to insurance, billing and medical records, some teenagers may feel most comfortable with referral to a family planning clinic. This will assure confidentiality. On the other hand, when the potential limitations of confidentiality (medical records, explanation of benefits sent to parents) are described to adolescents, many of them choose to remain with their primary clinician for medical care. This may indicate some acceptance of parental knowledge despite initial hesitation to include parents in their health care.

Managed Care

Managed health care is affecting confidential health care of adolescents in a variety of ways. Low co-payments allow teenagers easier access to confidential health care than the old fee-for-service programs. Promotion of and coverage for preventive care encourages usage of a primary care physician and the development of a trusting clinician-patient relationship. This will enable adolescents to disclose sensitive information that affects their medical care.

On the other hand, when an explanation of benefits (EOB) is sent to parents, promises of confidentiality may be destroyed. In addition, even low co-payments may be a financial barrier for some teens. The referral system requirements of most managed care companies also cause problems for confidential care.

Such issues raise many questions. Can the provider request that the insurance company withhold an EOB to protect confidentiality? Do the HMOs, PPOs, etc. currently have policies on confidential health care for teenagers? Do they provide financial

access to safety-net providers in the community? Can clinicians bill teenagers separately to ensure confidential care or is this not allowed under the clinician's managed care contract?

A recent Society for Adolescent Health and Medicine (SAHM) position paper on Managed Care states that "managed care arrangements should incorporate protections for adolescents to receive confidential care and procedures allowing adolescents to give informed consent for their own care, as allowed by state and federal law."

Generally, managed health care companies in Arizona do not have policies on confidential health care for teenagers, and they have no specific protections or procedures for confidential care and adolescent informed consent. To our knowledge, none will allow the suppression of individual EOBs that would breach confidentiality. The ability to suppress individual EOBs relating to specific sensitive medical issues would enhance the ability of the clinician to provide confidential care.

When managed care companies threaten confidential adolescent health care with EOBs, some clinicians have historically skirted the problem by billing adolescents directly or referring them to family planning clinics. Unfortunately, managed care contracts do not allow patient billing for covered services. In addition, they do not cover safety-net practitioners, like family planning clinics, for teenagers. Although the care at family planning clinics is usually provided at a discounted rate, it may be cost prohibitive for many teenagers. The development of policies and procedures on adolescent consent and confidentiality by managed care companies would address these issues.

Managed care companies need to develop policies and procedures on the provision of confidential health care for adolescents addressing the issues of EOBs, safety-net practitioners, parental access to medical records and referral processes.

HIPAA

The HIPAA Privacy Rule (Health Insurance Portability and Accountability Act of 1996) is a federal medical privacy regulation that creates rights for individuals to have access to their protected health information. In addition, individuals can control the disclosure of their health care information in some circumstances.

With input from the Society for Adolescent Health and Medicine (SAHM) and other professional organizations interested in adolescent confidential health care, HIPAA addresses the issue of confidentiality for minors and their medical records. According to HIPAA, the parent does not necessarily have the right to access the minor's health information if the teen can legally consent to the health care or the parent has assented to an agreement of confidentiality. Under these circumstances, who may have access to the adolescent's health records depends on "state or other applicable law" (SAM Position Statement 2004).

This rule "embodies important protections for minors, along with a significant degree of deference to other laws (both state and federal) and to the judgment of health care providers" (English 2004). In this way the rule has allowed a compromise between the importance of parental knowledge and participation in the teen's health care and the important availability of confidential health care services for the teen.

Since there is no single Arizona statute that deals specifically with the confidentiality of a minor's medical record on the issue of parental access, the clinician can use his/her professional judgment regarding release of records, or at least the confidential aspect, to parents. If the teen can consent to care based on the type of care (STD/STIs, emergency care, etc) or their status (emancipated, married, etc), the individual adolescent and not necessarily his/her

parent has the right of access to their health information. This is also true if the parent has agreed to confidentiality between the health care provider and the teen. According to the SAM Position Statement, "In its final form, the HIPAA Privacy Rule (2002) recognizes the importance of confidentiality protection in adolescent health care and allows health care professionals to honor their ethical obligations to maintain confidentiality consistent with other laws."

2 A LEGAL PERSPECTIVE

The Law

For the purposes of medical care, a minor is a person under 18 years of age. Generally, a minor may not give valid consent to the performance of a medical or surgical procedure upon his or her own body. The consent of a parent or guardian is usually required. Possible statutory exceptions to this rule are discussed below.

Specific consent is needed when health care providers are going to penetrate the skin, insert or implant something in the body, use radiation or do surgery or comparable invasive procedures which interfere with body tissues. In general, no one may perform surgical procedures on a minor without first obtaining the written consent of the parent or legal guardian, except in the case of an emergency where the parent or legal guardian cannot be found after a reasonably diligent effort. Obtaining at least verbal consent is recommended for routine injections and examinations of patients' bodies where there are special privacy concerns. (Such consents do not take the place of a nurse or other appropriate witness if pelvic or breast examinations are to be done for physically mature minors.) The consent of a parent or guardian is required for vaccinations given to minors.

Exceptions

In general, a minor may be given medical care only if a parent or guardian gives actual consent or the

treatment involves emergency medical care and the parent is unavailable for consent. The minor may consent if one of the following conditions apply:

- The minor is emancipated, married or homeless;
- The care relates to STD/STIs;
- The care relates to rape or sexual assault and the minor is 12 years of age or older;
- The care relates to alcoholism;
- The care relates to substance abuse and the minor is 12 years of age or older; or
- The care relates to HIV testing.

In each case, the underlying facts for the application of these criteria should be documented in the medical record at the time of treatment. When a condition permitting the minor to consent is satisfied, the minor should sign the consent forms applicable to the treatment. Due to the minor patient's relative immaturity and lack of sophistication, time needs to be spent to confirm that the consent is informed and adequate.

The law governing treatment of minors has numerous exceptions and nuances; this summary will focus on the most common issues and is not meant to be exhaustive. It does not address more case-specific problems related to extremely immature minors who may lack mental competence to consent, the court-ordered treatment of minors, or discuss in detail the right of minors to refuse medical care. In all circumstances, if physicians and hospitals use common sense and their best judgment, with an emphasis on what is best for the patient, the liability risk will be minimized.

In addition to Arizona law, numerous regulations also exist which apply to adolescent health care. A regulation is an authoritative rule or order having the force of law which is issued by an executive body. Regulations relating to health care for minors come from diverse sources and include, for example, Title X Family Planning regulations (issued by both the federal Department of Health and Human Services and state family planning agencies), confidentiality regulations for drug and alcohol treatment programs (issued by the federal Department of Health and Human Services), and regulations concerning contagious diseases, STD/STIs and HIV (issued by state health departments).

In general, with a few exceptions relating to alcohol and substance abuse, if the minor is able to consent to treatment, then the minor should also have the right to see and consent to disclosure of his or her records. In such circumstances, records and information should not be shared with parents unless the minor consents.

Be consistent. Consent and confidentiality are issues that are generally tied to one another. If a decision is made to allow a minor to consent to treatment, information concerning that treatment should be held in confidence unless otherwise specified by law.

Consent Based on Status

Emancipation

An emancipated minor is commonly viewed as an individual who lives away from the parent, is free from parental control and is self-supporting. By statute, an emancipated minor is defined as a person who is at least sixteen years old, a resident of Arizona, is financially self-sufficient, and is neither under a legal duty of service to his or her parent nor entitled to that parent's support under Arizona law. Attending school out of state would not, for

example, indicate emancipation if the parent/guardian remains the child's source of support. A minor in the military or one who is married is considered emancipated.

Homelessness

A minor can consent to medical care if he or she is homeless, although homelessness is often difficult to document. To be homeless the minor must live away from parents and lack a fixed and regular night time residence or live in a supervised shelter designed to provide temporary accommodations, a halfway house or a place not normally used for sleeping by humans.

Mature Minors

While not mentioned in Arizona Statute, you may hear the phrase "mature minor" used when deciding to provide care outside of the parent/guardian's consent. This common law concept is based on an opinion by the U.S. Supreme Court, which states that rights do not "come into being magically only when one attains the state-defined age of majority." Under this theory, and particularly in areas affecting reproduction and related medical care, mature minors are felt to be able to consent for their own care. Because some courts have been willing to apply the mature minor doctrine in cases that have resulted in litigation, liability for providing treatment without parental consent to a mature minor is mitigated.

Obviously, very young adolescents would not ordinarily be considered "mature." With adolescents nearing the age of majority, some record should be made of the reason for deciding that the patient is or is not "mature" enough to consent to a particular course of treatment. However, recognize that there is not a legal definition of "mature minor," nor is it recognized in Arizona Statute. Other jurisdictions have found the minor to be "mature" when:

- He or she is 15 years old or older and is able to understand the risks and benefits of the proposed care sufficiently well to give an informed consent; and
 - The medical care is for the patient’s benefit; and
 - The care is necessary according to conservative medical opinion; and
 - There is good reason (including the minor’s objection) for not obtaining parental consent.
- (The above is not a legal definition.)

Consent Based on Service

Emergencies

When rendering emergency medical, surgical, hospital or health services, efforts should be made to secure consent from a parent or guardian, but emergency care should not be unduly delayed. If the minor’s condition could deteriorate, treatment should begin at once and consent should be sought concurrently. Although “emergency” can be defined either broadly or narrowly, it clearly has a broader meaning than just “life threatening.” As in most cases, determining when to treat emergencies without parental or guardian consent requires good judgment and common sense. Physicians or hospital personnel should document efforts to contact the parent or guardian to secure consent to emergency care.

Sexually Transmitted Disease/Sexually Transmitted Infections

A minor may consent to evaluation of, and treatment for, sexually transmitted disease or sexually transmitted infection (STD/STI) without notice to

a parent or guardian.

Sexual Assault

A minor 12 years old or older may consent to treatment for sexual assault if it is not possible to contact the parent or guardian due to the short period of time available before examination and treatment is necessary. As always, clinicians must report all sexual assaults to Child Protective Services.

Pregnancy

There are no specific Arizona statutes addressing the right of minor parents or pregnant minors to consent to their own health care. In the absence of such a statute, however, a pregnant minor can generally receive care under the “mature minor” doctrine or on an emergency basis. Thus, a pregnant minor would generally be able to consent to treatment for her pregnancy—including prenatal care, delivery services, treatment of complications and post natal care. It is interesting to note that under Arizona law an adolescent mother has the right to consent for her child’s medical care, but not her own medical care unless she is emancipated. There have been no Arizona cases specifically testing the use of the mature minor doctrine in Arizona.

Family Planning Services

Two areas where federal law and regulation weigh heavily include family planning services and issues concerning abortion. The federal Title X Family Planning Program has assured confidential access to contraceptives and other family planning services for teens for nearly three decades. Title X services must be made available without regard to age and on a confidential basis. Federal law does require that Title X Programs (such as Planned Parenthood)

encourage family involvement, but parental notification or consent is not required.

Practitioners who are not participants in a Title X program are generally not governed by the above provisions. Although no Arizona statute specifically addresses family planning, an opinion issued by the State Attorney General in 1977 states that a minor may consent to family planning services. The opinion also states that a health care provider who delivers such services will not be civilly or criminally liable to the minor's parents for battery. The clinician would be well advised to consider and document evidence of the maturity of the minor when providing such services without parental consent.

Abortion Services

The U.S. Constitution protects the right of privacy for minors as well as adults. This right of privacy has been expanded to encompass decisions concerning not only contraception, but also abortion. The issue of parental involvement when pregnant minors seek abortions has been the subject of much controversy and many court cases in the past 25 years. A state may require parental consent only if it provides an alternative procedure under which authorization may be obtained.

Under Arizona law, a person may not perform an abortion on a pregnant unemancipated minor unless the physician has obtained written consent from one of the minor's parents, guardians or conservators, or unless a judge authorizes the physician to perform the abortion. Parental consent is not required if the pregnancy resulted from sexual contact with the minor's parent, step-parent, uncle, grandparent, sibling, adoptive parent, legal guardian, foster parent or an unrelated male living with the mother or child. Additionally, no parental consent is needed if the attending physician, on that basis of the physician's good faith clinical judgment, certifies in the minor's medical record that the abortion is

immediately necessary to avert the minor's death or an irreversible impairment of major bodily function.

Emergency Contraception

For emergency contraception, or Plan B, an over-the-counter procedure, parental consent is not required. Mifepristone, which is sold in the United States under the brand name Mifeprex and is sometimes referred to under the name of its French predecessor RU-486, belongs to a new class of drugs known as antiprogesterins, which stop the development of a pregnancy once a fertilized egg implants in the uterus. This drug is approved for use in early abortions (less than 7 weeks) and as such, in Arizona would require parental consent or judicial bypass.

Alcoholism and Substance Abuse

A minor may apply for care to an approved treatment facility, but family must be notified as promptly as possible if the minor is admitted for treatment. An adolescent 12 years of age or older who is found to be under the influence of a dangerous drug or narcotic (including withdrawal) may be considered an emergency case and should be regarded as having consented to care needed for treatment.

Drug Testing

There is no applicable Arizona Statute that states the minor must be aware of, and consent to, drug testing requested by a parent or guardian. In a narrow sense, based on Arizona law, the knowledge or consent of the minor probably is not necessary. However, this is one of many circumstances where the clinician has an opportunity to foster open communication and positively impact family dynamics. Parents requesting such tests to "confirm their suspicions" should be queried as to what they intend

to do if results are positive and counseled about the impact of the secrecy on the eventual welfare of the minor.

HIV Testing

A minor's capacity to consent to HIV testing is based on his or her ability to understand and appreciate the nature and consequences of the test, regardless of the minor's age. Therefore, the parent's consent will not always be necessary if the test is to be given to a mature minor. Because of the extreme ramifications of this test, the clinician or other qualified provider should determine the capacity of the minor to consent. Capacity to consent means ability to understand and appreciate the nature and consequences of, and make an informed decision regarding, a proposed service, treatment or procedure.

The MMWR recently revised recommendations for HIV screening include the following:

- Conducting routine, voluntary HIV screening for all persons ages 13 to 64 in any health care setting, regardless of risk.
- Screening all patients with tuberculosis (TB) or seeking treatment for STD/STI.
- Repeating annual HIV screening of all persons with known risk.
- Opt-out HIV screening with the opportunity to ask questions and the option to decline testing.
- Communication of test results in the same manner as other diagnostic/screening test.

Additionally, the MMWR did not recommend requiring separate signed informed consent or prevention counseling in conjunction with HIV screenings in health care settings.

Mental Health Treatment

Under a 2010 Arizona law (see Appendix C), health care practitioners may not perform mental health screenings of a minor in a non-clinical setting or perform mental health treatment on a minor without the prior written or oral consent of the minor's parents or legal custodian. If consent is given through telemedicine, the practitioner must verify the identity of the parent or the custodian at the site at which consent is given. These consent requirements do not apply in the event of an emergency that requires a screening or treatment to prevent serious injury to or save the life of a minor child.

If an examination of the adolescent patient raises concerns that there might be mental health issues, then an assessment of whether referral might be necessary is recommended. **The health care practitioner does have the right to ask questions, interview and educate all patients regarding mental health concerns or issues.**

Refusal of Consent by the Minor

If a competent minor refuses care, then strong consideration should be given to the minor's wishes. Mature minors, if competent, have been allowed to refuse care in some situations. However, when parents or legal guardians consent, the physician should normally comply with parental instructions that are consistent with the patient's best interest. It is easier to defend the giving of appropriate care than to defend someone who has been excessively worried about legal technicalities and has thus harmed a patient by not giving care.

Guardianship Issues

Minors in Custody

Minors in the custody of the juvenile court, depart-

ment of youth treatment and rehabilitation, or in the physical custody of someone other than the natural or adoptive parent cannot be hospitalized for evaluation or treatment without approval by the court upon application filed by the child's probation officer, parole officer, caseworker or attorney.

Minors with Stepparents

If a minor has been legally adopted by a stepparent, the stepparent may consent to the performance of medical or surgical care upon the minor. If a minor has not been legally adopted by the stepparent, the stepparent generally may consent if the biological parents are unavailable. Health care personnel should proceed carefully if there is a disagreement between the minor's parent and adoptive stepparent.

Minors with Legal Guardians

If the minor is in the care and custody of a legal guardian, the guardian may consent to the minor's care. The clinician should require the consenting party to show proof of guardianship. A certified copy of the court order establishing guardianship should be attached to the signed consent form.

Minors of Divorced or Legally Separated Parents

Generally, the consent of either parent is legally sufficient. However, where parents of a minor patient are divorced or legally separated, an attempt should be made to obtain the consent of the parent who has legal custody of the minor. This is especially true if divorced or legally separated parents disagree about the performance of a particular treatment. Difficult cases should be discussed with counsel.

Treatment when Parents Disagree

Generally, the clinician is not obligated to seek consent of both parents. However, if it becomes apparent that there is a disagreement between natural parents, it is wise not to act in the absence of an emergency or without a court order authorizing treatment. Upon application, a court may order performance of a medical procedure or surgery on the minor where a stalemate between the parents would otherwise prevent it. Such situations require the input of counsel or your facility risk manager.

Persons with Temporary Care of a Minor

The right to consent can be delegated by the parent or guardian to another person who temporarily has care or custody of the minor. Such delegation should be in writing using some sort of continuing consent to treatment of minor form. Practically speaking, every effort should be made to contact the parent or guardian if the minor is very ill and/or requires serious treatment or surgery.

Issues of Confidentiality

Medical Records

Generally, in Arizona an individual's medical records and the information contained in them are privileged and confidential. There is no single Arizona statute that deals specifically with the confidentiality of a minor's medical records. Rather, several statutes determine a health care practitioner's rights and duties regarding the confidentiality of a minor's medical records.

A health care practitioner may only disclose that information pursuant to law or the written authorization of the patient or patient's health care decision-

maker, which includes the parent of a minor. The statutes, however, allow a patient to limit access to his or her medical records. Thus, in some situations, Arizona law may be interpreted to both give minors the right to limit their health care decision-maker's access to the minor's medical records and prohibit a health care clinician from giving the records or information to the minor's health care decision-maker in the absence of some other law requiring that the records be turned over. Even when minors choose to limit access to medical records and information, they need to understand this is not absolute. Special reporting statutes or simple cost of care issues may impact the ability to keep the adolescent's health care information confidential.

Communicable Disease

Regardless of the patient's age, practitioners are required to report communicable diseases to the Arizona Department of Health Services. The adolescent should be made aware of reporting requirements, just as with their adult counterparts. Under Arizona law, information regarding communicable disease is highly confidential. Release of information in such circumstances is tied to the patient's capacity to consent more than it is to his or her majority. If a minor has been determined to be mature or by law otherwise capable of consent, information or records concerning the communicable disease should not be released without the patient's consent, even to a parent or guardian unless by order of the court or other administrative body.

Duty to Report

Arizona law directs that any physician or other person having responsibility for the care or treatment of children immediately report "or cause to be reported" to a peace officer or to the child protective services of the Department of Economic Security if

that individual's observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of non-accidental injury, sexual abuse, molestation, sexual exploitation, incest, child prostitution, death, abuse or physical neglect. Arizona law does not allow a minor to consent to sexual activity with anyone aged 18 years or older.

A clinician does not have to report a minor's evidence or report of sexual activity if the sexual activity involves minors age 14 through 17 and there is no evidence that the sexual activity was anything other than consensual.

Arizona law makes it a felony for an adult to engage knowingly in sexual conduct with a minor less than 15 years old; it is a lesser felony if a minor is 15 or older. Although there is no statute or case that obligates providers to ask their minor patients about the age of their sexual partner, a clinician must report consensual oral sex or sexual intercourse with a minor under age 18 whose partner is 18 or older or 13 or younger as sexual abuse. Exclusions that might prevent prosecution and therefore taken into consideration include the following: if the activity was consensual, the victim is age 15, 16, or 17 and the defendant is less than 19 years of age; or the defendant is attending high school and is no more than 24 months older than the victim.

The statute also requires that the person who has custody or control of the minor's medical records make either the records or a copy of the records available to the investigating peace officer or child protective services' worker upon presentation of a written, signed request.

Noncustodial Parents

Arizona law states that the noncustodial parent is entitled to have access to medical records or other information unless otherwise provided by court

order or law, or if the court finds that access would “seriously” endanger either the child’s or the custodial parent’s physical, mental, moral or emotional health. The premise behind the statute is that the noncustodial parent is entitled to equal access to documents, including medical records and other information regarding his or her child’s physical, mental and emotional health. It follows that noncustodial parents have no greater rights than custodial parents, thus the same statutes discussed above seem to limit noncustodial parents’ rights to obtain their minor child’s medical records and the information contained therein.

Cost of Care Considerations

For other than emergency care, the ability to consent may have consequences for patient confidentiality related to, and payment for, the cost of care. Parents or guardians are not liable for the cost of care provided without their consent where the minor has a right to consent without consulting the parents. In these instances, each minor needs to be informed that he or she will be responsible for paying for services, and appropriate arrangements should be made.

Use of Best Judgment

Practically speaking, physicians choose to provide care to adolescents without consent of parent or guardian in a variety of situations on a routine basis, sometimes in direct violation of pertinent statutes. Are they liable for that care? Certainly, if anything goes wrong and the physician or other health care practitioner was in violation of applicable state law, the clinician is in a vulnerable position. Allegations of malpractice can and will apply. Do many physicians get sued for issues related to providing care to minors? Such suits occur infrequently and the allegation is generally secondary to some other claim

of negligence.

A physician who has carefully considered and clearly documented his or her thought process in providing care believed to be in the minor’s best interest will be in a good position to defend his or her actions.

Hopefully, this section has acquainted you with the applicable laws and regulations to assist you in making the informed decisions needed to care for your adolescent patients. Clinicians, as always, are responsible for erring on the side of best medical judgment for an individual patient’s welfare.

3 Case Scenarios

Case 1 – Immunizations

Susan, 15, a long-standing patient of yours, is an excellent student and active in volleyball. Her mother drops her off for her sports physical and she plans to take the bus home. As her primary care physician, you do a full checkup and determine she needs a Tdap, HPV, and MCV4.

Can Susan consent to the immunizations without parental consent?

Legally, in Arizona, Susan cannot consent to the immunizations without parental consent unless she is emancipated. Susan does not meet the emancipation requirements since she lives with her parents, is not free from parental control and is not self-supporting. Although Susan may be considered a mature minor for this procedure, there is no mature minor statute in Arizona. Therefore, legally, parental consent is required.

While the HPV vaccine can be interpreted as prevention and treatment of STD/STI, it is important to note that current legal statutes in Arizona, as well as federal guidelines, specifically require parental consent for immunizations. Choosing to administer HPV to an adolescent without parental consent and under the auspices of STD/STI treatment could open a health care worker to liability issues and charges of battery.

Ethically, Susan is mature enough to understand the risks and benefits of the immunizations. In ad-

dition, the shots are for her benefit and the risks are very low.

Practically, there are many ways to obtain parental consent in this situation. You may have Susan's mother sign a general form in early to mid-adolescence giving general consent for medical care; however, this would not fulfill the requirement of use of the Vaccine Information Statement with each immunization. Your office scheduler may ask Susan's mother to come in prior to the visit to review the VIS and give consent, or the information and consent can be faxed prior to or during the appointment.

Case 2 – Contraceptives, Sexual Activity and Medical Records

Jennifer, 15, comes in with her mother for evaluation of a persistent headache. When interviewed alone she reports recent sexual activity. She has had one partner and is using condoms most of the time. Her last normal menstrual period was last week. She doesn't want her mother to know, but she would like oral contraceptives. She also needs a pelvic exam with routine screening for STD/STI. She is on a PPO with a \$10 copay. You know that her parents will receive insurance information for the visit and lab tests.

Can her care be kept confidential? Can she consent to her own care? What do you do about reimbursement?

Legally, Jennifer can consent to her care because it relates to family planning and STD/STI. Since she can consent, the medical care can remain confidential.

Ethically, it is important to provide these confidential services so that Jennifer will develop a trusting relationship with her clinician, feel comfortable disclosing this information in the future, and obtain

the appropriate medical care. The need for parental consent in this situation may be a significant barrier to obtaining medical care.

Practically, compliance and reimbursement are greatly enhanced by parental participation. You may encourage Jennifer to include her mother in this important health care decision, and you may offer to facilitate the discussion. You may also describe the reimbursement options. Jennifer may choose to pay for her care, or she may accept insurance billing with the understanding her parent(s) will receive an explanation of benefits from the insurance company. For some teenagers, a referral to a family planning clinic may be more acceptable.

Jennifer's mom never finds out that Jennifer told you about her sexual activity. Two weeks later her mom calls for medical records to be released to her. What do you do?

There are many ways to flag confidential material in a medical record. The visit or pertinent discussion may be documented on a different color progress note, or as some clinics do, different charts may be developed for confidential issues. There is no specific Arizona statute that deals specifically with the confidentiality of a minor's medical records; however, as described in Issues of Confidentiality on page 21, minors may have the right to limit access to their records. Practically, you can require written consent from both the parent and the teen for record release.

Case 3 – Drug Screening and Drug Abuse

Until a few months ago, Jason, 16, did well in school and was active in student government. His parents noticed that his grades deteriorated, he skipped school, he changed his dress and his friends, and he avoided his family. His mother made an appointment for a checkup and asked your staff to perform a urine drug screen without Jason's knowledge.

You see Jason alone and he denies using substances other than infrequent marijuana use. His physical exam is normal. From this history, appearance and demeanor you are worried about drug abuse. He provides a urine sample for routine testing. As he leaves the exam room he asks that his drug use not be discussed with his parents.

What should you do? What is the Arizona law relative to testing Jason's urine for drugs?

Legally, there is no Arizona statute that addresses the issue of a minor's consent to (and therefore knowledge of) drug testing. In a narrow sense of the law, the knowledge or consent of the minor is not necessary in Arizona. Laws vary tremendously from state to state on this issue. Strictly speaking, in this situation, the parents have a legal right to the results.

Ethically, to enhance a trusting relationship between the practitioner and the teen and to promote the teen's developing autonomy, a drug screen should not be done without the teen's knowledge and consent. The practitioner may decide to take a more paternalistic approach and determine that the drug screen is in the teenager's best interest despite the adolescent's objections. In this case, the practitioner should still do the test with the teen's knowledge. In deciding whether you take the more "adult approach" and require Jason's consent or whether you take the "pediatric approach," deciding what is in Jason's best interest depends on many factors. These factors include age, emotional and intellectual maturity, the relationship between the parents and the teen and the nature and seriousness of the medical decision.

Practically, the practitioner needs to discuss the issues of drug use and signs of abuse with the family and with Jason. What are the parents or the practitioner going to do with a positive urine drug test done without Jason's knowledge or consent? What will they do with a negative test? The negative test

does not rule out substance use, and confronting Jason with a positive result will show him that he cannot trust his parents or the practitioner. Jason's recent behavioral changes indicate a problem without the drug screening, and some type of mental health evaluation and treatment for Jason and his family is indicated.

Case 4 – Depression

Sam, 15, comes in with his mother for chronic abdominal pain. His usual excellent grades have dropped and he has had trouble sleeping. When you interview him alone you find that he is markedly depressed and reports considering suicide. There is a family history of alcoholism. He denies drinking alcohol or using other drugs.

What do you do?

Legally, Arizona law generally requires parental consent for outpatient psychological treatment or counseling of minors, but this requirement is waived in the event of an emergency requiring mental health screening or treatment to prevent serious injury or to save the life of a minor child. Parental consent is required for inpatient care.

Practically, Sam needs mental health treatment. This situation is clearly life threatening, and the clinician needs to include the family for appropriate treatment.

Case 5 – Drug Use

Sally, 16, is being seen for a well checkup. She is a cheerleader and in student government. Her grades are excellent. Her parents report no problems when interviewed. Alone, Sally reports occasional use of marijuana and alcohol with her friends. She denies riding in a car with someone high, using drugs or alcohol to relax or feel better, using them alone, and forgetting things while using. Her family and

friends have never mentioned that she should cut back and she has never been in trouble because of alcohol or drugs. She has no signs of depression or suicidal ideations. She denies other drug use. She is dating someone, but denies sexual activity so far.

How do you counsel her? Can you keep the confidentiality you promised?

In this scenario, Sally displays all the characteristics of substance use and experimentation and not substance abuse. The clinician may discuss the risks of these drugs and the problems of good decision-making while under the influence – driving, sexual abstinence, trying other drugs, etc.

Legally, Arizona law requires parental consent for mental health treatment of minors.

Ethically, Sally is an older teen who appears mature. Confidentiality could be important in this situation to encourage her to take responsibility for her own health and to help build a trusting relationship.

Practically, most clinicians promise confidentiality to adolescents “except for life-threatening behaviors.” This promise is purposefully vague and subject to individual case evaluation. In addition, each clinician’s yardstick measurement of life-threatening will be different. In this case, Sally’s behavior does not appear to be life-threatening at this time. Assuring confidentiality at this time may be appropriate. If mental health issues become an issue in the future, parental involvement is indicated.

Case 6 – STD/STI Treatment

Rachel, 14½, is a new patient brought in by her mother for complaints of abdominal pain for several weeks. After obtaining an initial history from mother and Rachel together, you see Rachel by herself. You assure Rachel of confidentiality and learn that she has been sexually active for more

than six months without any contraception. For the last week, she has had more severe pelvic pain. You suspect pelvic inflammatory disease (PID).

How do you handle the following scenarios?

1. You perform the pelvic exam and confirm PID. You determine that outpatient treatment is appropriate. What do you tell Rachel's parents? How do you ensure follow-up? Who are the lab results given to?

2. You observe strong discord in the family, and Rachel relates that her parents are strongly opposed to premarital intercourse and have indicated stern disapproval of such behavior. You worry about the consequences of breaking confidentiality. What do you do?

Legally, Rachel can consent to her care without parental consent because it relates to a sexually transmitted disease.

Ethically, Rachel is a relatively young teen by age and her medical care is more serious than most situations. Every effort should be made to encourage communication between the clinician, Rachel and her parents, hopefully with Rachel's consent.

Practically, the clinician needs to be sure appropriate medical care is given and Rachel's parents may have to be included in the medical decision-making. Alternately, very close medical follow-up may be attempted before notifying the parents. Clinicians need to err on the side of best medical judgment for an individual's welfare. If there is a concern about overbearing parents who are potentially abusive, a Child Protective Services referral may be indicated.

Case 7 – Emergency Care and Ectopic Pregnancy

Beth, 17, presents to your emergency department with a three day history of right-sided pelvic pain

that has become severe. Her last normal menstrual period was eight weeks ago. She is sexually active and uses contraception intermittently. A positive pregnancy test and an ultrasound exam confirm your suspicion of an ectopic pregnancy. She needs emergency surgery and her parents are not available.

Can you provide the emergency care without parental consent? When parents are available, is their consent required?

Legally, physicians can render emergency medical and surgical care without parental consent when obtaining consent would delay appropriate medical treatment. Efforts should be made to obtain parental consent, and these efforts should be documented.

Other than the statute regarding abortion, Arizona has no specific statute addressing the right of pregnant minors to consent to their own health care. If parents are available, their consent is necessary for the care.

Ethically, Beth is an older mature teen who is consenting to a procedure that benefits her.

Practically, you need to provide the best possible medical care.

Case 8 – Sexual Assault

Becky, 14, is brought to your emergency department by the local police for evaluation of sexual assault. She reports being raped three hours previously, and she needs to be evaluated. Because she has never had sexual relationships before and is worried about getting pregnant, she would like the morning after pill. Her parents are out of town and she is staying with her 18-year-old brother, who does not have authority to consent to her medical care.

Can you examine her and treat her for injuries without parental consent? Can she consent to the morning after pill to prevent pregnancy?

Legally, a minor 12 years old or older may consent to treatment for sexual assault if it is not possible to contact the parent or guardian due to the short period of time available before examination and treatment is necessary.

For emergency contraception, or Plan B, an over-the-counter procedure, parental consent is not required. This is in contrast to Mifepristone (sometimes called RU486) which belongs to a new class of drugs known as antiprogestins, designed to stop the development of a pregnancy once a fertilized egg implants in the uterus. This drug is approved for use in early abortions (less than 7 weeks) and as such, in Arizona would require parental consent or judicial bypass. However, as emergency contraception, the use of the morning after pill may be considered part of the treatment for sexual assault. Therefore, she can provide her own consent.

Ethically, she is young on the adolescent spectrum between a pediatric patient and an adult patient. However, the timely treatment is for her benefit.

Practically, the practitioner must use his or her best judgment.

Case 9 – Pregnancy

Molly, 15, is referred to you (an obstetrician) for care during her pregnancy. She is at 16 weeks gestation at her first visit and has had no previous prenatal care. She lives with her parents, and she wants to keep the baby.

Can you provide Molly with routine obstetrical care and a cesarean section if needed with only her consent?

Legally, many states have enacted statutes that permit minors to consent to care related to pregnancy; however, Arizona has no such statute. A pregnant minor could receive pregnancy-related care under the mature minor doctrine, but Arizona has not adopted the doctrine in that context. In this case

Molly does not fit the criteria for an emancipated minor.

Ethically, Molly appears to be mature and the care benefits her and the baby.

Practically, Molly needs good prenatal care. Despite the lack of an appropriate Arizona statute, the routine obstetrical practice in Arizona is to allow for the adolescent to consent for her own prenatal care and all related treatments and procedures. This is consistent with other areas of the United States, and it is the standard of care.

Case 10 – Guardianship

Robert, 12, is brought in for an earache and fever by his babysitter. He is a longstanding patient of yours whom you know well. There is no formal parental documentation in the chart that allows the babysitter to give consent for medical care.

Can you examine and treat Robert for this minor illness?

Legally, parental consent is required for treatment of Robert's minor illness. Since you know the family and know that his parents would want you to treat Robert, the consent is implied.

Ethically, since you know the family and since this is a minor illness, you should examine and treat Robert.

Practically, your office staff can contact one of Robert's parents for consent if needed. Also, families should provide general written consents for the chart for other individuals to give consent for medical care. Or, a parent can send a written note with Robert or the babysitter indicating consent for medical care.

Case 11 – Abortion and Age of Consent

Angie, a 16-year-old patient, arrives with her 19-year-old boyfriend, with the complaint of “flu systems.”

As you notice that her chart does not contain the standard “permission to treat in my absence form” generally requested of parents, your medical assistant shares with you that she has already tried to obtain a phone number to call Angie’s mother, but Angie has not been helpful. Your office knows that they should obtain permission to treat an unaccompanied minor from a parent or guardian, either with two staff persons witnessing a call, or with a fax, but they also realize that Angie is an established patient with the practice and she, therefore, has “implied consent” from her parents for treatment.

You think you remember Angie’s parents are reasonable people, who would want you to do the best thing for their daughter, and you walk in the room to say hello. The tense atmosphere in the room makes it quickly apparent that it would be best to start with your consent and confidentiality speech.

It turns out that Angie and her boyfriend have been careful about using condoms, but are worried that last night after sex it looked like the condom had a tear. Since contraceptive care, diagnosis and treatment of STD/STI can be treated with an adolescent’s consent, you advise her that she may be able to take an emergency contraceptive to reduce her chance of pregnancy.

You mention that it would be advisable to check for any possible diseases, and maybe do a Pap smear to check for the wart virus. Also, it might be a good idea for her to consider the Gardasil vaccine, to help protect her from HPV. You suggest she discuss this with her Mom or Dad, since both she and a parent should sign that they have reviewed the vaccine information and agree to the three shots, and their insurance will be billed.

As Angie prepares for the exam, you ask her to

leave a urine specimen to check for pregnancy. She quickly grasps that this will likely alert her mother to the nature of this visit and she refuses. Although you explain the importance of this test, and the importance of involving her parents in important health issues, she continues to refuse. Realizing that she has the right to be wrong, you both agree to proceed with STD/STI testing; she has had more of a discharge recently and does think she can discuss this with her Mom.

After completing your exam, you have to tell Angie that her “flu symptoms” of nausea and fatigue are likely due to an early pregnancy. She agrees to have a pregnancy test, which she will pay for on her own so that her parents won’t see the bill. The test confirms your diagnosis of pregnancy. Before you bring back the boyfriend, who has been waiting in the hall, you need to have a heart-to-heart discussion with Angie about her options. After explaining her options, you elicit a promise that she will return in two days to discuss what she has decided. You strongly encourage her to bring a parent; pick the most supportive. If she decides on an abortion, Arizona law requires the consent of a parent. If she decides to keep the baby, there is actually no Arizona law that automatically grants emancipation to a pregnant teen, and her parents will have to know anyway since she will need their help.

Angie does return for follow-up but is only accompanied by her boyfriend. You have been wondering, in the meantime, about what you’ll do if she doesn’t return, and have decided you’ll call her and suggest you’d like to speak to her parents. At this visit, she shares with you that she did follow your advice to consult her parents and it has not gone well. They are furious and have kicked her out of the house. She is living with her boyfriend’s family. She is not sure about whether or not she wants to have an abortion. You counsel her, offer her a couple referrals and give her information to contact a judge as soon as possible to obtain judicial consent if she decides

she wants an abortion. You strongly encourage her to follow up next week, whatever happens.

You recall that the Arizona Medical Association (ArMA) mentioned a new law a couple years back addressing sexual conduct between minors and adults. Her boyfriend is definitely not a minor, so this doesn't qualify as consensual sexual conduct between minors 14 to 17 years old.

Can you continue to provide medical care without the consent of her parents? Should you report the age of consent situation to the authorities?

Legally, in Arizona, an adolescent who is emancipated, homeless, or a “mature minor” can give consent for their own care. Angie is not exactly an emancipated minor, since she still has some support from her parents, including medical insurance coverage and she is not homeless. Fortunately, she can be considered a “mature minor” because she is more than 15 yrs old and understands the risks and benefits of treatment. Thus, because the care is necessary according to conservative medical opinion, and there is good reason (including the minor's objection) for not obtaining parental consent you decide that you can continue to care for her.

Regarding the age of consent law, you refer to ArMA's web site for the “Consent and Confidentiality in Adolescent Health Care” document and read about A.R.S. § 13-3620(B): Arizona law does not allow a minor to consent to sexual activity with anyone aged 18 years or older.” And, “...a clinician must report consensual oral sex or sexual intercourse with a minor under age 18, whose partner is 18 or older or 13 or younger, as sexual abuse.”

Ethically, there are very few health care professionals who are well versed in adolescent issues and, because you care, and know her and her family, you are the best physician for Angie. Although she is your primary concern, her parents are also your patients. You would like to talk with them, but you know that

if you do not maintain patient confidentiality with Angie she may not return to you or any other doctor for care.

Practically, prevailing community practice is to allow pregnant teenagers to consent to medical care if their parent or a guardian is not available, and so you are confident about your decision to continue to care for Angie without parental consent if she decides to maintain the pregnancy. However, if she decides to have an abortion, she will need to have parental consent in Arizona or judicial consent. You document your thinking in the chart and consider that adequate for now.

Your assessment of the situation is that Angie and her boyfriend have attempted to act responsibly, and the fact that he accompanied her to her medical appointments appears encouraging. You feel uncomfortable involving the authorities and risking the alienation of a patient in need of your care. You make a note to call the Mutual Insurance Company of Arizona, your liability insurance carrier, to consult with them regarding your choice to not report the age of consent nature of Angie's relationship.

OFFICE POLICY

CONSENT AND CONFIDENTIALITY FOR ADOLESCENTS

POLICY

Provide confidential health care to adolescents in an atmosphere of acceptance and sensitivity, with open communication and involvement of parents and significant others in the patient's social network, as appropriate, and following generally accepted ethical guidelines and Arizona and federal laws.

CONSENT

In general, adolescents 14 and older should be the primary focus of education and consent, with parents/guardians involved as much as possible. The adolescent is the primary patient, but the parents are often the primary decision-maker recognized by the law. Both should understand the risks and benefits of proposed treatments and decide voluntarily to proceed, or not, with the physician's recommendations. Typically, consent forms should be signed by both the adolescent patient and the parents/guardians, except in certain, specific situations.

EMANCIPATED MINORS

Under Arizona law, adolescents may consent for any health care, excluding sterilization, if they are 18 years old and legally competent, lawfully married, emancipated, homeless or in the military. Generally, emancipated minors under 18 years old are adolescents who are living away from home, free from parental control and self-supporting.

SELF CONSENT FOR MEDICAL CARE

A number of special circumstances empower the minor to provide self-consent for medical care, including:

Emergency Care

Health care providers can give emergency care and perform emergency surgical procedures on minors without the consent of the minor's parents if:

- a. The minor is in need of immediate hospitalization, medical attention or surgery;
- b. Such care and procedures are designed to treat a serious disease, injury, or drug abuse or to save the minor's life; and
- c. The minor's parents cannot be reached after reasonable effort.

Sexually Transmitted Disease/Sexually Transmitted Infection (STD/STI)

Any age minor may consent for the examination and treatment of venereal disease.

Sexual Assault

A sexual assault victim 12 years old or older may consent to care if a legal guardian cannot be contacted within the short time span in which the examination is necessary.

Drug/Alcohol Treatment

Patients 12 years of age and older can consent to their own care for treatment of drug problems. Any minor 12 years old and older found to be under the influence of a dangerous drug may be considered an emergency; such minor is to be regarded as having consented to hospital or medical care.

Minor Parents and Pregnant Minors

Arizona law does not specifically address the right of minor parents or pregnant minors to consent to their own health care.

Abortion

Under Arizona law, a person may not perform an abortion on a pregnant unemancipated minor unless the physician has obtained written consent from one of the minor's parents, guardians or conservators, or unless a judge authorizes the physician to perform the abortion. Parental consent is not required if the pregnancy resulted from sexual contact with the minor's parent, step-parent, uncle, grandparent, sibling, adoptive parent, legal guardian, foster parent or an unrelated male living with the mother or child. Additionally, no parental consent is needed if the abortion is necessary to avert the minor's death or an irreversible impairment of bodily function.

Family Planning

The U.S. Supreme Court has ruled that contraception must be made available to minors. If a minor requests and consents to family planning services, the physician can provide them without parental consent.

Mental Health Treatment

Under a 2010 Arizona law, health care practitioners may not perform mental health screenings on a minor in a non-clinical setting or mental health treatment on a minor without the prior written or oral consent of the minor's parent or legal custodian. This requirement does not apply when an emergency exists that requires a mental health screening or treatment to prevent serious injury to or save the life of a minor child.

MATURE MINOR DOCTRINE

Arizona has not formally recognized the mature minor doctrine. Practically, however, health care providers may face situations where it is appropriate to consider this doctrine, for example in the case of a pregnant

minor seeking treatment. In all cases, health care providers should understand that the mature minor doctrine substantially mitigates but does not eliminate the risk of liability.

Although there is not a legal definition for a mature minor in Arizona, other jurisdictions have found a minor to be “mature” when:

- He or she is 15 years old or older and is able to understand the risks and benefits of the proposed care sufficiently well to give informed consent; and
- The medical care is for the patient’s benefit; and
- The care is necessary according to conservative medical opinion; and
- There is good reason (including the minor’s objection) for not obtaining parental consent.

(The above is not a legal definition.)

AGE OF CONSENT

Arizona law directs that any physician or other person having responsibility for the care or treatment of children immediately report “or cause to be reported” to a peace officer or to the child protective services of the Department of Economic Security if that individual’s observation or examination of any minor discloses reasonable grounds to believe that a minor is or has been the victim of non-accidental injury, sexual abuse, molestation, sexual exploitation, incest, child prostitution, death, abuse or physical neglect. Arizona law does not allow a minor to consent to sexual activity with anyone aged 18 years or older. A clinician does not have to report a minor’s evidence or report of sexual activity if the sexual activity involves minors age 14 through 17 and there is no evidence that the sexual activity was anything other than consensual. However, a clinician must report consensual oral sex or sexual intercourse with a minor under age 18 whose partner is 18 or older or 13 or younger as sexual abuse. Arizona law makes it a felony for an adult to engage knowingly in sexual conduct with a minor less than 15 years old; it is a lesser felony if a minor is 15 or older. The statute also requires that the person who has custody or control of the minor’s medical records make either the records or a copy of the records available to the investigating peace officer or child protective services’ worker upon presentation of a written, signed request.

CONFIDENTIALITY

A minor’s medical records, and the information contained within them, are generally confidential. This means that, in most instances, only the minor patient has access to his or her medical records. Arizona law allows a minor’s parents to obtain the medical records upon the parents’ written request. However, in situations in which the minor has the capacity to consent, the right to confidentiality is also preserved.

GUIDELINES FOR CONFIDENTIALITY

1. A minor patient can limit his or her parents' access to the minor's medical records by filling out the "Limitation of Access" form. The physician will document in the medical record his/her informed judgment that the patient was mature and capable of giving informed consent, informed consent was obtained, and parental involvement was encouraged and refused by the patient.
2. Regardless of whether a minor is emancipated, if the behavior of the patient is immediately life-threatening to him/herself or to others, disclosure will be made to parents or guardians as well as to appropriate authorities.
3. All child abuse reporting laws will be respected, and evidence of non-accidental injury, sexual abuse, molestation, sexual exploitation, incest, child prostitution, death, abuse or physical neglect will be reported to the police or child protective services. It is not necessary to report a minor's sexual activity if the minor is 14 years old or older, and sexual activity was consensual.
4. The Arizona Department of Health Services (ADHS) will be notified about reportable STD/STI as required by law.
5. A minor's records are available to a noncustodial parent to the same extent as the records are available to the custodial parent, except where limited by law or court order.

STAFF TRAINING TOOL

1. It is advisable that clinicians involve both the adolescent and the parent/guardian in issues involving consent.

(circle) True False

2. A minor may consent to treatment if the following conditions apply: (Circle all that apply)

- a) Minor is emancipated, married or homeless
- b) Care relates to sexually transmitted diseases, sexual assault, or HIV testing in an outpatient/emergency basis
- c) Care relates to alcoholism or substance abuse d) Care relates to abortion
- d) Care relates to immunizations

3. If you obtain the consent of only the minor for a pelvic exam and then prescribe oral contraceptives, the parents may still have a copy of the entire medical record without the minor's authorization.

(circle) True False

4. If a minor's parents request that a drug screen test be done on their adolescent, the preferred approach is to facilitate open lines of communication between the adolescent and the parent.

(circle) True False

5. Outpatient psychological treatment/counseling can be rendered to minors without parental consent.

(circle) True False

6. If a minor's parents are divorced, only the custodial parent has a right to the medical record of the minor.

(circle) True False

7. If a minor has provided legal consent for care, information about that care should not be discussed with the parent without the minor's consent.

(circle) True False

8. Under Arizona law, a parent may obtain the minor's medical records except in the following cases: (circle all that apply)

- a) Care relates to immunizations
- b) Care relates to STD/STI, sexual assault, or HIV testing in an outpatient emergency basis
- c) Care relates to abortion
- d) Care relates to alcoholism or substance abuse

9. An adolescent is considered emancipated if... (circle all that apply)

- a) self-supporting and living away from parents
- b) pregnant
- c) in the military
- d) married

10. When rendering emergency medical, surgical, hospital or health services, should care be withheld while waiting to secure consent from a parent or guardian?

(circle) True False

11. In an introductory conversation, a clinician may reassure adolescents that their care and information will be confidential except for the following situations:

- a) their behavior is a risk to themselves or someone else
- b) they have an infectious disease that must be reported
- c) any bill sent to their parents will likely include information about specific services provided
- d) any evidence of abuse must be reported

Staff Name:

Training tool answer key available in Appendix A.

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Appendix A: Staff Training Tool Answer Key

1. True
2. a, b, c
3. False
4. True
5. True
6. False
7. True
8. b, d
9. a, c, d
10. False
11. a, b, c, d

Appendix B: Additional Resources

Arizona Coalition for Adolescent Health: www.azcah.org

Arizona chapter Arizona Academy of Pediatrics (AAP) Pediatric Learning (CME):

Centers for Disease Prevention & Control (CDC): www.cdc.gov

Center for Adolescent Health and the Law: www.cahl.org

Society for Adolescent Health and Medicine (SAHM): www.adolescenthealth.org

Appendix C: Arizona Revised Statute 36-2272

36-2272. Consent of parent required for mental health screening or treatment of minors; exception; violation; classification; definition

- A. Except as otherwise provided by law or a court order, no person, corporation, association, organization or state-supported institution, or any individual employed by any of these entities, may procure, solicit to perform, arrange for the performance of or perform mental health screening in a nonclinical setting or mental health treatment on a minor without first obtaining the written or oral consent of a parent or a legal custodian of the minor child. If the parental consent is given through telemedicine, the health professional must verify the parent's identity at the site where the consent is given.
- B. This section does not apply when an emergency exists that requires a person to perform mental health screening or provide mental health treatment to prevent serious injury to or save the life of a minor child.
- C. A person who violates this section is guilty of a class 1 misdemeanor.
- D. For the purposes of this section, "parent" means the parent or legal guardian of a minor child.

Source: Arizona Revised Statutes, Title 36 Public Health and Safety, Chapter 22, Article 1. <http://www.azleg.gov/arizonarevisedstatutes.asp>

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