Minors' Right to Consent to Medical Treatment

The legal age of maturity in Victoria is 18. Minors below this age may be legally able to consent to treatment, provided the doctor is satisfied that the young person has reached sufficient maturity to be competent to give consent.

Competence

In determining competence a doctor must be satisfied that the young person has sufficient understanding and intelligence to comprehend in general terms the:

- Nature and purpose of the proposed treatment Effects of the treatment including side-effects
- Consequences of non-treatment
- Other treatment options
- Possible repercussions of the treatment, for example the consequences if parents found out.

In such cases, the doctor is entitled to accept consent from the minor without parental consent, provided that:

- The child refuses to inform parents or legal guardians of intended treatment
- The treatment is in the child's best interests
- The proposed treatment or outcome is not as grave and complex as to be difficult for a minor to fully understand

Assessment of Maturity

When determining whether a minor is competent to give consent, a doctor must make an assessment of the maturity and cognitive ability of the minor. This may be based on such factors as:

- General maturity of speech and bearing
- Ability to present the clinical problem for which treatment is sought, through appropriate clinical history
- Level of schooling
- Ability to make judgements about his or her health
- Evidence of disturbed rational thinking due to psychiatric or other disorder

• How well the patient understands the explanation provided by the doctor during the consultation.

When a doctor has to make a decision about a minor's ability to consent to treatment, he/she is advised to document the assessment of maturity in the medical record, together with the factors taken into consideration in making a decision. Competency should be tested for each new treatment being considered.

Parents cannot override the consent of a competent minor, but the Family Court may do so, if it is the Court's opinion that it is in the minor's best interests.

The legal recognition of a competent minor's right to consent to medical treatment may not fully apply to a right to refuse all forms of medical treatment. Parents can refuse treatment for their child but this decision can be overridden by the Family Court if it is in the best interests of the child. Consent for special medical procedures such as sterilisation or gender reassignment can only be given for a minor by the Family Court.

Duty of Confidentiality in the Consultation with a Minor

There is a legal and ethical duty to maintain the confidentiality of a competent minor. There is no clear legal position on the duty of confidentiality as it relates to the non-competent minor. Some minors who are not assessed as competent to consent to treatment may, however, be able to enter a confidential relationship with a doctor. In that case, they may be entitled to confidentiality.

The duty of confidentiality is of crucial importance in engaging young people in a trusting relationship with their doctor and should not be breached lightly. There are however some legal exceptions to the duty of confidentiality, in addition to those applying to an adult. These include:

- Best interests of the patient
- Court proceedings
- Statutory reporting requirements (Vic):
    - Notifiable infectious disease
    - Children under 17 years in need of protection
    - Drug dependency and supply of S8 drugs
    - Registration of births and deaths

It may be helpful to mention the question of confidentiality to young people early in the consultation, and the circumstances in which it could be necessary to break

confidentiality. In particular, this includes risk of suicide or sexual, physical and emotional abuse and serious risk to others.

This statement is based on work done by the 'Young People and Informed Consent Project' and is published in consultation with AMA (Victoria). A more detailed document will be published jointly by AMA (Victoria) and the MPBV and a full document will be available on the AMA Website.

Whistle Blowing

Whistle Blowing: Ethical and Legal Responsibilities

Medical practitioners have ethical and legal responsibilities to identify situations where the public may be put at risk by the conduct of other medical practitioners.

Medical practitioners have a statutory obligation under the Medical Practice Act 1994 to notify the relevant registration board if they are treating a registered health practitioner and have formed an opinion that the patient has an illness or condition which:

• has seriously impaired or may seriously impair the health practitioner's ability to practise, and

• may result in the public being put at risk. registered health practitioners includes medical practitioners, nurses, dentists, pharmacists, physiotherapists, chiropractors, osteopaths, medical imaging technologists, radiation therapy technologists and nuclear medicine technologists.

The Act provides immunity from any civil or criminal liability when the medical practitioner makes the report "in good faith". Section 38 of the Act extends this immunity to registered health practitioners treating or working with medical practitioners they believe to be impaired. The following advice aims to guide practitioners in the day to day application of these responsibilities in medical practice:

• the protection of the public depends on all medical practitioners taking a collective responsibility to identify and assist other medical practitioners who may be impaired

• treating doctors must carefully consider if patients may be put at risk by the patient doctor's illness or condition. (Note, if the sick doctor has voluntarily ceased to undertake medical practice, the public is no longer at risk)

• the Board recognises that the decision to notify the Board of an impaired doctor can be difficult and that risks to the public may be difficult to assess.

Treating doctors should not hesitate to seek advice (anonymously if desired) from the Board's medically qualified Registration Manager or from a member of the Board's Health Committee. This advice can be sought through the Board on telephone 03 9655 0555.

• illness, condition, impairment and incapacity are broad terms and can include the carriage of a transmissible disease, especially when linked with the performance of exposure-prone procedures. Conditions associated with intellectual deterioration, loss of judgment and insight may similarly impair a doctor's ability to practise.

• Section 38 of the Medical Practice Act provides civil immunity for medical practitioners who notify the Board of colleagues in a working relationship, when there are concerns that the public may be at risk. It is important to note that the legal duty to notify

the Board applies to the treating doctor. Where the doctor who is considering notification is in a working rather than a treating relationship, the duty to report is an ethical duty, grounded in a general responsibility to protect the public and to protect the impaired colleague from harm. Situations can also emerge in which the public might be at risk due to a doctor's lack of skill, apparent incompetence or poor clinical judgment. In these cases, unless the reporting doctor believes that these attributes are related to illness, impairment or incapacity and unless the reporting doctor is also the treating doctor, there is no statutory obligation to notify your concerns to the Board. However, this does not relieve doctors of their ethical responsibilities to take steps to protect the public. If a doctor has objective evidence of another doctor's poor performance which puts the public at risk, he or she is clearly obliged to take reasonable steps to notify his or her concerns to an appropriate authority. The appropriate authority is either the Medical Practitioners Board of Victoria or a credentialling or privileges committee of a public or private hospital. Any such notification to the Board would be protected from civil liability under s.38 of the Medical Practice Act 1994.

The Board recognises that deciding to make such a notification can be difficult. Accordingly, the Board welcomes inquiries and requests for advice from doctors and if required, is prepared to accept such inquiries anonymously for both the inquirer and the doctor in question.

If a treating doctor fails to notify the Board of an impaired practitioner under s.37 of the Act, it is open to the Board to instigate a hearing into the professional conduct of the doctor who has failed to notify the Board.

Code of Ethics - AMA

The Code of Ethics of the Australian Medical Association

1.1 Standards of Care

a) Practise the science and art of medicine to the best of your ability and within the limits of your expertise.

b) Continue self-education to improve your standard of medical care.

c) Evaluate your patient completely and thoroughly.

d) Maintain accurate contemporaneous clinical records.

e) Ensure that doctors and other health professionals who assist in the care of your patient are qualified and competent to carry out that care.

1.2 Respect for Patients

a) Ensure that your professional conduct is above reproach.

b) Do not exploit your patient for sexual, emotional or financial reasons.

c) Treat your patients with compassion and with respect for their human dignity.

1.3 Responsibility to Patients

a) Do not deny treatment to any patient on the basis of their culture, ethnicity, religion, political beliefs, sex, sexual orientation or the nature of their illness.

b) Respect your patient's right to choose their doctor freely, to accept or reject advice and to make their own decisions about treatment or procedures.

c) To help with these decisions, inform and advise your patient about the nature of their illness and its possible consequences, the probable cause and the available treatments, together with their likely benefits and risks.

d) Keep in confidence information derived from your patient, and divulge it only with the patient's permission. Exceptions may arise where the health of others is at risk or you are required by order of a court to breach patient confidentiality.

e) Recommend only those diagnostic procedures necessary to assist in the care of your patients and only that therapy necessary for their well being.

f) Protect the right of doctors to prescribe, and any patient to receive, any new treatment, the demonstrated safety and efficacy of which offer hope of saving life, re-establishing health or alleviating suffering. In all such cases, fully inform the patient about the treatment, including the new or unorthodox nature of the treatment, where applicable.

g) Upon request by your patient, make available to another doctor a report of your findings and treatment.

h) Continue to provide services for an acutely ill patient until your services are no longer required, or until the services of another suitably qualified doctor have been obtained.

i) When a personal moral judgement or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere.

j) Recognise that an established relationship between doctor and patient has a value, which you should not undermine.

k) In non-emergency situations, where you lack the necessary knowledge, skill, or facilities to provide care for a patient, you have an ethical obligation to refer that patient on to a professional colleague.

l) Be responsible when placing an appropriate value on your services, and consider the time, skill, experience and any special circumstances involved in the performance of that service, when determining any fee.

m) Where possible, ensure that your patient is aware of your fees. Be prepared to discuss fees with your patient.

n) Do not refer patients to institutions or services in which you have a financial interest, without full disclosure of such interest.

1.4 Clinical Research

a) Where possible, accept a responsibility to advance medical progress by participating in properly developed research involving human subjects.

b)Before participating in such research, ensure that responsible independent committees appraise the scientific merit and the ethical implications of the research.

c) Recognise that the well-being of the subjects takes precedence over the interests of science or society.

d) Ensure that all research subjects or their agents have been fully informed and have consented to participate in the study.

e) Inform treating doctors of the involvement of their patients in any research project, the nature of the project and its ethical basis.

f) Recognise that the subjects have a right to withdraw from a study at any time.

g) Do not allow a patient’s refusal, at any stage, to participate in a study, to interfere with the doctor-patient relationship or to compromise appropriate treatment and care.

h) Ensure that research results are first communicated to appropriate peer groups so that a balanced view can be obtained before communication to the public.

1.5 Clinical Teaching

a) Pass on your professional knowledge and skills to colleagues and students.

b) Before embarking on any clinical teaching involving patients, explain the nature of the teaching methods and obtain the patients consent.

c) Do not allow a refusal to participate in teaching to interfere with the doctor-patient relationship.

d) In any teaching exercise, ensure that your patient is managed according to the best proven diagnostic and therapeutic methods and that your patient's comfort and dignity are maintained at all times.

e) Do not sexually or emotionally exploit students or colleagues under your supervision.

1.6 The Dying Patient

a) Remember the obligation to preserve life, but, where death is deemed to be imminent and where curative or life-prolonging treatment appears to be futile, try to ensure that death occurs with dignity and comfort.

1.7 Transplantation

a) If you are caring for a donor, you must provide to the donor, or their relatives where appropriate, a full disclosure of the intent to transplant organs, the purpose of the procedure and, in the case of a living donor, the risks of the procedure.

b) Accept that when brain death has occurred, bodily functions may be supported if some parts of the body may be used to prolong life or to improve the health of other people.

c) Ensure that the determination of the death of any donor is made by doctors who are not involved with the transplant procedure nor caring for the proposed recipient.

d) Donor families have made an important contribution to the health of others in very difficult circumstances. They must be offered ongoing counselling and appropriate support.

The Doctor And The Profession

2.1 Professional Conduct

a) Build a professional reputation based on integrity and ability. Be aware that your personal conduct may affect your reputation and that of your profession.

b) Refrain from making comments which may needlessly damage the reputation of a colleague or cause a patient anxiety.

c) Report to the appropriate body of peers any unethical or unprofessional conduct by a colleague.

d) Where a patient alleges sexual or other misconduct by another doctor ensure that the patient is fully informed about the appropriate steps to take to have that complaint investigated.

e) Accept responsibility for your personal health, both mental and physical, because it affects your professional conduct and patient care.

2.2 Contracts

a) Do not enter into any contract with a colleague or organisation which may diminish the maintenance of your patient's autonomy, or your own, or your colleagues professional integrity.

2.3 Advertising

a) Do not advertise professional services or make professional announcements unless the chief purpose of the notice is to present information reasonably needed by any patient or colleague to make an informed decision about the appropriateness and availability of your medical services.

b) Ensure that any announcement or advertisement directed towards patients or colleagues is demonstrably true in all respects, does not contain any testimonial or endorsement of your clinical skills and is not likely to bring the profession into disrepute.

c) Avoid public endorsement of any particular commercial product or service.

d) Ensure that any therapeutic or diagnostic advance is described and examined through professional channels, and, if proven beneficial, is made available to the profession at large.

2.4 Referral to Colleagues

a) Obtain the opinion of an appropriate colleague acceptable to your patient if diagnosis or treatment is difficult or obscure, or in response to a reasonable request by your patient.

b) When referring patients, make available to your colleagues all relevant information and indicate whether or not they are to assume the continuing care of your patients during their illness.

c) When an opinion has been requested by a colleague, report in detail your findings and recommendations to that doctor.

d) Should a consultant or specialist find a condition which requires referral of the patient to a specialist or consultant in another field, the referral should, where possible, be made following discussion with the patient's general practitioner.

3.1 The Doctor And Society

a) Strive to improve the standards and quality of medical services in the community.

b) Accept a share of the profession's responsibility to society in matters relating to the health and safety of the public, health education and legislation affecting the health or well-being of the community.

c) Use your special knowledge and skills to consider issues of resource allocation, but remember that your primary duty is to provide your patient with the best available care.

d) The only facts contained in a medical certificate should be those which you can personally verify.

e) Then giving evidence, recognise your responsibility to assist the court in arriving at a just decision.

f) When providing scientific information to the public, recognise a responsibility to give the generally held opinions of the profession in a form that is readily understood. When presenting any personal opinion which is contrary to the generally held opinion of the profession, indicate that this is the case.

g) Regardless of society's attitudes, do not countenance, condone or anticipate in the practice of torture or other forms of cruel, inhuman, or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or convicted.

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Mentally ill : Non-Psychiatric Treatment

Surgical operations and procedures, anaesthesia for medical investigation, and any course of medical treatment for other than psychiatric purposes performed on involuntary patients requires informed consent. The patient is considered to have given this if he or she gives voluntary consent in writing. If the patient is incapable, consent may be obtained from a duly appointed guardian or in any other case from the authorized psychiatrist.

Major medical and surgical procedures, as specified in the Guardianship and Administration Board Act 1986, require the consent of the Guardian and Administration List of the Victorian Civil & Administrative Tribunal.

New Policy on Blood Borne Infectious Diseases

All medical practitioners and medical students should know their HIV, HBV and HCV antibody status.

Doctors are at risk from contracting infections from their patients. They should therefore protect themselves and their patients by:

* Adhering to current infection control guidelines and protocols

* Being immunised against HBV at the earliest possible opportunity in their career and preferably before commencing clinical contact. They should ensure that they have responded by having post-vaccination testing

* Following post-exposure protocols, including seeking expert advice about early management and practice modification.

Medical practitioners and medical students who carry a blood borne virus:

* have an ethical duty to review their practice of medicine,health risks and health status. They should obtain and follow the advice of their treating specialist and must never rely on their own assessment of the risk that their condition may pose to patients

* should not perform any exposure prone procedures if they have been infected with a blood borne virus and are viraemic. A specialist medical practitioner must ascertain whether the infected practitioner or student is viraemic, using the most sensitive test available

* who are not viraemic should not perform exposure prone procedures unless they have been given specific approval by their treating specialist.

Responsibilities Of Treating Medical Practitioners

Medical practitioners who treat health care workers should observe the same standards of clinical practice and record-keeping as they would when caring for any other patient.

The infected health care worker has the same rights of clinical care, counselling and confidentiality as any other patient, unless the treating doctor believes that the infected health care worker is putting the public at risk. In this case the matter must be referred to the appropriate registration body.

In caring for an infected health care worker, the treating doctor should assess and monitor the patients' physical, emotional and cognitive status and his or her safety to practise medicine and/or maintain patient contact.

Further advice

Copies of the Board's policy can be obtained by telephoning the Board on (03) 9655 0500 or via email at info@medicalboardvic.com.au.

Practitioners who are managing doctors or students with infectious diseases can approach the office of the Chief Executive Officer of the Board if they would like help in assessing whether an infected practitioner should be practising medicine and whether his or her practice should be limited. An expert advisory group can be convened to assess the case and provide advice.