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# Please Don't Call My Mom: Pediatric Consent and Confidentiality

Courtenay R. Bruce, JD, Stacey L. Berg, MD, and Amy L. McGuire, JD, PhD

A 15-year-old girl goes on her own to see a primary care physician. In the absence of a mature minor doctrine in the state, can the physician treat her without parental involvement? And does the physician have an obligation to keep her clinical information confidential, or can, or must, the physician discuss it with her parents? The answer quite simply is: It depends.

Though the duty to maintain confidentiality with adult patients is well established,<sup>1</sup> the obligation owed to pediatric patients is less certain.<sup>1,2</sup> There is no clear ethical consensus, and state laws vary, often leaving it to the physician's professional judgment to decide whether or not to disclose confidential patient information to the parents of pediatric patients.<sup>2,3</sup> This article provides a general overview of federal and state law regarding pediatric consent and confidentiality and provides ethical considerations for the responsible management of physician discretion in these difficult clinical situations (Table 1).

## Federal Law: Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule

The HIPAA Privacy Rule creates a national floor for protecting the privacy of adult patients.<sup>4</sup> It also

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**Table 1.** Summary of Ethical Considerations for the Responsible Exercise of Professional Discretion

- Physicians should familiarize themselves with relevant state law. For the majority of states, the state law will, at the very least, describe the circumstances in which the unemancipated minor may give his or her consent to treatment.
- Many state statutes are silent with regard to adolescent confidentiality, in which case the physician must use his or her professional judgment as to whether confidentiality should be maintained. Because there is no clear professional consensus, physicians will have to carefully consider the ethical implications of their decision.
- Decisions about whether or not to maintain confidentiality should be made on a case-by-case basis, but if a physician has a general policy about parental involvement or parental confidentiality, that policy should be made transparent and articulated to patients and their families prior to the initiation of a physician-patient relationship.
- In the event the physician believes disclosure of patient information may result in abuse or harm to the patient, the physician may find it necessary to violate state law in favor of patient confidentiality.
- Ultimately, the physician should consider all the relevant factors to make a good faith judgment in each situation.
- The physician should uphold the professional virtue of honesty by never lying to the patient and by always informing the patient when confidentiality is breached.

broadly addresses adolescents' rights to consent and confidentiality, but ultimately, it provides little guidance, deferring principally to state law.

According to the HIPAA Privacy Rule, parents or guardians presumptively control their children's personal health information and can authorize disclosures of the information to third parties, but the parents lose this presumptive right if state law does not require parental consent for the minors' medical treatment.<sup>3,4</sup> Furthermore, whether the parent can access the pediatric patient's personal information without the consent of the child also depends on state law. If the state

law permits the minor to consent to treatment but is silent or ambiguous with regard to whether the parent can access the minor's health information, the physician may use his or her professional discretion.<sup>4</sup>

## State Law: Pediatric Consent for Treatment

State law, then, is the touchstone in terms of both adolescents' rights to consent and confidentiality. Unfortunately, in many states, the law is far from clear. With regard to consent, all states statutorily recognize the right of emancipated minors to consent to medical treatment. Although state laws vary, the types of situations that are considered sufficient for emancipation include marriage, parentage, service in the armed forces, and evidence of independence (financial or otherwise).<sup>5</sup> An overwhelming majority of states explicitly mention marriage, parentage, and independence as a means of emancipation, whereas only 20% include service in the armed forces.

All states recognize that unemancipated minors have a right to consent to treatment in the context of certain diseases or conditions. However, the states differ as to what treatments unemancipated minors may consent to. The result is a hodgepodge of contextually tailored statutes, permitting minors to consent for one condition but not another and resulting in different rights for minors in different states.<sup>5</sup>

Analysis of state statutes that recognize the right of unemancipated minors to consent to certain treatment reveals 4 types of conditions that are commonly recognized to warrant an exception to the general rule requiring parental consent. The ability to consent to treatment for sexually transmitted diseases is a recognized exception in virtually all states, even among younger adolescents. This ubiquity may reflect concern for the public health implications of untreated sexually transmitted diseases. Substance abuse treatment is also commonly accepted in nearly 80% of states, permitting a minor to consent to such treatment in the absence of parental consent.<sup>2,5</sup> Adolescents are also permitted to consent to mental health services and family planning services in some states, but these exceptions are less common. (Approximately 55% and 30% of states, respectively, permit a minor to consent to mental health services and family planning services without parental consent.) Of those states that explicitly permit a minor to consent to family planning services,

nearly all of them require outside referrals from clergy, a health care facility, or a higher-education institution.<sup>5</sup> However, in the context of family planning services, any minor can receive confidential family planning services without referral or parental consent at a federally funded family planning clinic.<sup>6</sup> Therefore, a physician at a private institution who thinks it is in the best interest of the patient may want to consider referring a patient to a federally funded clinic for family planning services.

## State Law: Pediatric Confidentiality

Many states do not legally address pediatric patients' rights to confidentiality. Of those states that do discuss confidentiality, only 10% to 15% either broadly require parental notification of medical treatment or provide absolute protection of confidentiality.<sup>5</sup> Approximately 50% adopt a more moderate approach by explicitly permitting physician discretion, with only 10% of states encouraging, without explicitly requiring, parental involvement. For the remaining quarter of states that do not statutorily address pediatric confidentiality, the decision about the extent to which pediatric patients' confidentiality ought to be maintained and information withheld from the patient's parents will require the responsible exercise of professional judgment.

Of course, if parental consent is required, then sufficient information should be disclosed for the parent to make an informed treatment decision. This would be expected to include information about the patient's diagnosis, the nature of the illness, the recommended treatment, medically reasonable alternatives, and the risks and benefits of each alternative.<sup>7</sup> Additional information that is shared by the patient, but is not necessary for informed parental consent, can be disclosed at the physician's discretion. Similarly, if state law is silent with regard to parental consent, then health care professionals are free to decide whether to disclose confidential patient information.

## Ethical Considerations for the Responsible Exercise of Professional Discretion

Because nearly 90% of states, either explicitly or by virtue of statutory silence, defer to the physician's

discretion as to whether the parents should be notified of the minor's health care information, the emphasis of this article is on the responsible and ethical exercise of professional discretion.

The exercise of professional judgment will likely require decisions about confidentiality to be made on a case-by-case basis. Physicians should become familiar with relevant consensus statements and should consider the ethical implications of their decision by balancing a multitude of factors, including but not limited to (1) the maturity level of the adolescent; (2) the family dynamics; (3) the potentiality that the patient's trust in the physician and medical establishment, more generally, will be sullied by a breach of confidentiality; (4) the exigencies presented, including the inability to reach the parents; (5) respect for parental decision making; and (6) fiduciary responsibilities to the patient. In each case, the risks and benefits of disclosure should be weighed.

The American Medical Association (AMA) encourages parental involvement in pediatric medical care: "When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minors' reasons for not involving their parents and correcting misconceptions that may be motivating their objections."<sup>9</sup> The AMA does not specifically address whether or under what circumstances pediatric confidentiality should be maintained. The Society for Adolescent Medicine advocates more strongly for confidentiality between physician and patient, appealing to the physician's fiduciary duty to act primarily for the benefit of the patient. They reason that "protecting the confidentiality of adolescents' health information is a professional duty deriving from the moral tradition of physicians and the goals of medicine."<sup>10</sup> The American Academy of Pediatrics has not, as a group, addressed the issue of pediatric confidentiality. A position statement from the American Academy of Pediatrics would provide additional guidance for physicians. However, health care professionals should not simply rely on the opinions of professional organizations. Rather, they should seek to identify the rationale behind the organization's position so that it can be evaluated for its analytic rigor and moral relevance.

The AMA's recommendation to encourage patients to involve their parents not only shows respect for the parents' right to rear their child as they see fit, but in some circumstances, it may facilitate parent-child communication, which could

benefit the patient and lead to more responsible and informed decisions. However, the physician who encourages parental involvement when the minor explicitly requests confidential services must proceed delicately. If the minor senses coercion or duress, trust will be lost and the health of the minor might be compromised.

Maintaining confidentiality with adolescent patients, as the Society for Adolescent Medicine suggests, helps build trust in the physician-patient relationship. This may result in more honest and full disclosure of relevant information by the patient, which is essential for proper diagnosis and patient care, and may facilitate adherence to recommended treatment and/or preventative behavioral changes. Maintaining confidentiality also shows respect for the developing autonomy of the adolescent patient and his or her interest in determining with whom to share personal/private information.

If the physician suspects that parental involvement might lead to abuse or harm to the patient or that it would result in the patient's neglecting to seek needed medical treatment or care, then the physician may be ethically compelled to maintain confidentiality, even if doing so violates state law requiring parental consent and/or parental notification. Alternatively, if the physician believes that the patient may harm herself or others, then the physician may be obligated to breach confidentiality and inform the parents and/or appropriate state officials.<sup>8,11</sup> This should be explained upfront to the patient to foster trust and promote the professional virtues of honesty and respect.

Similarly, physicians who have a strong general preference for either parental disclosure or patient confidentiality should disclose their general practice regarding communication with patients and their parents prior to the initiation of treatment. Of course, the risk is that if the policy favors parental involvement, the patient may not be as forthcoming about sensitive information.<sup>11,12</sup> On the other hand, if the policy favors patient confidentiality, parents who oppose that policy may choose another physician. Ultimately, the physician may find that a categorical policy proves unwieldy in light of multifaceted cases and their inherent factual nuances.

Finally, even if the health care professional opts to maintain patient confidentiality, he or she should be cautious about promising absolute confidentiality and may want to inform patients of ways that their parents could discover confidential patient information (eg, if the patient is billing the treatment to the

parent's insurance or if an incidental disclosure is made during the course of an unrelated clinical encounter or HIPAA-related disclosure/use of protected health information.). The physician should also discuss the financial burden that may be imposed on the minor if he or she continues treatment in the absence of parental involvement.

## Conclusion

Because state laws vary with respect to consent and confidentiality requirements, health care providers should educate themselves on the local context in which they practice. In addition, providers should be aware that they may face conflicts between legal and ethical requirements in the care of adolescents. One tool to minimize conflict may be for providers to proactively make their positions on such issues clear to the parents and older children in their practices, before an actual circumstance arises.

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