Alberta Doctors' Digest

Letters: Navigating consent and assent in Alberta

The information regarding consent in minors in Alberta is vague, making it difficult for health care providers to assist young patients in making medical decisions, with no consolidated resource for providers to consult. The aim of this piece is to summarize consent and assent in Alberta to aid in shared decision-making with minors in an ever-changing political environment.

Consent is the process of making an autonomous decision by informed persons voluntarily and free from coercion. Consent may be implied, as in many patient-care scenarios, based on their behaviour and speech. At times, consent must be expressed in verbal or written form such as in sensitive exams or when there is risk involved.

When an individual does not have the capacity to consent, assent may be obtained instead. Assent is agreement with a medical decision with information explained in a developmentally appropriate manner to allow participation in care. If there is dissent, it should be acknowledged, and at times a third-party may be required to assist.

Capacity in medical decision-making is nuanced. The capacity to make decisions relies on a provider's assessment of the individual's ability to understand information relevant to a medical decision, including risks and consequences, as well as their insight, reasoning and ability to express a decision. In minors, this varies on the scope of the decision and the individual's mental and emotional maturity.

There is no legally defined age of consent in Canada to medical decision-making. Capacity to consent is assumed upon reaching the age of majority, which is 18 in Alberta. In infants and children, assent should be attempted, with consent obtained from a legal guardian, either a parent or legally appointed guardian. In adolescents, capacity to consent will vary on an individual and case-specific basis. Mature minors are individuals close to the age of majority and capable of making a reasonable decision. There is a minimum age of consent for medical assistance in dying in Canada, age 18. Consent is not required in the provision of emergency life-sustaining care. The minimum age of sexual activity in Canada is 16. However, minors within short age spans 14-15 and 13-14 may consent with an age-matched peer not in a position of dependence or authority. Children under the age of 12 may not consent to sexual activity.

Privacy is often a barrier to adolescent care. Alberta's *Health Information Act* confirms the duty to keep personal health information confidential, including in mature minors. However, within the *Family Law Act*, guardians are entitled to be informed of significant decisions affecting their dependents, and courts in Alberta are not obligated to withhold information about mature minors from their guardians. Despite this, mature minors and adolescents should be consulted, and consent obtained if a guardian is requesting access to their personal medical information. Confidentiality may be breeched if one is at risk of harming themselves or others, if there is reasonable concern that the minor needs protection, in cases of mandatory reporting of communicable diseases, or if a court order is granted. Health care providers are mandatory reporters and are protected from legal

liability if the report has been made within legislation, in good faith and without malice. Minors do not require parental consent for contraception.

Gender-affirming care is a medically necessary intervention. Recommendations are provided by the World Professional Association for Transgender Health (WPATH) Standards of Care. Some interventions, such as puberty suppressing hormones, are considered fully reversible. This is an important therapy, as it gives time to explore gender nonconformity, assists with transition by preventing some sexual characteristics and prevents social and emotional consequences seen with later use. This can be considered as early as Tanner stage 2, as experiencing some pubertal changes can help form gender identity. Masculinizing and feminizing hormones are considered partially reversible interventions. There is no minimum age requirement, and this may be considered in individuals who have shown evidence of gender incongruity over a prolonged period of time.

Surgical interventions are irreversible. Other than bottom procedures, such as phalloplasty and vaginoplasty, which have a minimum age requirement of 18, this can be considered at younger ages after the individual has been on gender-affirming hormones for 12 months, if this is desired and not contraindicated. It is recommended that parents or guardians be involved in discussions regarding gender-affirming treatments; however, this is not necessary, especially if their involvement is felt to be harmful or not feasible.

Physicians have a duty to their patients to help make decisions that align with their beliefs and values. Understanding the nuances around consent can help health care providers assist minors in having autonomy over their own health and protect their rights and confidentiality.

Editor’s note: The views, perspectives and opinions in this article are solely the author’s and do not necessarily represent those of the AMA.

References available upon request