Minors, confidentiality and healthcare: What crosses the line?

Hugh Stephens
Fourth Year Medicine, BMedSc (Hons)
Monash University

Hugh has a strong interest in youth issues, both generally and with regards to healthcare provision. He presented last year at the "Children, Youth and Privacy" conference organised by Privacy Victoria. Currently, Hugh is undertaking research into Donation after Cardiac Death at The Alfred Hospital in Prahran, Victoria.

Healthcare provision and access to effective healthcare for young people (aged fifteen to 24 years) has long been a debated issue. [1,2]

The law is clear regarding the conditions under which a person under the age of eighteen (a 'minor') may consent to medical treatment. Yet there is a remarkable lack of clarity, and lack of legal precedent, over the right of minors to control the confidentiality of their medical information. This deficiency includes the extent to which disclosure should occur between medical professionals and the parents or guardians of the minor in question.

In Australia, adults have a right to complete confidentiality of all of their health information. The few exceptions to this occur when the doctor does not identify the person, when disclosure is in the public interest or in the case of forced disclosure. The right to confidentiality is a cornerstone of the nature of healthcare provision in Australia: if it did not exist, it is likely that the confidence of the public in seeking health care would be diminished. So why is it that minors are not afforded this right?

Ethically, the focus must be the minor's interests, not those of the parent, and it should be remembered that the treating doctor is the final judge of a minor's capacity to consent. In some cases, the doctor will maintain a minor's confidentiality in accordance with their wishes, but also encourage them to involve their parents in their treatment. This approach often leads to improved outcomes for the minor, as parent involvement is on the minor's agenda (and not that of the parent or doctor). It also establishes a more effective 'team' (the family-doctor unit) approach to their ongoing healthcare.

Of particular concern, parents and guardians are now able to access Medicare and pharmaceutical benefits scheme (PBS) claims for minors under the age of sixteen. [3] This allows parents to access information outlining when and from whom minors have received medical treatment, and what medications have been prescribed. If the minor is aged fourteen or fifteen, a form must be signed by the minor in order to release the information to the parent or guardian. Despite this, the ability of parents to potentially access the Medicare and PBS records of their child creates a potential deterrent for the minor to access future healthcare. Children under fourteen years, who may be deemed capable of consenting to a medical treatment, are not able to restrict parental access to their Medicare and PBS record at all. This situation also places the healthcare provider in a difficult situation.

There is little legal clarity as to the point at which a young person gains the right to confidentiality. Should a young person's ability to gain confidential healthcare be linked to their ability to consent to their own treatment (the Gillick competence)? There is a strong argument for this case. Research into minors with chronic ongoing illnesses such as diabetes has found that they may be Gillick competent from as young as the age as six. [4] Many of these minors self-manage complex conditions with little parental involvement, and perhaps should, in some cases, also have the right to confidentiality if deemed appropriate by the doctor, the minor and the parent. However, there are situations where confidentiality is not in the best interest of the minor. This may occur, for example, when a minor refuses treatment or is unable to comply with an agreed treatment without external assistance.

Perhaps the nature of health information should be an important consideration in this discussion of confidentiality? A minor may regard some types of health information as 'private,' while considering other issues to be suitable to discuss with their parents. For example, vaccination records would likely fit into the latter category, whilst a prescription for the oral contraceptive pill may be a more sensitive area over which the minor may wish to retain confidentiality. The difficulty with such a requirement, whereby the law is to classify the nature of the information and whether it should be confidential, is to effectively apply criterion to different 'types' of healthcare information. Furthermore, different minors are likely to have different opinions about what types of information could be freely 'shared.'

Alternatively, should privacy be linked

to a specific request not to disclose that information? This may be an effective way of balancing individual opinions and relationships between minors and their guardians. Should the expectation be, however, that for every piece of information shared the doctor asks the minor whether they wish it to remain confidential, or vice versa? What about information that the doctor may assume not to be private? Of course, in many ways this is the system currently in place, with doctors respecting minors' decisions to maintain privacy, with several notable exceptions as previously discussed.

This issue will continue to be a topic of debate and discussion within the community. Ultimately it is fundamental to put the best interest of the minor first, ensuring the best possible health outcomes. If the importance of privacy is not appreciated, we create the risk of discouraging young people from seeking healthcare – which is usually contrary to the intention of the parent or guardian in the first place. Current policy and medical practice should be evaluated to ensure that doctors have appropriate guidelines surrounding when privacy should be maintained with respect to minors. Finally, it is crucial to communicate to young people seeking care their right to privacy (and the limitations upon this right), in an upfront and honest way. This will ideally result in optimum healthcare provision for young Australians.

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References

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