

CEJA Report H – A-92 Mandatory Parental Consent to Abortion

INTRODUCTION

In another report submitted by The Council on Ethical and Judicial Affairs at this meeting, the Council discusses the general importance of confidential health care for minors. [see Report 40] The report observes that assurance of confidentiality may be critical to ensuring that minors are not deterred from seeking medical care, particularly for sensitive problems like mental illness, sexually transmitted diseases, and drug abuse. While parental involvement in the medical care of children is always important and is generally necessary for significant medical procedures, the report concludes that in certain circumstances parental involvement can be counterproductive and, unless required by law, should not be mandatory. In this report, the Council on Ethical and Judicial Affairs (CEJA) will examine the sensitive issue of parental involvement when minors seek an abortion.

The Council will not discuss the philosophical, moral, religious or legal issues surrounding abortion or examine the appropriateness of abortions for minors. Physicians have widely divergent views on these issues and the Council respects those differences. However, there is a need for guidelines for situations in which a minor is permitted by law to have an abortion without obtaining parental consent. According to Opinion 2.01 of the Council, “[t]he Principles of Medical Ethics of the AMA do not prohibit a physician from performing an abortion in accordance with good medical practice and under circumstances that do not violate the law.”^{1(p.2)} The purpose of this report is to define ethical medical practice with regard to parental involvement.

ETHICAL CONCERNS

No physician is obligated to perform an abortion if it conflicts with his or her conscience. The Council recognizes that for many physicians and patients abortion is viewed as wrong except in very limited circumstances, and where state law mandates parental consent physicians must respect those laws and the position of the public it reflects. Outside of those states, however, it is public policy to permit abortions without parental consent, i.e., to treat abortion like other extremely sensitive choices involving reproduction which minors can make. As the law stands today, minors do, in fact, have the right to obtain an abortion without consent unless otherwise provided by state law. The Council knows that, for almost everyone, abortion is qualitatively different from other "reproductive options," but public policy often requires difficult line drawing and those lines exist today.

Therefore, in many places, the issue of confidentiality for minors who seek an abortion implicates competing ethical concerns apart from the abortion issue itself. On the one hand, as with other decisions, minors may not make considered choices about abortion because of immaturity, inexperience or poor judgment. Parents are generally in the best position to counsel minors about their reproductive options, and they usually have a deep and respected interest in any significant matter involving their children. However, some minors may, in fact, be physically or emotionally harmed if they are required to involve their parents in the decision to have an abortion. In addition, as the Council on Scientific Affairs explains in its report, "Confidential Health Services for Adolescents," parental involvement could interfere with the minor's need for privacy on matters of sexual intimacy.²

Benefits of Parental Involvement

The decision to terminate a pregnancy is, of course, an extremely serious one, and minors will often lack the maturity and judgment necessary to reach a sound decision on their own. It is important for minors to

receive comprehensive counseling about the issues involved in pregnancy and guidance regarding the different reproductive options.

Moreover, parents are ordinarily the people most concerned with a minor's welfare, and they generally act in their child's best interests. In working through the difficult decision about abortion, minors will generally benefit from the mature advice and emotional support of their parents. Their parents will usually be in the best position to understand their needs and concerns and to help them as they apply their values to the abortion decision. Principles of constitutional law have long held that parents should be involved in and responsible for the medical care of their minor children. According to the U.S. Supreme Court, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents."³

Similarly, the common law has long recognized that "natural bonds of affection lead parents to act in the best interests of their children."⁴ Parents have traditionally enjoyed a strong presumption under the common law that they are the appropriate medical decision makers for their children.⁵ While the state must intervene to protect against abuse, parental decisions are almost never overturned as long as the parents choose from among professionally accepted treatment options.

Concerns with Mandatory Parental Involvement

For most children, the home is a place of caring, love and support, a place of safety. For some children, however, the home falls far short of this ideal and may be a place of physical abuse and neglect and psychological maltreatment. On the basis of reports to child protection agencies, the federal government has estimated that there are approximately 1.5 million cases a year of physical abuse and neglect of children.⁶ Although no study has specifically dealt with violence as a reaction to minors informing parents about pregnancy, it is reasonable to believe that some minors justifiably fear that they would be treated violently by one or both parents if they had to disclose their pregnancy to their parents. Research on abusive and dysfunctional families has shown that family violence is at its worst during a family member's pregnancy, immediately following childbirth, and during the adolescence of the family's children. Studies of family violence have found that four to eight percent of women are physically abused during their pregnancy.⁷ If parental involvement were universally required, some minors might suffer serious physical injury. Disclosure of the pregnancy may also cause serious emotional harm to the minor. Parental notification often precipitates a family crisis, characterized by severe parental anger and rejection of the minor.^{8(p.1165)}

In addition, like adults, minors have a profound need for privacy in matters of their health care. Privacy may be especially important for minors. Adolescence is a critical period for minors to develop their independent sense of self; the ability to maintain spheres of privacy from parents in areas of personal intimacy is an essential part of that development. The Association has long recognized this need.

Organized medicine has viewed confidential care for adolescents as essential to their use of health services. As early as 1972, the AMA took the position that to stem the incidence and prevalence of venereal disease (VD), minors needed to receive medical treatment for suspected VD without parental notification.⁹ All states subsequently codified this policy, including those without statutory provisions allowing minors to consent to treatment for other diseases or conditions. The AMA also opposed regulations requiring parental notification for the provision of prescription contraceptives to minors through federally funded programs "since they create a breach of confidentiality in the physician-patient relationship."¹⁰ AMA policy recommendations state that adolescents should have "access to medical consultation and the most effective contraceptive advice and methods,"¹¹ and physicians should provide contraceptive services on a confidential basis where legally permissible.¹⁰

Because the need for privacy may be compelling, minors may be driven to desperate measures to maintain the confidentiality of their pregnancies. They may run away from home, obtain a "back alley" abortion, or resort to self-induced abortion. The desire to maintain secrecy has been one of the leading reasons for illegal abortion deaths since the U.S. Supreme Court decided the existence of a constitutional right to abortion in 1973.¹²

BALANCING THE COMPETING ETHICAL CONCERNS

Provisions should be made to ensure that pregnant minors receive appropriate counseling, support and advice when deciding among their reproductive options. At the same time, minors should not be forced to undertake measures that may put their health at risk and prevent them from maintaining the necessary degree of privacy in their lives.

As a first step, physicians should strongly encourage minors to discuss their pregnancy and their reproductive options with their parents. Physicians should explain how parental involvement can be helpful and that parents are generally very understanding and supportive. Physicians should also explain that parents are usually in the best position to help the minor consider the issues involved and the way that they will affect the minor's future. If a minor expresses concerns about parental involvement, the physician should try to ensure that the minor's reluctance is not based upon any misperceptions about the likely consequences of parental involvement. For example, physicians should try to ensure that the minor is not underestimating parental supportiveness, overestimating parental anger, or failing to appreciate that initial parental disappointment, however profound, will likely moderate.

While minors may not exhibit the same maturity as adults when deciding about abortion, research suggests that the process of medical decision making for adolescents often does not differ from that of adults.^{13(pp.37-48),14,15,16} In one recent study, researchers interviewed 75 women, ages 13 to 21, who were visiting a clinic for a pregnancy test because they suspected an unplanned pregnancy. The decision whether to carry the pregnancy to term was examined, and comparisons of the women's decision making processes were made across the different age groups. Among the women who considered abortion, the researchers found no age-related differences for the three measures of cognitive competence studied (thoroughness of consideration of consequences, number of reasons considered, and content of the reasoning about pregnancy).¹⁶

The expert opinion to date, and the available scientific evidence, support the view that physicians should not require minors to involve their parents before deciding whether to undergo an abortion. In its comprehensive study of adolescent pregnancy, the National Research Council concluded: when considering abortion, "minor adolescents should be encouraged, but not required, to involve their parents and partners in the decision making process."^{17(pp.910)} The American College of Obstetrician and Gynecology has reached the same conclusion. During the litigation over Minnesota's parental notification statute, the trial court held extensive hearings on the effects of the statute. There was considerable expert testimony that the statute was having negative effects on parent-child relationships. Moreover, according to the court, there was no persuasive testimony that the law was enhancing parent-child communications or relationships.^{18(p.768)} Parental involvement may be harmful to the minor, and the minor is in the best position to assess whether, on balance, parental involvement is advisable.

Accordingly, experts conclude that minors should ultimately be allowed to decide whether parental involvement is appropriate, although physicians should provide them with any necessary guidance as they make their decision. It would not be sufficient to waive a requirement of parental involvement only for those minors who have reported abuse by their parents. Victims of family violence are characteristically secretive about the abuse they have suffered, and minors are particularly reluctant to reveal the existence of abuse in their homes.^{18(p.769)} In addition, the minor's pregnancy may precipitate the first episode of

physical abuse that she suffers. Finally, minors may be psychologically abused to an extent that is serious without the abuse being reportable under state child abuse statutes.

As with adult patients, physicians should try to ensure that their minor patients have made an informed decision after giving careful consideration to the issues involved. They should encourage their minor patients to consult other adults if parents are not going to be involved in the abortion decision. Minors should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers or the clergy.

Counselors should fully explore the alternative choices available to the minor, including carrying the pregnancy to term and keeping the child, carrying the pregnancy to term and placing the child with a relative or with another family through foster care or adoption, or having an abortion. The minor should be told that a decision to have an abortion may be withdrawn at any time before the abortion is performed and that a decision to carry the pregnancy to term may be reconsidered at any time within the time period in which an abortion may be legally performed. Counselors should explain that public and private agencies can provide information about measures to prevent future pregnancies, and the minor should be given a list of such agencies in the local community. But those who counsel must also be objective and not attempt to coerce. The decision is ultimately for the patient to make.

LEGAL CONSIDERATIONS

At least 41 states have enacted statutes that address the issue of parental involvement in a minor's decision to have an abortion. However, more than half of the statutes either have been enjoined by the courts or are not enforced.¹⁹ Parental involvement statutes generally require either that parents be notified about the minor's abortion or that parents give consent to the abortion. However, in order to be valid under the U.S. Constitution, these statutes must include a provision allowing the minor to avoid parental involvement by seeking approval from a judge for the abortion.²⁰ These provisions are known as "judicial bypass" provisions. In two states, California and Florida, parental involvement statutes have been invalidated under state constitutional provisions, even if the statutes have a judicial bypass option.^{21,22} Three states, Connecticut, Maine and Wisconsin, encourage parental involvement, but only require counseling by the health care provider or another professional counselor before the abortion may be performed.^{23,24,25}

Researchers have attempted to measure the effects of laws requiring parental involvement. In a study of the impact of Massachusetts' parental consent law, researchers found that the law reduced by half the number of minors undergoing abortion in Massachusetts.²⁶ However, the reduction was explained by a corresponding increase in minor residents of the state traveling to neighboring states for their abortions. There was a small increase in the number of minors who bore children rather than undergo abortion, but the study was not able to determine whether the parental consent law caused the increase.

The impact of Minnesota's parental notification law has also been examined. In one study, researchers found that parental notification was more common after passage of the law than was found in another study conducted before passage of the law. Approximately 65% of minors notified at least one parent about their plans to undergo abortion, and, the younger the minor, the more likely she was to notify one of her parents. However, parental notification in Minnesota was no more common than in Wisconsin, a neighboring state that has no law requiring parental involvement.²⁷ A second study found that, after the enactment of Minnesota's law, there was a sharp drop in abortion rates among 15-17 year-old women.²⁸

The option of a judicial bypass does not always solve the problems with laws requiring parental involvement. The key to successful counseling of the minor is the minor's ability to seek guidance from individuals with whom she feels most comfortable discussing her pregnancy and her reproductive options. When Minnesota's parental notification statute was reviewed by the courts, the trial court found

that many minors were very uncomfortable with judicial hearings.¹⁸ In particular, although the proceedings are confidential, minors are forced to disclose intimate details of their lives before complete strangers. The Council recognizes that judicial bypass may be an effective compromise for all of the competing concerns, but rather than providing a safeguard to ensure fully considered decisions, judicial proceedings tend to provide cursory review. In Massachusetts, a study found that the average length of time for judicial bypass hearings was 12.12 minutes.²⁹

RECOMMENDATIONS

With respect to parental involvement when minors seek an abortion, the Council on Ethical and Judicial Affairs believes that the following guidelines constitute good medical practice.

1. Physicians should ascertain the law in their state on parental involvement to ensure that their actions are consistent with their legal obligations.
2. Physicians should strongly encourage minors to discuss their pregnancy with their parents. Physicians should explain how parental involvement can be helpful and that parents are generally very understanding and supportive. If a minor expresses concerns about parental involvement, the physician should ensure that the minor's reluctance is not based upon any misperceptions about the likely consequences of parental involvement.
3. Physicians should not feel or be compelled to require minors to obtain consent of their parents before deciding whether to undergo an abortion. The patient—even an adolescent—generally must decide whether, on balance, parental involvement is advisable. Accordingly, minors should ultimately be allowed to decide whether parental involvement is appropriate. Physicians should explain under what circumstances (e.g., life-threatening emergency) the minor's confidentiality will need to be abrogated.
4. Physicians should try to ensure that minor patients have made an informed decision after giving careful consideration to the issues involved. They should encourage their minor patients to consult alternative sources if parents are not going to be involved in the abortion decision. Minors should be urged to seek the advice and counsel of those adults in whom they have confidence, including professional counselors, relatives, friends, teachers or the clergy.

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