

SEXUAL AND REPRODUCTIVE RIGHTS OF YOUTH IN ALBERTA

With some knowledge about the laws that govern privacy and consent, you will be better able to volunteer information and respond to a youth's query in a timely manner so that the opportunity to help the youth is not lost.

I. Background:

How is this relevant to my job as a health care professional?

- Youth under the age of majority (18 years) are considered minors in Alberta.
- Minors seeking your medical services about sexual and reproductive health (SRH) may be unclear about being treated without parental permission as well as unclear about how health information shared with you will be treated. In particular, **youth may not understand how their rights to privacy and confidentiality are maintained in the health care setting.**

II. Informed consent requirement:

Do I obtain consent from a youth or his/her parent?

Health care professionals must obtain informed consent before providing SRH services.

- For minors, whether informed consent must be obtained from the minor or the minor's guardian **depends on whether the youth is a 'mature minor'.**

III. How do I determine if a youth is a 'mature minor'?

In Alberta, the law does not set a specific age for when a minor is capable of consenting to medical treatment. An individual under the age of 18 does not, merely by reason of age alone, lack legal capacity to consent to medical treatment.

- If a minor is **sufficiently mature to appreciate the nature and consequences** of consenting to, or refusing to consent to, the given medical treatment, that minor is considered a mature minor and his/her informed consent or refusal is valid.

- If the minor is not a mature minor, then informed consent is required from that minor’s legal guardian (in most cases a parent).

Determining whether or not a minor is a mature minor is performed on a case-by-case basis. Just because a 16 year old is a mature minor in one case does not mean that all 16 year olds are mature minors. Similarly, a 14 year old may be a mature minor while a 16 year old may not.

In the daily course of providing SRH services, health care professionals are the individuals who determine whether or not the minor is a mature minor. If you are ever in doubt, consult with colleagues and, where appropriate, arrange for a formal assessment.

IV. Mature minors and confidentiality:

Do I have a duty to keep a minor’s health information confidential? What are the exceptions?

When a minor goes to see a health care professional, a relationship of trust and a duty of confidentiality is created. SRH issues are of a highly personal nature and a minor **should, where appropriate, receive assurance that his/her information will not be shared outside the relationship.** It is important for both doctor and patient to know that there are some exceptions to the duty of confidentiality.

- For health care professionals, a number of exceptions to the duty of confidentiality arise under Alberta’s *Health Information Act* (“HIA”). The

following are some situations when individually identifying health information can be disclosed without consent:

- for the purpose of complying with a subpoena, warrant or order issued or made by a court;
- to a municipal or provincial police service for the purpose of investigating an offence involving a life-threatening personal injury to the individual, if the disclosure is not contrary to the express request of the individual;
- to any person if the custodian* believes, on reasonable grounds, that the disclosure will avert or minimize an imminent danger to the health or safety of any person;
- if that individual lacks the mental capacity to provide consent and, in the opinion of the custodian*, disclosure is in the best interests of the individual; or
- if the disclosure is authorized or required by an enactment of Alberta or Canada.

*[Note that the definition of custodian under the HIA includes health care professionals providing publicly funded health services, as well as pharmacists and pharmacies.]

- There are other laws that also authorise or require physicians to disclose health information. See the College of Physicians & Surgeons published guideline, *Release of Medical Information: A Guide for Alberta Physicians*. Accessible online at: www.cpsa.ab.ca/publicationsresources/policies.asp

Two important laws listed in this publication relevant to youth and SRH are:

- the *Child Welfare Act*, under which every person, including health care professionals, who learns that a child is in need of protective services must report information to the Director of Child Welfare; and
- the *Public Health Act*, under which health care professionals are required to report certain information if an individual, including a minor, is known or believed to have a reportable communicable disease (see the *Communicable Diseases Regulation* under the *Public Health Act* for a list of diseases).

V. Access to health information:

If a parent asks for his/her child’s medical chart, can I give it?

HIA identifies who may exercise the rights set out under the HIA, including the right to access health information. The language used in the HIA is similar to the mature minor doctrine that is used for consenting to medical treatment.

- If a youth understands the nature of the right of access to health information and the consequences of exercising that right, the youth may make a request for his/her health information and his/her guardian

may not – unless they have the youth’s consent.

- If a youth does not understand the nature of the right of access to health information under the HIA and the consequences of exercising that right, the youth cannot make a request for his/her health information, but his/her legal guardian can.

Deciding whether or not a youth understands his/her rights under HIA is done on a case-by-case basis. The specifics of each case must be carefully considered. In the course of routine access requests, the health care professional usually makes this determination.

VI. Are there any exceptions to the right of access?

Regardless of whether the youth or a guardian makes an access request, the HIA sets out certain limitations to the right of access. There are situations when health care professionals **may not release health information** and situations when health care professionals **must not release health information**. These situations are listed in the HIA, the commonly applied ones being:

- Custodians **must** refuse if:
 - the health information is about an individual other than the applicant, unless the health information was originally provided by the applicant;

- Custodians *may* refuse if:
 - the disclosure could reasonably be expected to:
 - (i) result in immediate and grave harm to the applicant’s mental or physical health or safety,
 - (ii) threaten the mental or physical health or safety of another individual, or
 - (iii) pose a threat to public safety; or
 - the disclosure could reasonably lead to the identification of a person who provided health information to the custodian explicitly or implicitly in confidence and in circumstances in which it was appropriate that the name of the person who provided the information be kept confidential.

For further information about the legal obligations in responding to access requests such as timelines, see Part 2 of HIA.

VII. Accessibility of sexual health products outside the health care setting:

What do I need to know if a youth asks how to get sexual health products?

In consulting with you about SRH issues, youth may ask you about the accessibility of sexual health products, for example in drug stores. It is important to know that Alberta law does not require store owners, managers or cashiers to check identification before selling condoms.

Unlike cigarettes, for example, **there is no age restriction for the purchase of condoms.**

Sexual health products such as spermicides and sponges may be kept on the store shelves or behind the pharmacy counter. Sexual health products may be kept behind the pharmacy counter due to legal requirements, pharmacist preference and/or lack of shelf space. The pharmacist usually interacts with the customer regarding the use of a sexual health product when such products are kept behind the counter.

For sexual health products available only with a prescription, such as birth control pills or the emergency contraceptive pill, pharmacists will likely review usage information and answer any questions the youth may have, as they do when dispensing any prescription medicine.

DISCLAIMER: THIS DOCUMENT SHOULD NOT BE CONSTRUED AS OR RELIED UPON AS LEGAL ADVICE. A LEGAL PROFESSIONAL OR HEALTH PROFESSIONAL, OR BOTH, SHOULD BE CONSULTED FOR PARTICULAR SITUATIONS RELATING TO SEXUAL HEALTH AND MINORS.

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