GPSA
GENERAL PRACTICE SUPERVISORS AUSTRALIA

MDA National
Support Protect Promote

Case 1 – Brian

Brian, a 13 year-old adolescent male, presents to your practice with his mother, Mrs C. When you ask him what the matter is, his mother interrupts. She says her son is impossible to live with and has angry outbursts. Last evening he hurt his brother and his mother says she is fearful of her safety. He spends long periods in his bedroom and Mrs C. reports that sometimes Brian says he wishes he were dead. When Brian is questioned he doesn't make eye contact but grudgingly admits his mother's recount is true.

Best Practice Response

- Brian is too young to be considered "Gillick competent". (1)
- Common law recognises that a child or young person may have the capacity to consent to medical treatment on their own behalf and without their parents' knowledge. This is known as "Gillick competence", based on a 1986 English judgment (2), which stated that the child must have a "sufficient understanding and intelligence to enable him or her to fully understand what is proposed".
- The Privacy Act does not specify an age after which individuals can make their own privacy decisions. The Office of the Australian Information Commissioner advises to assess on a case-by-case basis whether someone under the age of 18 has the capacity to consent, being that they have sufficient understanding and maturity to understand what is being proposed. If it is not practicable or reasonable to assess this capacity, you can presume that someone 15 or over has capacity to consent, and someone under 15 does not (3).
- In New South Wales and South Australia, a child's capacity to consent to medical treatment is regulated by statute, and children can consent to their own treatment once they are 14 in NSW (4) and 16 in SA (5).
- If it becomes evident that Brian poses a risk to either himself or others then you can breach his privacy and your duty of confidentiality. Doctors have an ethical duty to maintain the confidentiality of patient's personal information. (6)

- There are certain situations where doctors can breach patient confidentiality. There is an overriding duty to in the "public interest" to disclose information, such as when there is a "serious" threat of harm to an individual and it is unreasonable and/or impractical to obtain consent.
- A "serious" threat must reflect significant danger, it is a high threshold and could include a potentially life threatening situation or one that might reasonably result in other serious injury or illness to any individual, whether it be the patient concerned or a third party. (7)

(1) Bird S. *Consent to medical treatment: the mature minor.* Australian Family Physician. 2011; 40(3):1-2.) Pdf available at http://www.racgp.org.au/afp/2011/march/consent-to-medical- treatment-the-mature-minor/
(2) Gillick v West Norfolk & Wisbech Area Health Authority (1986] 1 AC 112
(3) Office of the Australian Information Commissioner. *APP Guidelines. Chapter B: Key concepts.* 2015; B.56 - 8.58. Pdf available at https://www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-b-key-concepts
(4) Section 49 (2) Minors (Property and Contracts) Act 1970 (NSW)
(5) Section 6 (1) Consent to Medical and Dental Procedures Act 1985 (SA)
(6) https://ama.com.au/media/new-code-ethics-doctors
(7) htt ps:ljwww.oaic.gov.au/ engage-with-us/consultations/health-privacy-gui dance/business- resource-using-and-disclosing-pati ents-health-information