

Case 2 – Simon

Simon, a 17 year-old male, has been brought in by his parents. He has been in trouble at school and been given internal suspension. His grades have been falling over the past year from B+ to D-. Taking a case history was difficult with Simon's mother answering most of the questions and Simon withdrawing or making remarks about his mother's responses. Six months later Simon's behaviour has deteriorated to a point where he frequently extremely agitated, hardly coherent, very angry, frustrated and irrational. He has been heard threatening harm to his teachers and himself. Do you medicate him against his will?

Best Practice Response

- Required to assess if Simon is “Gillick competent” and can consent to his medical treatment. (1). Consider having Simon only in the consultation and asking his mother to leave the room.
- 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 Simon 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)
- You are unable to medicate Simon against his will on the assumption he has the capacity to make decisions for himself. If his mother demands that you medicate him you are unable to do so.
- If Simon does not have capacity to make decision for himself (i.e. he is not Gillick competent) then you may consider either prescribing him medication with his mother being aware. As a general practitioner you may decide to refer Simon to a specialist e.g. psychiatrist or pediatrician for management.
- If Simon’s mother demands that you medicate him, you cannot be compelled to provide treatment that you do consider is warranted, even if Simon does not have capacity to consent to treatment.
- The law demands that a medical practitioner should obtain valid consent from patients before any intervention, including a test or investigation. This process will involve a discussion of benefits and risks with patients. (8)The narrower the margin between the benefits and risks, the more fully should patients be informed. The current climate in which GPs practise is one of shared decision making with their patients. There is a greater recognition of patients’ autonomy and a move away from a ‘paternalistic’ model of medical care.
- The Doctrine of Necessity may apply in this situation. The doctrine provides that treatment can be provided to Simon without his consent, this doctrine applies in circumstances where there is an emergency and or the patient is in imminent danger. The doctrine of necessity can apply where the doctor reasonably believes that some action is necessary even if it turns out later that it was not.

(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 – B.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)<https://www.oaic.gov.au/engage-with-us/consultations/health-privacy-guidance/business-resource-using-and-disclosing-patients-health-information>

(8) MDA National Defence Update Winter 2011: Consent [The Doctrine of Necessity:](#)

(9) <https://emergencylaw.wordpress.com/2017/01/31/4203/>