

Case 11 – Jennifer

Jennifer, a very mature 14 year old, requests to go on the contraceptive pill. She doesn't want her parents to know that she has a new boyfriend and that they are very much in love.

Best Practice Response

Material facts

- The relevant facts are:
 - Jennifer is a “very mature” 14 year old.
 - Jennifer has requested the contraceptive pill.
 - Jennifer doesn't want her parents to know that she has a new boyfriend and that they are very much in love.

Ethical considerations and medico-legal issues

- Doctors have an ethical duty to respect the patient's right to make their own health care decisions. This includes the right to accept, or reject, advice regarding treatments and procedures including life-sustaining treatments.
- Doctors have a duty to recognize that a competent minor may have the capacity to make a specific health care decision on their own behalf. Doctors have an ethical duty to maintain the confidentiality of patient's personal information including their medical records, disclosing their information to others only with the patient's express up-to-date consent or as required or authorized by law.
- Disclosure of a patient's personal information goes hand in hand with the patient's capacity to consent to their own treatment.
- The age at which a person becomes an 'adult' in Australia is 18 years. Consent for the medical treatment of patients less than 18 years of age is generally provided by parents. However, there are circumstances in which patients under the age of 18 can consent to their own medical treatment.
- These circumstances include where a child has sufficient understanding and intelligence to enable him or her to understand fully what is being proposed, including an understanding of the nature and effects of any procedures. This is otherwise known as “Gillick” competency.
- In *Gillick v Wisbech Area Health Authority* [1986] 1 AC 112, the issue to be determined was whether a doctor could provide contraceptive advice and prescribe contraceptives to a patient under the age of 16 years, without the prior knowledge or consent of her parents. The Court determined that there were circumstances in which a child or young person could consent to their own medical treatment. In order to do so, the child or young person must have a 'sufficient understanding and intelligence to enable him or her to fully understand what is proposed'. This is often referred to as 'Gillick competence' or the 'mature minor'.

- In Gillick, the judges determined that the concept of absolute authority by a parent over a child or young person was no longer acceptable. Because this absolute authority no longer existed, the House of Lords held that even though it will, in most cases, be in the patient's best interests to have parental consent, there may be special occasions when the best interests of the child or young person may be served without it.
- These principles have been endorsed as part of Australian common law.

MDA's recommendations

- It would be important to first ascertain Jennifer's level of understanding and intelligence before determining whether she is capable of consenting to her own medical treatment.
- If Jennifer has capacity to consent to her own medical treatment, then confidentiality over her personal health information should be maintained.
- Doctors will also need to explore whether Jennifer is at significant risk of abuse. In determining this, doctors will need to explore whether the sex is consensual and whether there is a significant age gap between Jennifer and her boyfriend. There will be mandatory reporting requirements if Jennifer is being abused.

Links to resources:

<https://ama.com.au/media/new-code-ethics-doctors>

Consent to Medical Treatment, the Mature Minor - AFP- 2011.pdf

<http://www.mdanational.com.au/Resources/Publications/Medico-legal-Booklets> (Confidentiality and Consent booklet)

FAQ - Mandatory reporting for CHILD ABUSE (update JMW Nov 14 2016).pdf