

Case 24 – Susan

Susan is asking for information about her daughter Linda’s visits to the doctor’s office. Susan suspects that Linda is sexually active and taking the pill.

(Assuming that Linda is under the age of 18)

Best Practice Response

- If you think Linda is mature enough to understand the risks of sex at her age and the risks of taking the pill, you can prescribe her the pill without her parents’ knowledge. 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 (1). 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”.
- If you have decided that Linda is mature enough in this circumstance, explain to Susan that you cannot discuss Linda’s visits with her, unless you have Linda’s consent. Empathise with Susan about her concern for her daughter, explain that you always encourage minors to discuss their health with their parents, and you always have Linda’s best interests in mind.
- 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).
- The legal age of consent for consensual sex is 16 years of age in the ACT, NSW, NT, Queensland, Victoria and WA; and 17 years of age in Tasmania and SA. If Linda is younger than this and is in a sexual relationship with an adult, or there is evidence that the relationship is abusive, she is at risk of harm and you have mandatory reporting requirements. These requirements vary across the states and territories (6) – call your MDO for advice.

- (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) Child Family Community Australia. *Mandatory reporting of child abuse and neglect*. 2016; Australian Institute of Family Studies. Available at <https://aifs.gov.au/cfca/publications/mandatory-reporting-child-abuse-and-neglect>.