Health Committee
Meeting 13
Document 33

AGE OF SEXUAL CONSENT

Medical Council Malta

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Standing Committee on Health

Social Affairs Committee and Family Affairs Committee

Meeting - 3/6/15

Malta Medical Council - Mission Statement

The Medical Council strives at ***safeguarding patients' rights and safety****…*

- *by protecting, promoting and maintaining the health of the general public…*
- *by ensuring proper standards in the practice of Medicine…*
- *as well as by* ***safeguarding the values and integrity of the Medical and Dental professions****..*

Patient Rights and Safety – Adolescents

Adolescence

- A period of transition between child and adult roles
- Most adolescents are untroubled and healthy

  - 20% go through difficult periods and behaviours

- Adolescents differ according to the **context** they are brought up and live in

- **Special health problems** - substance abuse, risky sexual behaviour, depression and suicide.

Cognition and behaviour

- Adolescent cognition and behaviour tends to be **impulsive** and **less risk averse**

  - due to a delay in neurological **development** that ***continues into adulthood***

- Cognitive changes include the development of advanced **reasoning and thinking skills**

- Adolescents also develop "meta-cognition," the ability to **understand why they think and feel** the way they do

Adolescents

- Have a sense of **invulnerability**

- **Do not think in abstract ways** about the future **consequences** of their own decisions and actions

- **Peer influence** is great. Adolescents exhibit a heightened level of **self-consciousness.** They may imagine people watching them, noticing their behaviour and appearance. They worry about being different from their peers and **conformity becomes extremely important**

- Can have **self esteem issues**

- Teens experience an **exaggerated sense of their own emotions,** thinking that others have not felt the way they do. They may **conclude that other people cannot understand them.**

- **Parents and adolescent** often **disagree** on which **behaviours** are appropriate and at what age

Adolescent behaviour

Behaviour is very relevant to the **communication needs** of the adolescent

- ***Aggression*** can be a result of fear, lack of self-esteem, or the inability to control a situation in another way.

- ***Submissive or accommodating behaviour*** allows the reduction of anxiety, guilt or fear by allowing views or thoughts to be misconstrued, ignored or taken advantage of. It is often instilled in children by parents and /or schools

- ***Avoidance behaviour*** is used to avoid confrontation. Adolescents can be highly adept at avoiding uncomfortable situations, either through a refusal to recognise a problem or by deliberately side-stepping confrontational situation

Confidentiality

- **Parental guidance** is always to be respected however **confidentiality to the adolescent is paramount.**

- The doctor should ensure confidentiality, saving the need to disclose if self harm to the adolescent or the public presents.

Adolescents - Parents

Adolescents have

- A right to be Parented
- A right to be heard
- A right to have an informed opinion, even if different to that of their parents

A responsibility

- to be informed of the consequences and heed them
- To allow their parents to guide them

Parents are not all the same

Two dimensions of parenting styles

Types of Parent	**Hostile** Cold, neglects child or ignores child's needs, uses punishment for child's behaviour	**Loving** Warm, accepts child's needs and attends to them, uses praise to control child's behaviour
Authoritarian Strict unrealistic demands on child's behaviour	Constantly strict and punishes, may be abusive physically, sexually and emotionally. Adolescent shows internalised anger, anxiety, depression and may be suicidal	Unlikely combination. If parent less extreme child may become 'overachiever' to try to please parent, but this is usually unsuccessful
Authorative Clear expectations of behaviour but these are flexible, realistic and negotiable	Combination unlikely as hostility precludes clear flexible expectations	Parent provides good guidance. Ideal combination. Adolescent likely to become well adjusted adult
Permissive Makes few demands on behaviour and provides few guidelines for child	Child's behaviour largely ignored and punishment inconsistent. Some parents may be abusive. Adolescent develops externalised anger with acting out behaviour, delinquency, drug abuse	Parent treats child too much as equal. Child spoiled and has major role conflicts as is forced to 'be parent'. Less extreme acting out behaviour.

Patient's rights and safety

Adolescents (puberty – 18yrs) have particular health issues

- Are in a **state of developmental flux** – vary; change is on a continuum – their needs change
- need to respect and nurture their **evolving capacities in** the **realization of their rights**

- Right to be able to **mature through experiences**
- Right to **be safe**
- Right to have **supportive transitions** so as **not to suffer the unseen consequences - Parental, Educational, Medical, Psychological, Social and Spiritual**

Protecting, Promoting and Maintaining Health of Adolescents

Percentage of mothers aged < 20 – EU (2010)

- EU median – 2.7%

- Switzerland - 1.1
- Romania. Latvia, Malta, Hungary, Slovakia, and the UK - 10.6

- In > half of EU countries, births to teenaged mothers account under 3% of all deliveries.

EUROPEAN PERINATAL HEALTH REPORT 2010

% number of mothers under 18 - Malta

- In the past 10 years (2004-2013), a significant decrease has been noted in the proportion of mothers delivering at less than 18 years of age

- 2004 – 2.5 % of all births
- 2009 – 2.7 %
- 2013 – 1.23 %

- Minimum age at delivery of the mothers was 13 years

National Obstetric Information System (NOIS) Report – 2013

Teenage mothers 2012-2014

Mother age at delivery(yrs)	2012	2013	2014
13	0	2	0
14	3	1	0
15	3	5	3
16	18	13	17
17	30	29	26
Total mothers	4175	4073	4275
% under 18	1.29	1.23	1.08
% mothers under 16	*0.14*	*0.20*	*0.07*
% mothers 16-17	*1.15*	*1.03*	*1.01*

Source: National Obstetrics Information System, DHIR 02/06/2015

Bugeja R - 2010

- 12% of Maltese secondary school students have sexual intercourse by the time they leave school at the age of 16.
- 1st sexual intercourse – **mean age14** (girls 1yr before boys)
- Only one in five of these young students used condoms every time they had sex.

Bugeja R - Sexual Activity and Sexual Behaviour among young people aged 14-16 yrs on the Maltese Islands - 2010

Despite their psychosocial immaturity,

adolescents are having sex.

Younger mothers – health risks

Younger mothers are more likely to

- have low social status,
- have increased risks of unwanted or hidden pregnancy,
- inadequate antenatal care, and poor nutrition.
- Poor mental and physical health

Early childbearing - associated with higher than av. rates of

- Preterm birth,
- Foetal growth restriction, and
- Perinatal mortality and morbidity.

Adolescent Health Malta

- Present legal age of consent requires **parental authority** if under 18 resulting in different provisions of health care across Malta
- **Medical profession hindered to help** by the law – fear of legal repercussions if patient needs are put first
- **Adolescent patient more at risk especially with sexual health**
- Also health **risk to community** increased

Parental authority only ceases

- in these following cases:-
  - on the death of both parents or of the child;
  - when the child attains the age of eighteen years;
  - on the marriage of the child;
  - if the child, with the consent of the parents, has left the parental home and set up a separate domestic establishment;
  - in certain cases relating with administration of property devolved by will to minors;
  - on remarriage of a parent if some obligations are not adhered to
  - by court order

Ensuring Proper Standards in Clinical Practice

Consent - Legal age

In Malta State Law

- defines an adult as one who is age 18 and over
- A minor is under age of 18 and requires parental consent to be seen medically and treated

- HOWEVER with regards to capacity, the New Mental Health Act states:

New Mental Health Act and Minors – Chap 31

Treatment and care of minors.

31. (1)

(a) In those cases where in the opinion of the responsible specialist, a ***minor has sufficient maturity and understanding to consent to treatment***, no treatment or care shall be given to the minor ***unless the minor consents to it:***

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- Provided that in the case of an *involuntary* admission if the *minor refuses to give consent,* treatment can be given to prevent physical harm to self or others or to prevent mental deterioration and notes to this effect shall be entered in the clinical records:

Mental Health Act and Minors – Chap 31cont.

(b) In those cases where in the opinion of the responsible specialist, the minor lacks sufficient maturity and understanding to consent to treatment,

- the consent of the responsible carer shall be required:

- Provided that in the case of an involuntary admission, *if the responsible carer cannot be traced or refuses* to *give consent*,
- treatment can be given to prevent physical harm to self or others or to prevent mental deterioration and
- notes to this effect shall be entered in the clinical records and in such cases measures to replace the responsible carer in terms of article 4 may be taken.

Mental Health Act and Minors – Chap 31cont.

(2) No psychosurgery, sterilisation, implantation of hormonal or other invasive devices to modify sexual and, or emotional and, or behavioural changes arising from mental illness *shall be carried out on minors.*

(3) *No clinical trials or other medical or scientific research* shall be carried out on minors suffering from a mental disorder unless the Commissioner is satisfied, after an independent review by two specialists, that the expected benefits of the trials or research are likely to outweigh any potential harm to that minor. Such trials or research shall be subject to ethical and any other additional safeguards that may be applicable.

- Furthermore, the Commissioner shall appoint an appropriate independent specialist to monitor the minor during such trials or research.

Consent

Depends on

- **Autonomy** - not be acting under duress
- **Competence** / capacity - recognize the potential risks, benefits, and consequences of a decision
- Having **all the information** pertaining to the decision

- **Consent can change** – can be withdrawn or it can be given when initially is was not
- **Documentation** of consent essential

- While adolescents need to exercise their decision-making skills as they mature, they **still need protection from adult / abusive sexual relationships**

A person's capacity to make decisions

depends on two things:

- The **nature of the decision** to be made - in this case the sexual act or sexual play and its consequences

- Their **state of mind at the time** (capacity may fluctuate, and incapacity can be temporary; drugs, alcohol, fear etc).

Teen-adult relationships

When adolescents <18 are **involved with adults** who are **substantially older** than they are, **differences between partners** in such factors as

- **maturity,**
- **life experience,**
- **social position,**
- **financial resources and**
- **physical size**

may make **such relationships inherently unequal**, and the young women/men may therefore be **vulnerable to abuse and exploitation** by their partners.

- Although **most sexual activity** among young **teens** is **voluntary**, there is evidence from studies that **some young teens**, like older teens, can get into situations where they **feel sexual pressure or coercion.**

- By virtue of their young age, however, **they may be less able to handle these situations effectively** than older teens

Law **should have** Consideration for

- **Close-in-age limits**
- **Nonexploitative / exploitative limits**

Communicating consent

- **Communication difficulties** may affect consent – organic , psychological and social reasons
- An apparent lack of capacity to give or withhold consent may be the result of communication difficulties rather than genuine incapacity.

Age of sexual consent

- Respecting rights
- Fulfilling rights
- Protecting rights

Respecting rights

Includes

- **access to information,**
- legal recognition of **evolving capacities,**
- **empowering** adolescents as citizens,
- freedom of association,
- right to **privacy,**
- **recognition of identity**
- right **to parenting**

Fulfilling rights

Including

- access to quality and inclusive secondary **education,**
- **transition** from education and training into **work,**
- ensuring appropriate opportunities for play, recreation and full participation in **cultural life** and the arts,
- access **to reproductive and sexual health information and confidential services,**
- access to appropriate **Mental Health Services and**
- **Sexual health services – medical care**

Protecting rights

Including

- addressing **violence and exploitation,**
- gender **inequalities,**
- risks associated with **digital** environments,
- **harmful norms** and practices,
- risks associated with migration or trafficking,
- susceptibility to **abuse of** both legal and illegal harmful **substances,**
- adolescents as **victims or perpetrators of crime,** and

Safeguarding the values and integrity of the Medical and Dental professions

Guiding Principles of care

- **Health and well being** of adolescent must be **safeguarded**
- Must **treat** them **as individuals** and respect their views as well as their physical and emotional well being
- When treating adolescents **parents have to be respected** **but** the patient must be the doctors' main concern – **best interest of adolescent**
- When parents are present the adolescent may not divulge information, however **parents need information** to be able to provide for child's best interest

Integrity of Professionals

- Age of consent has to **enable professionals** to provide **effective and efficient, time appropriate and safe health care** to all adolescents

- The Medical Council recommends that the **ethos of consent** in the **New Mental Health Act** pervades all legal parameters of consent to provide a **equitable, holistic practice of medical care**

Fraser Guidelines - Gillick Principles

Under common law (ie English law not Maltese Law)

- **the test for the capacity for minors to give consent to medical treatment has been determined in a case**
  - *Gillick v West Norfolk & Wisbeck Area Health Authority* [1986] AC 112 House of Lords.

- The Fraser guidelines were emanated from this case.

Fraser Guidelines - Gillick Principles

"*...whether or not a child is capable of giving the necessary consent will depend on the child's* ***maturity and understanding*** *and* ***the nature of the consent required.***

The child must be ***capable of*** *making a reasonable* ***assessment of the advantages and disadvantages of the treatment proposed****, so the consent, if given, can be properly and fairly described as true consent."*

Fraser Guidelines – apply specifically to Contraceptive Advice:

*"...a doctor could proceed to **give advice and treatment** provided he is satisfied in the following criteria:*

*1) that the girl (although under the age of 16 years of age) will **understand his advice;***

*2) that he **cannot persuade her to inform her parents** **OR** **to allow him to inform the parents** that she is seeking contraceptive advice;*

*3) that she is **very likely to continue having sexual intercourse** with or without contraceptive treatment;*

*4) that unless she receives contraceptive advice or treatment her **physical or mental health or both are likely to suffer;***

*5) that her **best interests require him to give her contraceptive advice, treatment or both without the parental consent.**"*

Gillick Competency

Lord Scarman's comments in his judgement of the Gillick case in the House of Lords (1985) are often referred to as the test of "Gillick competency":

> "*...it is* ***not enough*** *that she should* ***understand the nature of the advice*** *which is being given: she must* ***also have a sufficient maturity to understand what is involved.***"

Parents' versus Children's rights:

- Lord Sacram also commented more generally on

"*Parental right* ***yields to the child's right*** *to make his own decisions* ***when*** *he reaches a* ***sufficient understanding and intelligence*** *to be* ***capable of making up his own mind on the matter requiring decision***"

- Debate continues on issue of rights of adolescents to consent to treatment and the balance of this with the duty of professionals to act in best interest of adolescents

Conclusions

- **Adolescent developmental capacity** and the potential **consequences of sexual conduct** should **form part of** any **discussion** of the **legal significance of adolescent "consent" to sexual conduct.**

- **Age of Sexual Consent** - 16yrs - has to be **supported by regulated support services** - Medical support is one

Conclusions cont.

- **Clear guidelines** within the remit of the Law have to be pronounced

- Medical and Dental Practitioners have to be **medico-legally protected** to act in the **best interest of the adolescent**

- **Parents** should **ideally** be **informed and involved**

- **Educational campaigns** for **youth and parents** a **must**

THANK YOU