1.5.2 Medical Decision-Making and Mature Minors

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Learning Objectives

1. To understand the legal and ethical considerations in decision-making by minors.
2. To learn how to determine whether a minor has capacity to make health care decisions.

Case

Susan is a 14-year-old girl with ulcerative colitis. She has been receiving medical therapy since her diagnosis two years ago. She is admitted to the in-patient general pediatric ward for an exacerbation of her disease, requiring systemic steroids. On the fifth day of her admission, she develops acute abdominal pain, fever and hypotension. Her laboratory tests reveal leukocytosis and hypoalbuminemia. Computed tomography imaging shows evidence of toxic megacolon, which is an indication for urgent surgical intervention. The surgeon on call is consulted and explains to Susan and her parents the need for urgent laparotomy.

Susan refuses to undergo surgery, citing fears of scarring. The surgeon is concerned that she does not understand that declining surgery may lead to sepsis and death. The parents want her to proceed with the surgery. Susan tells her parents about her concerns about scarring and the importance of her body image to her overall well-being and confidence. She states that she would rather risk death than have a scar.

Questions

1. Does Canadian law define an age of decision-making capacity?
2. Are there any professional society guidelines on the issue of decision-making by minors?
3. How does one determine the capacity for decision-making in adolescents? What are the similarities between adults and adolescents?
4. Are there any differences in this capacity between adolescents and adults?
5. How would you manage this case if the consensus was that Susan was incapable?
6. How would you manage this case if Susan is determined to be capable?

Discussion

Q1. Does Canadian law define an age of decision-making capacity?

Canadian law generally recognizes that decision-making capacity is not tied strictly to age. New Brunswick has passed legislation specifying the age at which a minor can consent to treatment. The New Brunswick Medical Consent of Minors Act assures that minors 16 years or older have the same right to refuse or to consent to medical treatment as adults do. The New Brunswick Act also provides that a minor under the age of 16 can make decisions about medical treatment if two medical practitioners are of the opinion that the minor is capable of understanding the nature and consequences of the medical treatment and that the treatment and procedures are in the best interests of the minor and his or her continued health and well-being. The Quebec Civil Code states that a 14-year-old can consent to care. However, the consent of a parental authority is also necessary if the care sought is not medically required and entails a health risk. Ontario, Alberta, British Columbia, Manitoba and Saskatchewan do not identify an age at which minors may exercise independent consent for health care. These provinces follow the "mature minor doctrine," which recognizes that the level of the patient's understanding of the nature and consequences of the treatment have determinants beyond age. This allows physicians to make a determination of capacity to consent for a child just as they would for an adult.

Q2. Are there any professional society guidelines on the issue of decision-making by minors?

The Canadian Paediatric Society, the American Academy of Pediatrics and the Society for Adolescent Medicine have
issued policy statements on medical decision-making by minors.\textsuperscript{9-11} The Canadian Paediatric Society requires that the minor demonstrate comprehension of the magnitude of the intervention, the probabilities of harm and benefit, and the consequences of consent or refusal. The American Academy of Pediatrics policy statement emphasizes that a minor's choice must be voluntary and rational.

**Q3. How does one determine the capacity for decision-making in adolescents? What are the similarities between adults and adolescents?**

As outlined above by Canadian and American professional societies, the elements of decision-making capacity for adolescents mirror those for adults. Decision-making capacity requires that:

- the patient be informed of his or her condition, prognosis, proposed treatments and alternatives;
- the patient understands the risks and potential benefits of each alternative and the consequences of choosing a particular alternative; and
- the patient has the ability to relate a choice to a stable set of values.\textsuperscript{1,9-11}

According to Jean Piaget's cognitive development theory, individuals aged 14 years and older have essentially the same capacities to process information as adults. There is also evidence that adolescents have the capacity to understand the concept of life and death.\textsuperscript{12}

Like adults, adolescents may be influenced by their religious beliefs. In the case of a Jehovah's Witness adolescent, the refusal of blood transfusions may reflect the adolescent's own religious beliefs. The courts have upheld adolescents' refusal of transfusions on the basis of religious beliefs in New Brunswick, Newfoundland and Ontario.\textsuperscript{1}

**Q4. Are there any differences in this capacity between adolescents and adults?**

Adolescents' treatment choices may be significantly influenced by age-specific and transient influences. In a study of the choices of adolescents with epilepsy, a significant proportion of adolescents rejected treatment with phenytoin because of concerns regarding gum swelling or excessive body hair.\textsuperscript{13} Other concerns that are relevant to adolescents include lack of acceptance from a peer group and the impact of medical treatment such as hemodialysis on personal independence.\textsuperscript{12} It can be argued that religious beliefs may reflect a stable set of values, whereas the age-specific concerns of image and peer group acceptance may reflect a transient set of values for the adolescent. Patients are held to a higher standard of decision-making capacity based on the seriousness of the medical condition and the consequences of accepting or forgoing treatment.

**Q5. How would you manage this case if the consensus was that Susan was incapable?**

If Susan were not capable of making decisions regarding surgery, her parents would act as substitute decision-makers. Further steps would be required if her parents were not making decisions in her best interest. Physicians may solicit the assistance of other professional services, including hospital ethicists, hospital legal counsel and children's aid societies. The courts may be approached by the hospital to hear the views of all the party members and adjudicate the conflict.

**Q6. How would you manage this case if Susan was determined to be capable?**

The principle of respect for persons requires that the wishes of capable, autonomous individuals be honoured. If it were determined that Susan had decision-making capacity with respect to the choice of whether or not to undergo surgery, then her decision would have to be respected.

**References**


Resources