

# **Guidelines on the Management of Consent and Confidentiality When Working with Minors**

## **Alberta College of Social Workers**

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In the province of Alberta anyone under the age of 18 is considered a minor. However, it is recognized that as teens age they develop a greater ability to make independent decisions regarding their own bodies and wellbeing. When a teen is deemed capable of making such decisions he/she is deemed a mature minor for the purpose of independently engaging with a defined health service, for the duration of the consented to episode of care.

These guidelines are intended to help social workers manage consent and confidentiality when working with minors in the province of Alberta. They are not meant to be fixed protocols and do not replace the need for ongoing consultation in the provision of social work services to minors.

### **1. When a minor is a client**

ACSW Standards of Practice require that consent be obtained from a client before providing professional services to them (B.4(e)). The ACSW Standards of Practice defines a client as “an adult or minor age 14 or over who has the requisite understanding to appreciate the nature and consequences of the professional services being provided” (A(a)(i)). A minor may also be a client when legislation provides for the provision of services directly to the minor (for instance in the case of the *Child and Youth Advocate Act* Chapter C-11.5).

Notwithstanding the definition of “client” in the Standards of Practice all persons receiving services from a social worker, irrespective of their age or their capacity to consent to services or to share information, must be treated with respect and dignity, and the principles of confidentiality and consent must be honoured.

### **Mature Minor Doctrine**

### **2. Rebuttable presumption that minors 16 years and older have capacity to consent to services**

The law recognizes that as minors age they should have increasing say over decisions that affect them and their bodies. A minor’s thought of what is in their best interest becomes increasingly determinative of what their best interests are as they mature (*A.C. v. Manitoba (Director of Child and Family Services)* 2009 SCC 30). Consequently, case law has established that minors aged 16 and over have *defacto* medical decision making authority, unless the minor does not understand implications of the decision or appreciate its consequences. Thus, there is a rebuttable presumption that minors 16 years and older have medical decision making authority.

### **3. Minors under 16 years of age may establish decision making authority**

In Canada, the Mature Minor Doctrine addresses the ability of a minor to consent to medical treatment. Mature Minor Doctrine can also be applied in the same manner to consent for social work services. The ACSW Standards of Practice suggests that a minor age 14 or older can be a client. However, this age should not be taken as an end point in determining whether a legal minor is deemed a mature minor. Rather, it is a starting point for assessing whether a minor has

the requisite understanding to appreciate the nature and consequences of the service being provided.

Factors to consider in determining whether a minor has decisional making authority (adapted from the College of Alberta Psychologists Practice Alert for Mature Minors):

- What is the nature, purpose and utility of the recommended treatment/service? What are the risks and benefits? The greater the risk and the more intrusive the intervention, there is a correspondingly greater expectation of maturity with the youth
- Does the minor demonstrate the intellectual capacity and sophistication to understand the information relevant to making the decision, and to appreciate the potential consequences?
- Is there reason to believe that the minor's views are stable and a true reflection of their core values and beliefs? Or, are there other factors unduly influencing their values and core beliefs?
- What is the potential impact of the minor's environment (lifestyle, family relationships and broader social affiliations) on their ability to exercise independent judgment?
- Does the minor have any emotional or psychiatric vulnerabilities?
- Does the minor's condition or illness have an impact on their decision-making capacity?

In determining whether a minor is a mature minor social workers must be responsible for their subjective views of what the best decision is for the minor.

For practice purposes the discussion above implies that for minors aged 14-15 years, a social worker should consider why the minor may be deemed a mature minor when accessing services, while for minors aged 16-17 years, a social worker should consider why the minor would *not* be deemed a mature minor when accessing services.

#### **4. Exception for Legislated Services**

When provided for by legislation, minors may have a right to receive services from service providers designated under the legislation, whether or not they are a mature minor. The legislation may also provide that minors have a right to confidentiality, whether they are a mature minor or not (including and not limited to the *Child and Youth Advocate Act*, Chapter C-11.5).

#### **5. A mature minor's rights to confidentiality**

Once a minor is deemed a mature minor for the purposes of consenting for services, they correspondingly have authority to manage the disclosure of health information associated with the care for which they provided consent. The parent/guardian does not have an automatic right of access to the mature minor's confidential information unless the mature minor provides written consent.

Once the mature minor doctrine is conferred upon a minor, it does not automatically apply to all future service events while they remain a legal minor. Mature minor status must be assessed at the onset of all future access points to service with a social worker, and should be considered with the implementation of any new intervention during a period of care with a particular social worker or service agency.

## **Consent and confidentiality when a minor is not a mature minor**

### **6. Requirements for consent when a minor is not a mature minor**

When a minor is under 14 years of age, or over 14 years of age and not deemed a mature minor, consent for services must be sought from a guardian. A person may be a guardian by virtue of meeting one or more of the requirements under the *Alberta Family Law Act*, by virtue of an agreement, or by appointment under a court order.

#### **a) The following people may be guardians for the purpose of giving consent:**

- i. Natural parent - if he/she meets the co-habitation or marriage criterion under the Family Law Act
- ii. Adoptive parent - provided the court order is current and consent has not been revoked by natural parents
- iii. Divorced parents – if there is joint custody; access parent is still a guardian but only has the “right to know”, not a “right to be consulted”
- iv. Common law relationship parent – (including same sex partners) – if both parents are natural parents, both are guardians. If not, then the non-natural parent is not a guardian unless appointed by court order
- v. Guardians appointed under court order – private guardians, as well as guardians appointed for children after apprehension by a child protection authority
- vi. Guardians appointed under a will

Step-parents are not guardians, unless there is a court order appointing them as such. Similarly, foster parents are not guardians, although they may be delegated authority to make certain decisions through an appointment.

#### **b) From whom *must* consent be obtained when providing services to a minor who is not a mature minor**

Section 104 of the *Health Information Act*, provides that consent of a guardian must be sought when a minor is not deemed a mature minor. Whenever there is more than one legal guardian, those rights and responsibilities are equally shared between the guardians, or differently divided between them as accorded by a specific court order.

The answer to the question of who must consent be obtained from depends on the circumstances. Who consent *must* be obtained from, as opposed to who consent *may* be obtained from, is a matter of professional judgement on the part of the social worker. Families dealing with separation and divorce may have acrimonious dynamics. Situations involving domestic violence or child sexual abuse also require professional judgement. Allowing one guardian the authority to exclusively bring a minor for services, potentially against the express wishes of the other guardian, could very well put a minor in an untenable and/or harmful position, and would arguably not be in the best interests of the child. And at the same time, refusing treatment of a minor because one guardian will not consent may be equally untenable for the minor and the guardian, and may not be in the best interests of the child.

Given that there is not one rule that will likely fit all situations, a social worker will need to assess each situation on its own merit, taking into consideration the point of view of all guardians, the nature of the services being sought, the age of the child, the status of the family, court orders in place, legal proceedings underway, and active judicial and/or child and family services investigations.

A best practice would be to obtain consent from all guardians where practicable. When this is not practicable, the social worker should determine who the most appropriate guardian is to give consent, and then obtain consent from that guardian. Of course, all decisions regarding consent for services on behalf of minors must be made in the best interests of the child, regardless of who is giving consent, and should be documented accordingly.

**c) A minor's right to confidentiality**

Confidentiality with a minor should be considered separately from consent for services, though the two can overlap. If a minor was not deemed a mature minor for the purpose of consenting for services, then the right to confidentiality must be independently discussed and negotiated with the minor and his/her guardian. Ultimately, minors who are not mature minors do not have an unfettered right to confidentiality. As provided in Standards D.3 and D.6 it behooves a social worker to negotiate and discuss matters of confidentiality at the outset of their involvement as part of their informed consent to care when working with minors.

Standards of Practice

- D3. A social worker working with a person under the age of majority who has not been designated a mature minor or as an adult and who has a guardian will discuss with the relevant parties where appropriate, who will have access to all or parts of the record. The discussion and any agreement reached with regard to access shall be recorded on the client file.
- D6. A social worker working with a person under the age of majority who has not been designated a mature minor or who has a guardian will discuss with the relevant parties, where appropriate, the limit the law imposes on the right to confidentiality with respect to communications with the social worker.