

Prescribing for a Minor – Anti-Depressants

Dr X is a GP in a busy practice in Dublin. He has a large GMS list. His first patient on this list on a Wednesday morning is Miss Y, a 15 year old girl with a history of deliberate self-harm. She tells him that she is having difficulty sleeping, is not eating and her mood is low. She has previously been seen and treated in psychiatry. Miss Y's parents are separated, with both retaining legal guardianship. Dr X does not consider that she requires another referral to psychiatry at the current time, but would consider prescribing a low dose of antidepressant.

Miss Y's father is adamant that there is nothing wrong with her and that she does not require treatment. Miss Y lives with her mother.

NOTE: This case study does not form part of the Guide to Ethics and Professionalism for Registered Medical Practitioners, nor does it constitute clinical or legal advice. It is intended as a helpful illustration of a potential scenario.

What are the ethical and legal options open to Dr X in this situation?

The Guide to Professional Conduct and Ethics for Registered Medical Practitioners can offer some ethical advice on this case. Paragraph 18.5 states;

18.5 If a young person refuses to involve a parent/guardian, you should consider the young person's rights and best interests, taking into account:

- **the young person's maturity and ability to understand the information relevant to the decision and to appreciate its potential consequences**
- whether the young person's views are **stable** and reflect their core values and beliefs
- whether the young person's physical or **mental health**, or any other factors are affecting their ability to exercise independent judgement
- the nature, purpose and usefulness of the treatment or social care intervention
- the risks and benefits involved in the treatment or social care intervention, and
- any other specific welfare, protection or public health considerations, covered by relevant guidance and protocols such as the 2011 [Children First: National Guidelines for the Protection and Welfare of Children](#) (or any equivalent replacement document). Where this is the case, the relevant guidance or protocols must be followed.

Paragraph 18.7 provides for the doctor using his/her own discretion when treating a mature minor without informing their parent/guardian;

18.7 You should provide treatment for young people without informing their parent(s) or guardian(s) if, having considered the factors in paragraph 18.5, you consider that it is in the patient's best interests to do so and the patient has sufficient maturity and understanding to make the decision.

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What are Dr X's Legal Obligations?

Section 23 of the Non-Fatal Offences against the Persons Act.

This permits young people aged 16 and over to consent to surgical, medical or dental treatment without consent from their parents/guardian. Parental/guardian consent is required for surgical, medical or dental treatment on children aged under 16.

Section 23 does not encompass the provision of mental health treatment or care. Provision of mental health services to minors under 16 requires parental/guardian consent.

Minors aged 16-18

Where access to mental health treatment is on an outpatient basis through CAMHS, GP or other counselling service, it seems that the patient may consent to treatment without parental/guardian consent. It appears that the 'mature minor' approach may be capable of applying to minors under 16 accessing these services.

There is an uncertain relationship between the Mental Health Act 2001 and the Non-Fatal Offences against the Person Act 1997. Can a 16 or 17 year old admitted for treatment under the MHA consent to treatment without parental/guardian consent?

Dr X would be advised to be cautious in such circumstances. Parental/guardian consent is required for mental health treatment of minors under 18 being treated for mental disorder covered by the 2001 MHA; in general terms, a patient admitted to hospital either on a voluntary or involuntary basis under the 2001 Act.

Is consent required by both parents?

Even where Miss Y's parents are separated and do not live together, they both remain her legal guardians even if Miss Y does not live with her father and even if he has not been awarded custody. However ultimately, they have an obligation to act in the best interests of Miss Y. Article 41 of the [Constitution](#) and the [Guardian of Infants Act 1964](#) suggests that consent of both is required. If Miss Y's parents want to be involved in a decision regarding her treatment for depression, this should be facilitated as far as possible.

However, if trying to get consent from both parents is difficult from a practical point of view, it could lead to delay in treatment. This needs to be balanced against what is in the best interests of the patient, where Miss Y's welfare is of paramount consideration. Where the proposed treatment may have profound, irreversible consequences, both parents/guardians should be consulted, if possible.

Because of her age, any mental health treatment Miss Y receives will require parental consent, subject to the possibility of Gillick-style competency being applicable. Although it is not recognised in Ireland, the latest edition of the Medical Council's Ethical Guide and the HSE National Consent Policy support the application of Gillick-style.

In summary, Miss Y is 15 and therefore consent would be required by her parent(s) to provide treatment to her. Dr X would need to give consideration as to whether, as a 'mature minor', he could justify treatment without parental consent, bearing in mind his ethical obligations under the new

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guide. Where she is 16 and the treatment is on an outpatient basis or in a GP practice, then parental consent is not required. However, if she was to be admitted to hospital, under the Mental Health Act, consent would be required for psychiatric treatment whilst she is under 18.

With reference to parental consent being required by both parents in this case, it would depend on the type of treatment and whether it would have profound and irreversible consequences, where consent from both would be advised, balanced against what is in the best interests of the patient, where consent from one may be justified.

Further Resources:

Mental Health Act, 2001

<http://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/html>

HSE National Consent Policy

http://www.hse.ie/eng/about/Who/qualityandpatientsafety/National_Consent_Policy/National%20Consent%20PolicyMay14.pdf

Non-Fatal Offences against the Person Act, 1997

<http://www.irishstatutebook.ie/eli/1997/act/26/section/23/enacted/en/html#sec23>

Irish Constitution

https://www.constitution.ie/Documents/Bhunreacht_na_hEireann_web.pdf

Children First: National Guidelines for the Protection and Welfare of Children

<http://www.dcy.gov.ie/documents/Publications/ChildrenFirst.pdf>

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