

Ethical Issues in Child and Adolescent Psychiatry

- Avi Kriechman, M.D.
- UNM Department of Psychiatry
- Center for Rural and Community Behavioral Health
- Division of Child and Adolescent Psychiatry

Fundamental Ethical Principles

Beneficence

- Beneficence: promoting the welfare of children and adolescents
- The wellbeing, functioning, and development of youth as individuals, and as a group, should be optimized whenever appropriate
- Social, familial and other group pressures should not override the best interest of the child

Fundamental Ethical Principles

Nonmaleficence

- Clinicians should avoid any practice that is harmful to, or may hinder, the optimal development of the child
- Efforts should be made to minimize harm to children as a group due to the action of others
- Relationships with patients beyond professional interactions should be carefully considered and avoided when indicated or harmful
- Any conflicts of interests or obligations to those other than the patient should be readily disclosed

Fundamental Ethical Principles

Autonomy

- Respecting the decisional capacity of persons to make informed choices – the rights of youth in decision making – is key to establishing trust
- For youth under 18, consent for treatment should be obtained from the guardian with assent from the minor
- Certain treatments are available to minors without guardian consent
- Additional attention when youth and guardian disagree about treatment decisions
- Assent, Dissent, Informed Consent

Minor

Minors (under age 18) do not have same constitutional rights as adults:

- vulnerability of children
- limited decision-making capacity
- important role parents play in making decisions for their children

Allowable treatment of minors without parental consent

Mature Minor: minor may seek medical care without parental consent if she can convince the court she is mature enough to act in her own best interest and thus make an independent judgment to consent to treatment. The process that allows minor to be declared mature is known as judicial bypass.

Emancipated Minor: Adult status by virtue of assuming adult responsibilities: minimum age (typically 16): self-supporting and not living at home; married; pregnant; parent; in the military; declared emancipated by court. Emancipated minors relinquish the right to parental support.

Emergency Situation

Consent, Assent, Dissent Defined

Informed Consent

- Cognitive capacity to understand condition and risks and benefits of proposed treatment (including the option of no treatment)
- Voluntarily decide whether or not to proceed with a treatment recommendation (including ability to make choices free from coercion)
- Able to communicate decision/preference to clinician

Assent: A minor's affirmative agreement **Dissent:** A minor's refusal

(Note on parental permission: do not assume that the adult living with the child is their legal guardian. This may be especially true for maltreated children or children in foster placements, who have unstable living arrangements.)

Consent: General Guidelines

- Youth under 18 should be involved in decision making about their care and assent should be obtained. Guardians must always consent to treatment except in emergencies or in certain states when treatment is available to a minor without guardian consent and it is in the best interest of the child to bypass the guardian (e.g., sexually transmitted disease, pregnancy-related treatment, contraception). Practitioners should provide full communication about all relevant issues for informed decisions to be made. Particular care should be taken when youth and guardian disagree.
- Complicating this ethical guideline is the fact that the minor is often not the one initiating the evaluation for mental health concerns or treatment. Also, some treatments lack rigorous pediatric data supporting their effectiveness or long-term neurodevelopmental impact.

New Mexico Law

- Child 14 or older presumed to have capacity to consent to verbal treatment that does not include aversive interventions
- Child under 14 may consent to initial assessment for medically necessary early intervention service limited to verbal therapy. Purpose of initial assessment to allow a clinician to determine what, if any, action needs to be taken to ensure appropriate mental health or habilitation services are provided. Clinician has 2 weeks to conduct this assessment.

New Mexico Law: continued

- Psychotropic medications may be given to a child 14+ with informed consent of child and notice to parent
- If child 14+ lacks capacity, process for parent to act as surrogate without court order
- Un-emancipated minor 14+ may consent for medically necessary care if 1) minor is living apart from parents or guardian or 2) is the parent of a child

Fundamental Ethical Principles

Autonomy and Fidelity

- **Fidelity and autonomy** are linked ethical concepts that are relevant to **confidentiality** in that **fidelity** refers to upholding one's duty and loyalty to a patient, while **autonomy** refers to the child's (and especially, the adolescent's), right to self-determination within a developmental context.

Third Party Influence (Fidelity)

- A patient's best interests supersede competing interests
- Practitioners should contemplate how his/her role may be influenced by outside parties
- Practitioners should monitor their professional interactions to support patient welfare

Confidentiality

- Right to control access to health care information
- Limits of confidentiality and circumstances necessitating disclosures should be discussed in a developmentally appropriate manner with the patient and the guardian
- Documented release of information to outside entities must occur with guardian consent and patient assent except in emergencies
- Services provided by school employees to students require separate analysis

Medical Records: HIPAA

Health Insurance Portability and Accountability Act: HIPAA

Exceptions to parental access to child's medical records

- minor obtains care at direction of a court
- parent agrees to confidential relationship
- whether or not state law permits or denies access (if state law is silent, provider may exercise professional judgment)
- duty to report abuse and neglect. In NM, *every person* (not limited to school officials or care providers) who knows or has a *reasonable suspicion* that child is abused or neglected shall report the matter immediately personally (school reports need NOT come through school principal)

NM: Exceptions to confidentiality

Exceptions for child under 14 whether authorization required for disclosure

- for treatment made in response to request from a clinician
- medically necessary care to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the child on self or another
- summary information essential to child's treatment can be provided to legal custodian
- information given to primary caregiver of child to continue necessary treatment
- for purposes of payment of treatment expense
- pursuant to court order

Educational Records: FERPA

Family Educational Rights and Privacy Act FERPA

- Education records = records directly related to student at educational agency or institution
- Personal notes/memory aids used only by person are not educational unless they're shared with/disclosed to another
- Parents have right to inspect and review all educational records relating to their child, including right to have copies of records and receive explanations and interpretations from school officials
- FERPA does **not** allow schools to protect health care information differently than other information when it's created by school personnel; school based health center is separate from school only if it is clear health care provider owns medical practice and controls medical records

Reporting suspected substance abuse in students

School employees who know or in good faith suspect student of using/abusing alcohol or drugs shall report pursuant to local school board procedures; they are released from liability

Student Health Information and Confidentiality

- Important to develop policies/procedures that protect confidential student health info yet allow for exchange between SBHC and school as well as SBHC and community health professionals whenever info exchange determined to be in a student's best interest
- Adolescent health experts agree that adolescents will not seek care unless they are assured of confidential services

Fundamental Ethical Principles:

Justice

Advocacy and Equity (Justice)

- Practitioners should strive to make access to mental health care available to all children and families in need
- Risks of care or research should not be unjustly borne by excessively vulnerable youth

Advocacy and Equity

Treat the earth well: it was not given to you by your parents, it was loaned to you by your children. We do not inherit the Earth from our Ancestors, we borrow it from our Children.

Native American Indian Proverb

Selected References

- American Academy of Child and Adolescent Psychiatry Code of Ethics
- “Informed Consent, Parental Permission, and Assent in Pediatric Practice”, Committee on Bioethics, American Academy of Pediatrics
- “Ethical Considerations in Child and Adolescent Psychiatry” FOCUS Summer 2012, Vol. X, No. 3
- Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) To Student Health Records (Nov. 2008)