REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS*

CEJA Report 3-A-13

Subject: Amendment to E-5.055, "Confidential Care for Minors" (Resolution 1-A-12)

Presented by: H. Rex Greene, MD, Chair

Referred to: Reference Committee on Amendments to Constitution and Bylaws (William T. Bradley, MD, Chair)

This report is submitted in response to Resolution 1-A-12, "HPV Vaccination for Minors," introduced by the Medical Student Section and referred by the House of Delegates, which asks that "our American Medical Association (AMA) develop and support model state legislation allowing unemancipated minors to consent to HPV vaccination" and was referred to the Council on Ethical and Judicial Affairs (CEJA) by the Board of Trustees for input on the relevant ethical considerations. Based on its review of the ethical analysis that informs current AMA policies, CEJA recommends that Resolution 1 be addressed by amending Opinion E-5.055, "Confidential Care for Minors" to allow minors to consent to measures that not only treat sexually transmitted disease, but also prevent it.

BACKGROUND

Human papillomavirus (HPV) is one the most common sexually transmitted infections (STI) in the world with a lifetime prevalence of 80%, and an estimated 6.2 million new infections occurring each year.[1,2] The Food and Drug Administration has approved several vaccines that are between 93%-100% effective in preventing the strains of HPV that are associated with cancers and genital warts in both males and females.[1] Vaccination can prevent 70% of all cervical cancers as well as vaginal and vulvar cancers in females, 90% of genital warts in both genders, and anal, penile, and oropharyngeal cancers.[1,3] Although HPV vaccines can be administered through age 26, the Center for Disease Control's (CDC) Advisory Committee on Immunization Practices (ACIP) recommends HPV vaccinations in early adolescence, when the best antibody response occurs and before the adolescent becomes sexually active.[4,5] The vaccine can be administered as early as 9 years of age and ACIP recommends HPV vaccination for both adolescent males and females, given the disease burden associated with HPV in both genders.[4,5]

An estimated 24% of parents may object to vaccinating their children against HPV [2]. Parents may not wish to consent to the vaccine on behalf of their children for a variety of reasons: they are conscientious objectors of vaccines generally; they do not feel their child is at risk for acquiring an STI, safety concerns, a lack of knowledge about the vaccine, or perceptions that the vaccine will promote sexual activity prematurely.[2,6,7] Recent data reveals that HPV vaccination of 11 and 12 year old girls is not associated with the clinical markers that suggest increased sexual activity like

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sexually transmitted disease or pregnancy.[8] The FDA has licensed HPV vaccines as safe and effective, and vaccination has shown only mild side effects like pain, fever, headache, or nausea.[9]

HPV vaccination has been at the center of state legislation over last several years, mainly considering whether states can and should mandate HPV vaccination for minors.[10] With respect to the question of consent, in January 2012, a California law went into effect that explicitly allows minors (ages 12 years and older) to consent not just to treatment and diagnosis of STIs (which the law already permitted), but also to prevention of STIs, including the HPV vaccine, Hepatitis B vaccine, and medications to prevent HIV exposure before or after sexual contact.[11,12]

CURRENT AMA POLICY

AMA Policy H-60.965, "Confidential Health Services for Adolescents," confirms that confidential care for adolescents is critical to improving patient health and that, while parental involvement in children's health should generally be encouraged, parental consent should not act as a barrier to needed medical care.[13] Moreover, H-60.958, "Rights of Minors to Consent for STD/HIV Prevention, Diagnosis, and Treatment," emphasizes the importance of minors being permitted to consent for prevention of STIs, as well as STI treatment and diagnosis.[14] While Opinion E-10.016, "Pediatric Decision-Making," acknowledges that generally parental consent should be sought in the treatment of pediatric patients, parental consent is not always mandatory.[15] For example, Opinion E-2.015, Mandatory Parental Consent to Abortion," ultimately allows minors to consent to abortion without parental involvement when, in the discretion of the minor, parental involvement is not appropriate.[16] Moreover, Opinion E-5.055, "Confidential Care for Minors," provides ethical guidance for physicians in the provision of other types of medical care to minors without parental consent.[17] According to Opinion E-5.055 and its related report, CEJA Report G-A-92, "Confidential Care for Minors," physicians should always permit competent minors to consent to medical care, only notifying parents with the patient's consent.[17,18] For incompetent minors physicians should ordinarily provide certain types of medical services without parental consent if, in the absence of confidentiality, the minor may otherwise fail to receive healthcare that is necessary to prevent serious harm. Such services include contraception, treatment of STI, pregnancy-related care, drug and alcohol abuse or mental health treatment.[17,18]

ETHICAL CONSIDERATIONS

Confidentiality is necessary in the medical encounter to ensure that patients are not reluctant to disclose all relevant health information or to visit the physician for certain sensitive health problems.[18] Confidentiality is of particular importance in minor care, or minors may avoid care that they do not want their parents to learn about.[18] Parents are generally seen as the authority in their children's health, including in making healthcare decisions on behalf of their children, however this relationship changes as the child matures and increasing need for confidentiality emerges.[18] In the vast majority of scenarios, minors will not object to their parents' involvement in their healthcare. Yet some care is private in nature and may be associated with behaviors that the parent would disapprove of, such as use of contraceptives or treatment for drug abuse. While minors should be encouraged to involve their parents in healthcare decisions and such involvement will usually be in line with the best interests of the minor, there are times where it is important to preserve confidentiality in order to ensure that the minor feels safe to seek care that can prevent serious harm.[6,7,18]

As AMA Policy H-60.958 already recognizes, preventing STIs in minors is equally as important as treating them—thus confidentiality is important in either case. Just like treatment for STIs, adolescents may be reluctant to seek care to prevent STIs and include their parents in these decisions for a variety of reasons: a desire to take ownership over their own health as they develop autonomy, or fear of embarrassment, parental disapproval, or parent refusal.[6] Without confidential care, some minors may avoid such preventive measures rather than have their parents find out. If parental consent is required, patients may fail to receive care which is necessary to promote patient health and prevent serious harm. For example, an HPV vaccine allows the prevention of a number of burdensome cancers associated with the disease, and the morbidity and mortality associated with those cancers. Moreover, like treatment for STIs, prevention of STIs may also be time-sensitive (as in the case of the HPV vaccine which minors should ideally receive before reaching age of majority). Preventive measures (like treatment) involve sensitive, private health matters where parental consent may sometimes act as a barrier to important care and thus confidential care should be permitted in preventive STI treatment as it is in treatment and diagnosis. Such preventive measures may include vaccinations against STIs, as well as medicines that minimize exposure to STIs. Like treatment of STIs, physicians should generally provide preventive STI measures to minor patients without requiring parental consent.

Like other services, the physician who is uncomfortable administering the vaccine without parental involvement should inform the patient that care may be available elsewhere.

RECOMMENDATION

Given these considerations, the Council recommends that Opinion E-5.055, "Confidential Care for Minors," be amended by insertion as follows and that the remainder of this report be filed:

> Physicians who treat minors have an ethical duty to promote the autonomy of minor patients by involving them in the medical decision-making process to a degree commensurate with their abilities.
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> When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor's reasons for not involving their parents and correcting misconceptions that may be motivating their objections.
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> Where the law does not require otherwise, physicians should permit a competent minor to consent to medical care and should not notify parents without the patient's consent. Depending on the seriousness of the decision, competence may be evaluated by physicians for most minors. When necessary, experts in adolescent medicine or child psychological development should be consulted. Use of the courts for competence determinations should be made only as a last resort.
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> When an immature minor requests contraceptive services, pregnancy-related care (including pregnancy testing, prenatal and postnatal care, and delivery services), or treatment for sexually transmitted disease, measures to prevent sexually transmitted disease, drug and alcohol abuse, or mental illness, physicians must recognize that requiring parental involvement may be counterproductive to the health of the patient. Physicians should encourage parental involvement in these situations. However, if the minor continues to object, his or her wishes ordinarily should be respected. If the physician is uncomfortable with providing services without parental involvement, and alternative confidential services are available, the minor

may be referred to those services. In cases when the physician believes that without parental involvement and guidance, the minor will face a serious health threat, and there is reason to believe that the parents will be helpful and understanding, disclosing the problem to the parents is ethically justified. When the physician does breach confidentiality to the parents, he or she must discuss the reasons for the breach with the minor prior to the disclosure.

For minors who are mature enough to be unaccompanied by their parents for their examination, confidentiality of information disclosed during an exam, interview, or in counseling should be maintained. Such information may be disclosed to parents when the patient consents to disclosure. Confidentiality may be justifiably breached in situations for which confidentiality for adults may be breached, according to Opinion 5.05, "Confidentiality." In addition, confidentiality for immature minors may be ethically breached when necessary to enable the parent to make an informed decision about treatment for the minor or when such a breach is necessary to avert serious harm to the minor. (IV)

Modify Current HOD Policy

Fiscal Note: $500

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13. H-60.965 Confidential Health Services for Adolescents.
14. H-60.958 Rights of Minors to Consent for STD/HIV Prevention, Diagnosis, and Treatment.
15. E-10.016, Pediatric Decision-Making.
16. E-2.015, Mandatory Parental Consent to Abortion.
17. E-5.055, Confidential Care for Minors.
18. CEJA Report G-A-92, Confidential Care for Minors.