

Discussion Pearls from Breakout Session: Legal Issues Related To Immunization

Mature Minor Consent (MMC)

- The question was raised: “Can school boards block access to the provision of health care, and if so, how?” Discussion: There was disappointment last year regarding the lack of political will to support MMC with respect to the HPV vaccine. However, in life, there is often a gap between one’s legal entitlement and reality. All agreed that the best approach was to maintain healthy working relationships with schools. A suggested remedy would be to change the School Act to state that the “Public Health Nurse must be allowed access to a room to provide health services, and that all student records must be provided upon request”. Another suggestion was to disseminate MMC information to youths re: their rights and options around consent for health care.
- One Health Authority noted that MMC is usually time consuming and it takes less time/effort to obtain parental consent
- All agreed that a slow, incremental approach to changing the attitudes and beliefs around MMC is best: “build relationships with the schools, and educate them about the law relating to mature minors and health care”.

Only one Parent Consenting for Vaccines

- The question was asked: “What do we do if a parent presents their child for an immunization and reveals that the other parent does not consent for this vaccine”?
- The legal advice is to not immunize the child unless the presenting parent has custody and the sole right to make health care decisions for the child, otherwise, the nurse could be liable for battery.

Parents Requesting Child’s Immunization Record

- This is the time of year when health units receive many requests for immunization records required for attendance at college or university, and often it is the parent who is calling on behalf of a teenage child
- The question was asked: “What if a child consented for a vaccine without their parents knowing and now, by releasing the record to the parent in the absence of the child’s consent for release of information, we are sharing private health information?”
- Section 3 of the Freedom of Information and Protection of Privacy Regulation provides:

3 The right to access a record under section 4 of the Act, the right to request correction of personal information under section 29 of the Act or the right to consent to disclosure of personal information under section 33 of the Act may be exercised as follows:

- (a) on behalf of an individual under 19 years of age, by the individual's parent or guardian if the individual is incapable of exercising those rights;
- (b) on behalf of an individual who has a committee, by the individual's committee;

(c) on behalf of a deceased individual, by the deceased's nearest relative or personal representative.
[en. B.C. Reg. 293/2003.]

Practically speaking, this means that health units should only release immunization records to parents with the consent of their child unless the health unit is satisfied that the child is incapable of consenting to disclosure by virtue of age, or some other reason.

- Some Health Authorities are documenting MMC into iPHIS and nurses are flagging that this information should not be released to anyone but the client
- There was agreement that records should not be routinely released to parents for children who are 13 years of age or older – and it is reasonable to ask the parent to have the child phone the health unit requesting release of their immunization record.
- The Informed Consent Working Group noted that the consents, which are obtained at the time of immunization, are for the immunization only, not for the release of information, and that guidelines regarding such requests lie within the Health Authorities' domain.

“Mandatory” Influenza Vaccination of Health Care Workers

- A human rights issue question arose from the plenary session titled “Mandatory Immunization of Health Care Workers Against Influenza” – a presentation about a pilot program in a Seattle hospital where mandated immunization increased uptake rates to almost 100% in hospital staff.
- It was clarified that the Seattle hospital program was the result of a facility policy and not a law. In British Columbia you cannot force people to be immunized against their will; however, you could require anyone refusing to be immunized to take measures to protect others, such as by staying away from certain places until the outbreak or season was over. At the Seattle hospital, people who refused to be vaccinated were required to wear a facial mask for the duration of the influenza season.
- It was noted that courts have to balance private versus public rights – and this approach is reflected in the new Public Health Act in BC.

Sharing Immunization Record Information Between Jurisdictions

- There is a desire to facilitate the flow of information between jurisdictions and institutions in order to provide optimal health services,
- It was recommended that legislation authorize this flow,
- The new *Public Health Act* provides for information collection, use and disclosure, and new regulations will be informed by the realities of today's information age, and the need to share confidential and personal information.