



The Manitoba Pharmaceutical Association

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The Duty of Pharmacists to Report Issues in the Course of Counseling and Providing Emergency Contraception Care for Minors

The introduction of Plan B as a Schedule II medication empowers pharmacists to supply emergency contraception in appropriate situations without a prescription. Pharmacists are expected to counsel patients requesting this care and medication. When dealing with minors, pharmacists may have additional responsibilities to report certain issues to the appropriate Child and Family Services agency ("CFS"), or the minor's parents or guardians ("parents").

Legal Framework - Minors (Under 18 Years of Age)

The additional duties on pharmacists arise because certain sexual behaviour regarding minors is considered to be a criminal offence under the *Criminal Code* of Canada. However there is no requirement for the pharmacist to determine the age of the patient, as long as proper patient counseling can be conducted without this information. Protection under the *Criminal Code* is offered to anyone under the age of 18, but the scheme of the legislation is complicated and can be difficult to decipher. Different rules apply depending on the age of the complainant, the age of the partner/offender, and whether there was a relationship of dependence or trust between the parties. When a patient presents herself to a pharmacist requesting emergency contraception, the pharmacist may become aware that the patient is a minor and was engaged in some type of sexual activity. If the patient discloses she is under the age of 18, the pharmacist needs to know their reporting obligations. The professionally responsible thing to do would be for the pharmacist not to make promises or commitments to their minor patients that they will be able to hold all discussions in complete confidence.

Where the sexual activity could constitute an offence under *The Criminal Code*, *The Child and Family Services Act* ("*CFS Act*") of Manitoba requires that the incident be reported to CFS or to the minor's parents. It is very clear that **the reporting of these sexual offences is required**, even though the pharmacist may have acquired this information through the discharge of professional duties during an otherwise confidential relationship. Because the protection of children is considered to be of paramount importance, the Manitoba Legislature has made the reporting provisions of the *CFS Act* prevail over any type of privacy legislation, including the privacy provisions in *The Personal Health Information Act* and *The Pharmaceutical Act*. Pharmacists are protected from liability for disclosing this very personal information, and there are strict rules to protect the identity of "informants". Pharmacists should advise their minor patients, that when information is known to the pharmacist for a patient under the age of 18, it may not be possible to keep all the information confidential.

Since failure to comply with the *CFS Act's* reporting provisions is an offence, **pharmacists should keep a record** of the circumstance when providing Emergency Contraception Care to a minor and any reporting they made as a result.

Considerations:

- There is no legal obligation for the pharmacist to determine the age of a patient requesting emergency contraception.
- There is no legal obligation to inquire as to the nature of the relationship with the partner leading to the request for ECP.
- There is no legal barrier to prevent a minor from requesting and receiving emergency contraception care and the pharmacist providing the medication. A minor who has a full appreciation of the nature and consequences of medical treatment may consent to (or refuse) treatment.
- A minor’s personal health information cannot be shared without their permission. The exception is the pharmacist’s duty to report under *The Child and Family Services Act*.
- If the pharmacist becomes aware of the age of the child, the pharmacist must comply with the following guidelines:

<i>No Duty to Report</i>	<i>Duty to Report</i>
Patient Age is Unknown	
Patient is age 18 or older	
<u>Patient is age 14 to 17:</u> <input type="checkbox"/> The nature of the relationship with the partner leading to the request for ECP is not disclosed; <input type="checkbox"/> It is disclosed that the nature of the relationship was with a partner who did not hold a position of trust or authority;	<u>Patient is age 14 to 17:</u> <input type="checkbox"/> It is disclosed that the nature of the relationship with the partner is one in which the partner violated a position of trust or authority; ** <input type="checkbox"/> It is disclosed that the nature of the relationship with the partner is one in which the parents (or one of them) violated their position of trust and authority; *
<u>Patient is age 12 to 13:</u> <input type="checkbox"/> The nature of the relationship with the partner is not disclosed; <input type="checkbox"/> There is less than 2 years difference in the age of the minors and the partner is aged 12 to 15; <input type="checkbox"/> The partner was age 12 to 13 and no violation of trust and authority was involved;	<u>Patient is age 12 to 13:</u> <input type="checkbox"/> It is disclosed the nature of the relationship with the partner was with a partner aged 16 or older; ** <input type="checkbox"/> It is disclosed there is two years or more age difference in the minors; ** <input type="checkbox"/> It is disclosed that the partner violated a position of trust and authority even though the partner is age 12 to 13; ** <input type="checkbox"/> It is disclosed that the nature of the relationship with the partner is one in which the parents (or one of them) violated their position of trust and authority; *
	<u>Patient is age 11 or younger:</u> <input type="checkbox"/> All incidents;** <input type="checkbox"/> It is disclosed that the nature of the relationship with the partner is one in which the parents (or one of them) violated their position of trust and authority;*

* Report to CFS only
** Report to CFS or Parents

The circumstances in question may have both serious mental and physical implications; the patient counseling required may be extensive and may often result in the pharmacist inadvertently finding out these relevant details.

This document is intended to provide guidelines for professional conduct and does not constitute legal advice.

The background of the information in this document is based on an legal opinion from the MPhA Lawyers

This document should be placed in the MPhA Manual either in the Policy and Procedures Manual under Emergency Contraception or under the tab for Standards of Practice & Guidelines.