

Standards Regarding the
Capacity of Minors to Consent
to Social Work Services

NBASW Ethics, Standards & Guidelines Training
2023-2024 Registration Season



NBASW Ethics, Standards & Guidelines Training

- One NBASW Ethics, Standards & Guidelines Training is required for practicing and non-practicing members each registration year.
- Watching the webinar counts as a Group A activity.
- Time taken to complete optional supplementary activities can also be counted as Group A activities.
- Track activities on annual CPE Log.

Presentation Outline

- Background & Context
- Informed Consent
 - Decision-Making Capacity
- Mature Minor Doctrine
 - Assessing & Re-Assessing Capacity
- Consent Required for Service Provision
 - Mature vs. Non-Mature Minors
- Access to Clients Records
- Navigating Confidentiality



Background & Context

Why did the NBASW develop new Standards Regarding the Capacity of Minors to Consent to Social Work Services?

- To address minors' need;
- To address gaps that have been identified; and
- To provide clear directions to members of the public and RSWs.

The Standards Regarding Capacity of Minors to Consent to Social Work Services provides clarity and ensures that minors are able to access the services they need, when they need them most!



Ethical Obligations in the Workplace

- 4.1.1. Social workers shall acknowledge and strive to carry out the stated aims and objectives of their employer, agency or service contractor, consistent with the requirement of ethical practice.

- 4.1.2 Social workers shall take all reasonable steps to ensure that employers are aware of their professional ethical obligations and advocate for workplace conditions and policies that reflect ethical professional practices.



Informed Consent

Informed consent is integral to the social worker-client relationship and is obtained from clients at the onset of service delivery and throughout the professional relationship, as necessary.

“Informed consent is an agreement reached voluntarily by a competent client after discussion as to foreseeable risks and benefits associated with the disclosure of confidential information”.



Decision-Making Capacity

- *Capacity* refers to *Decision-Making Capacity*.
- Assessing decision-making capacity is part of every client encounter.
- Process is typically straight forward and comes naturally.
- Through dialogue social workers are able to confirm the whether a client understands the situation and options.
- There are times when there is a need to assess decision-making capacity more thoroughly and more formally.

Scott, D. (2008) *Toolkit for primary care: capacity assessment*. 1-34.

Understand

- Ability to focus on factual understanding.
- Ability to cognitively grasp and retain information.
- Ability to process information regarding available options and risks.

Appreciate

- Ability to reason and attach personal meaning to decisions.
- Ability to realistically appraise potential outcomes and justify choices.



Mature Minor Doctrine

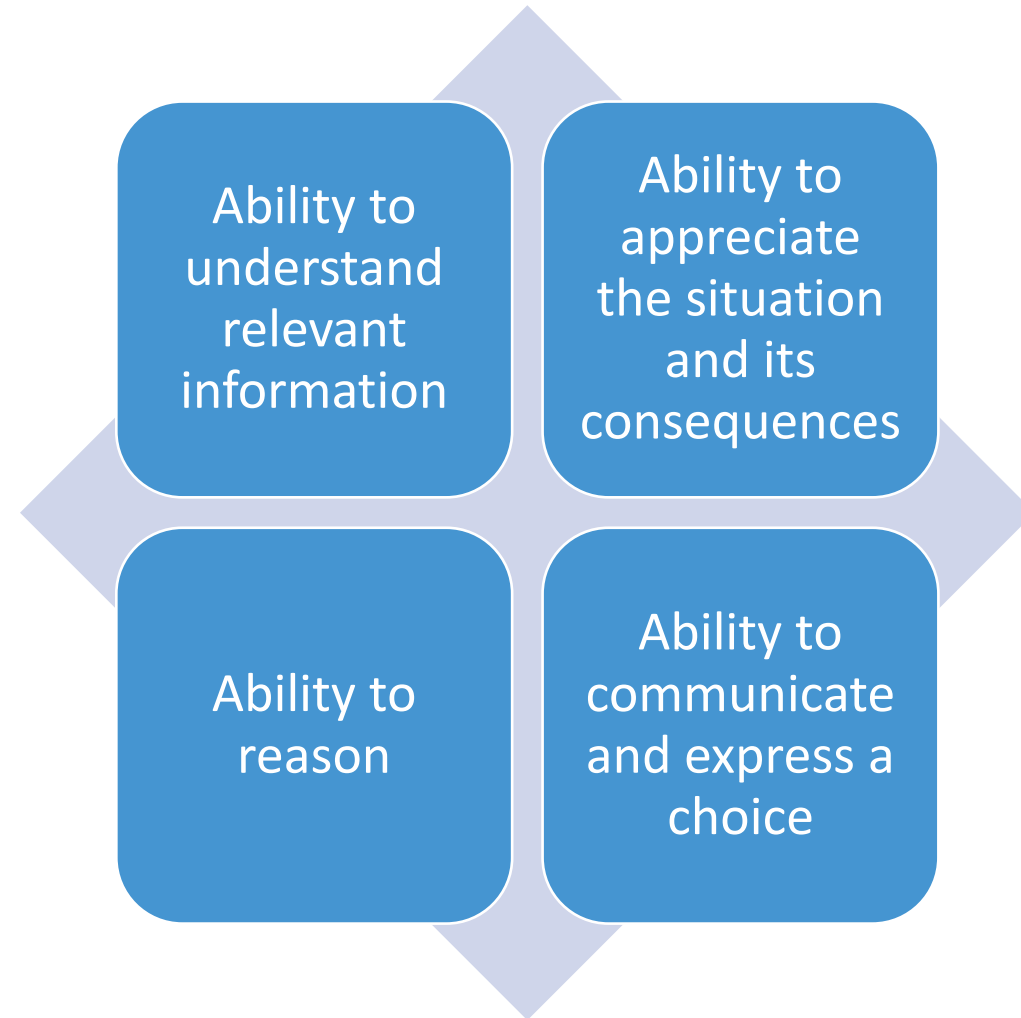
- The mature minor doctrine is a common law that indicates that minors who possess the capacity to understand the nature and consequences of a proposed treatment can consent to receive services.
- The mature minor doctrine focuses on the capacity of a minor, rather than focusing on the individual's age.
 - Ex. 1994 Court of Appeal decision titled *Region 2 Hospital Corporation vs. Walker*
- The social work profession and psychosocial interventions are not currently included in the *Medical Consent of Minors Act*.



Assessing the Capacity of a Mature Minor

- Before an individual can be considered a mature minor, social workers must assess whether the individual has the capacity to consent to services.
- This preliminary assessment shall take place during the first meeting with a client and must be documented in the client's file.

Decision-Making Indicators



Scott, D. (2008) Toolkit for primary care: capacity assessment. 1-34.

Ability to Understand Relevant Information

- Understanding of basic information about something, including the potential risks and benefits.
- Impacting factors may include intellectual ability and how information is presented.

- *What is your understanding of these services?*
- *What do you understand to be the benefits of receiving these services?*
- *How do you think these services will help you?*
- *What does confidentiality mean?*
- *What are the limits of confidentiality?*
- *What are the risks of accessing these services?*
- *What are the risks of not accessing these services?*

Ability to Appreciate the Situation and its Consequences

- The ability to recognize how a problem or solution pertains to one's own situation.
- Impacting factors may include the type of decision to be made and the complexity of the situation.

- *Tell me about your situation, what problems are you experiencing?*
- *What are some things that could help solve these problems?*
- *What are the potential risks and benefits associated with this solution?*
- *What are some other potential options that are available to you?*

Ability to Reason

- The ability to consider potential solutions to problems by:
 - Describing how a solution would affect everyday life.
 - Demonstrating how one solution is better in comparison to another.
 - Demonstrating logical thought processes in determining a choice.

- *Tell me how you reached your decision, what factors did you consider?*
- *What things were important to you in making this decision?*
- *What do you think the impact of your decision will be?*

Ability to Communicate and Express a Choice

- The ability to render a clear choice for the decision under consideration.
- This choice should be consistent with expressed beliefs and values and previous decisions and actions.

- *Have you decided what option is best for you at this time?*
- *How would you like to proceed?*

The Four C's of Capacity

Context

- Does the person understand the situation they are facing?

Choices

- Does the person understand their options?

Consequences

- Does the person understand the possible ramifications of choosing various options?

Consistency

- Does the person fluctuate in their understanding of choices?



Re-Assessing Capacity

- Age alone is not a predictor of capacity.
- Capacity typically increases with age.
- While less common, there are cases in which capacity may decrease (ie. after experiencing a traumatic event).
- Social workers working must continue to assess capacity throughout the social worker-client relationship.

Capacity: Key Points

- Capacity is an essential component of valid consent.
- Capacity is not a test result or a diagnosis.
- Capacity deals with the process of decision-making and does not depend on the actual choice made.
- Capable people are able to rational decisions and have the ability to identify and accept risks.
- Capacity is not a single ability that people have or do not have, it is task specific.
- Assessing capacity requires a consideration of the whole person.
- There is no minimum age for capacity.
- Capacity can fluctuate, it often increases over time but may at times regress.
- Capacity assessments are straightforward and often occur naturally, with more formal assessments being required at times.

Scott, D. (2008) Toolkit for primary care: capacity assessment. 1-34.



Best Interest of the Child & Children's Rights

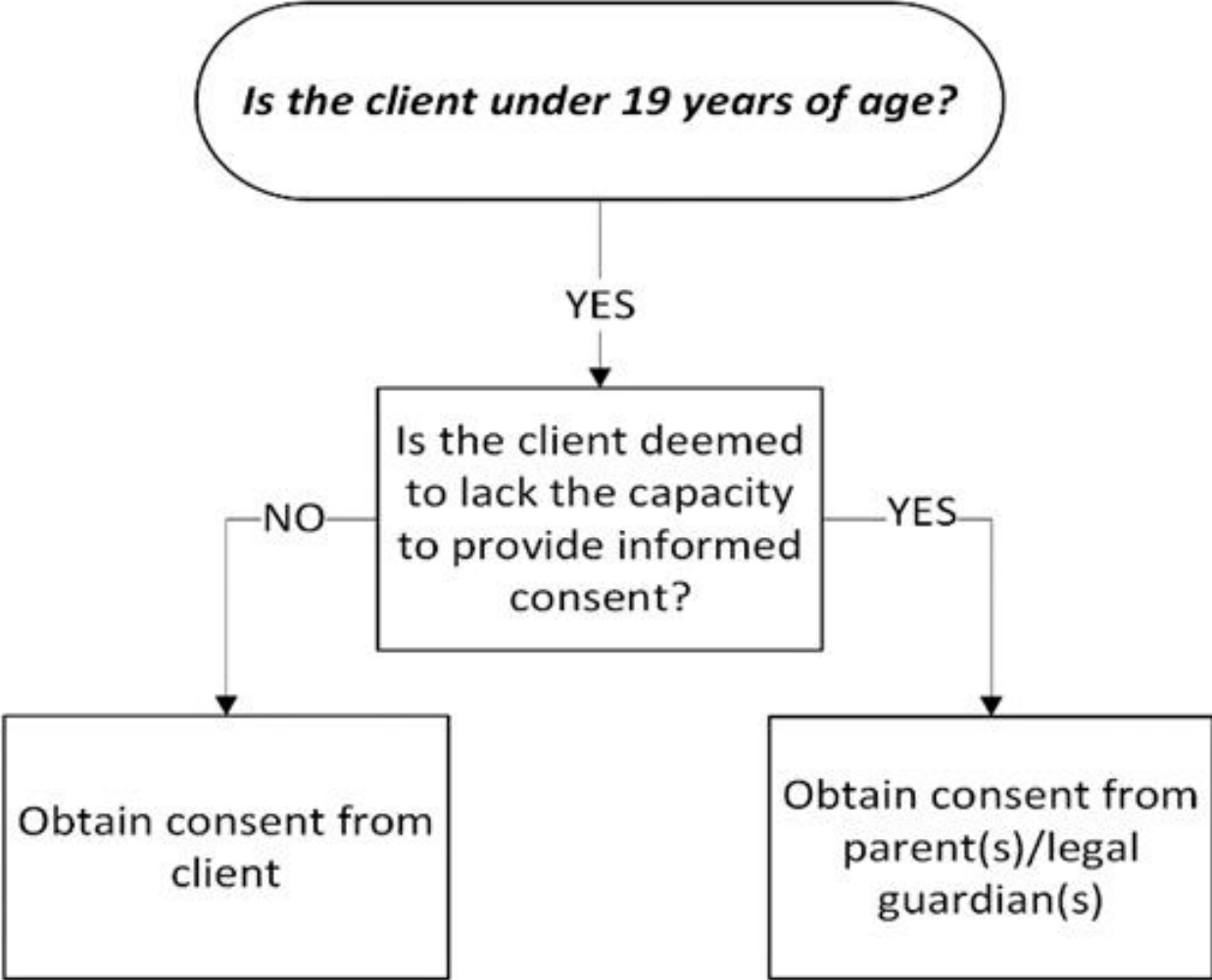
- Children and youth have rights under Article 12 of the *Convention on the Rights of the Child*.
 - Right to express their views freely in all matter affecting them.
 - Right to have their views given due weight in accordance with the age and capacity of the child and youth.
- Best interest of the child must inform all actions and decisions made by social workers.



Consent Required for Service Provision

- Before providing services, social workers must assess whether the minor is a “mature minor” with the capacity to provide consent for services.
- This assessment is done during the first meeting.
- The proper consent must be sought after the initial session if there is to be continued involvement.
- Document all steps taken & decisions made.

Capacity of
Minors
Decision-
Making Tool





Parental/Legal Guardian Consent

- A parent or legal guardian must consent for non-mature minors to receive services.
- Only need consent from one parent/legal guardian to proceed with services.
- Legal documentation only to be requested if there are questions/concerns, not a routine requirement.
- If no parent/legal guardian is willing to consent, a non-legal guardian may:
 - Request that they be appointed as the minor's legal guardian; or
 - Request that the Court provide consent under *parens patriae* doctrine.



Q: A youth is brought by their parents to see a social worker who is working in private practice. During the first session with the youth, the social worker assesses the youth as being a mature minor. The youth tells the social worker they do not want to receive counselling and will not consent for services. What should the social worker do?

Access to Client Records

- If a minor has been deemed a mature minor and provided consent for services, they have the right to access their file, if the social worker determines it is appropriate and in the best interest of the client.
- If the client is not considered a mature minor and (a) parent(s)/legal guardian(s) provided consent for services, then the parent(s) or legal guardian(s) that provided consent for services may access the file, if the social worker determines it is appropriate and in the best interest of the client.

Q: What should be done if a third party (e.g., another family member, lawyer, etc.) is requesting to view the client file?

Navigating Confidentiality

- Key in developing trust and rapport.
- Mature minors have a right to confidentiality similar to adults.
- When working with non-mature minors, there should be a clear understanding between the child, the parent(s)/legal guardian(s), and the social worker regarding the sharing of confidential information.
- Assess risks and evaluate pros and cons when determining if a disclosure is in the best interest of the client.
- Document all rationales and decisions.

35(1) Any person who has reason to believe that the well-being of a child or youth is in danger shall inform the Minister without delay regardless of whether the person has acquired the information

- (a) in the performance or exercise of the person's duties or powers, or*
- (b) within a confidential relationship.*

35(2) If a person required to report acquires information in the performance of their duties or in the exercise of their powers that should reasonably cause them to suspect that the well-being of a child or youth is in danger, the person required to report shall inform the Minister directly without delay.

- Child and Youth Well-Being Act, Section 35



Conclusion

- Ethical dilemmas may arise when working with minors.
- Be familiar with capacity and how it is assessed.
- Be familiar of consent requirements and how this impacts other aspects of service.
- Important to continually maintain and enhance knowledge of ethics and professional practice.
- Using ethical decision-making tools, having knowledge of legislation, engaging in supervision and consultation, and using professional judgement will assist social workers navigate ethical dilemma within the context of their practice.



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