



JOURNAL of FORENSIC ODONTO-STOMATOLOGY

VOLUME 32 Supplement 1 November 2014

IDEALS 10th International Dental Ethics and Law Society Congress

3 – 5 September 2014

Cape Town, South Africa

LIMITED RIGHTS OF MINORS IN DUTCH HEALTHCARE

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The authors declare to have no conflict of interest.

An oral presentation of this paper was delivered at the International Dental Ethics and Law Society (IDEALS) Congress 2014 in Cape Town, South Africa.

ABSTRACT

In many countries, if not all, the autonomy of minors is limited. Especially in countries with comprehensive legislation in the field of health law the (lack of) autonomy of minors may create challenges. These problems become more complex if the costs of treatment are not paid by the government or covered by insurance. Some challenges are: At what age is a minor able to decide about his health? As not every treatment is the same, how should the system take this into account? The Netherlands has a long history of very comprehensive health care legislation. This legislation includes a section about the treatment of minors that addresses the questions of the conditions in which the autonomy of minors is limited. Though this legislation is limited to the Netherlands other countries face the same challenges.

KEYWORDS: : Patient's rights, minors

JFOS. November 2014, Vol.32, Sup.No.1 Pag 30-33

ISSN :2219-6749

INTRODUCTION

In most countries minors cannot buy relatively valuable goods without the approval of their legal representative. The reason for this limitation of rights is that under civil law people can only close a contract when they are able, or should be able, to foresee the consequences of their action. If this is not the case they are considered to be legally incompetent. As making an appointment for dental treatment is seen as an agreement to treat, this agreement is subject to civil law. Based on the general rules for incompetency, one would expect that the rights of every minor who makes an appointment with a dentist are limited and the dentist has to take the opinion of the minor's legal representative into account. As the legal representative of a minor is in most cases his or her parents, we will use the common word "parent" instead of the more legal term "legal representative". It should be taken into account that in some cases a minor has legal representatives besides or instead of his parents. In Holland, as in many others countries this is the case when a family is under the supervision of a child protection service.¹

Should the triangular relationship between the patient, the parents and the dentist become complicated, the legislation can make things even more complex if the rules for the agreement to treat differ from the general civil rules concerning legal competency.¹

In this paper we will discuss the complicated rules for treating minors (being younger than 18 years of age) in Holland. We will focus on the practical implications of these rules in the dental office and on the challenges a dentist has to overcome in order to get payment for his services. To keep things simple, we will not address the complications that arise when parents divorce or when minors are placed under legal custody.

DISCUSSION

Patient's rights

In the Netherlands as in many other countries, patients have several important rights: the right to consent, the right to be informed and the right to privacy. Based on the rules of professional conduct there is also a right to be treated in emergencies. In addition to these rights the dentist has the duty to keep records. The most important rights in relation to minors are the right to consent and the right to be informed. Together these rights are referred to as the right to informed consent. When minors are involved three questions arise: Who has to be informed, the minor or his parents, or both? Whose consent is needed? and thirdly Does the dentist need the permission of the minor when the minor is treated in the presence of his parents?

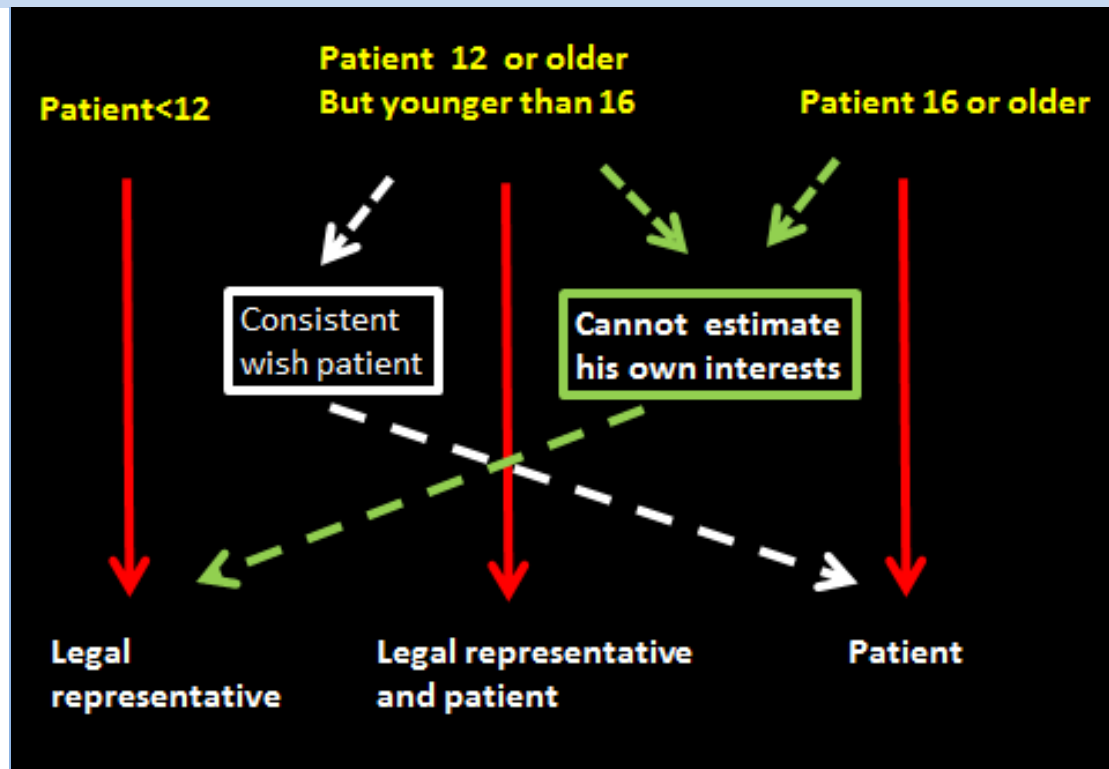
Main rule of age competency

Figure 1 shows the main rule for treating minors in the Netherlands. Based on age, minors are divided in three groups: younger than 12 years of age, 12 years or older but younger than 16, and 16 years but younger than 18 years of age.

If a minor is younger than 12 years of age, the dentist should determine the patients' rights based on the wishes of the parents. As a consequence the parent has to be informed about the treatment and has to decide whether or not the dentist has permission to treat.

If a minor is younger than 16 but 12 years or older, the dentist should determine the patients' rights based on the wishes of both the patient (a minor) and the parents. Both have to be informed and the dentist needs the permission of both parties. If a minor is 16 years old or older, the dentist has to determine the patients' rights even though a minor, without referral to the parent. As a consequence the dentist

Fig 1: Health law rules for minors



needs only the permission of the minor. As a minor has a right to privacy, the dentist has to ask the minor for permission when he invites the parents into his office during treatment of their son or daughter.

Exceptions

When a minor, regardless of his age, is not able to foresee the consequences of his wishes, the dentist has to consider the rights of the patient (a minor) against the wishes of the parents. As this may seem to simplify decision-making, dentists can be tempted to assume that a minor is not able to foresee the consequences of treatment. Legally, a Dutch dentist should be reluctant to assume that a minor is not capable to decide about dental treatment as the consequences of simple dental treatment, such as fillings, are considered easy to estimate. It is more likely for a dentist to assume that the minor lacks the capacity to judge treatment consequences for complicated or long-term treatment such as orthodontics. This may also occur

when a wish for dental treatment is solely based on a unrealistic fear for dental treatment. For instance when a minor wants to have all his teeth removed so he will never have to face a dentist again.²

The second exception is when a minor is 12 years old but younger than 16 years old and the parents want to waive dental treatment, but the minor persistently wishes to be treated. In that case, the dentist should ask the minor for permission for further treatment instead of his parents.

A third exception presents when a minor is 12 years old or older, but younger than 16 and a dentist has the minor's permission, but not the permission of the parents and treatment is necessary to prevent severe health damage. Needless to say, this exception will give rise to many discussions about the meaning of "severe health damage".

A fourth exception occurs when there is an emergency and there is not enough time to

contact the parents. In dentistry this may occur when a child loses a tooth in an accident.

A fifth exception is when treatment is not consistent with an acceptable standard of care. In Holland a dentist is obliged to refuse every treatment that is contrary to the standard of care. So if a parent wants the dentist to remove a healthy incisor, the dentist has to refuse.

A sixth exception occurs when, once consent has been gained, a minor subsequently resists treatment. Ceasing treatment would seem to be a practical solution as it is nearly impossible to treat a patient who is physically struggling. However, one should keep in mind that struggling in Holland is not always a valid reason to stop treatment.

With a certain variation these rules are found in most countries.

Financial consequences

In the Netherlands simple dental treatment for minors is covered by the insurance. For orthodontics, crowns or bridges the patient or his parent has to pay a part of the bill themselves. Under the main rule, the financial consequences are logical. The dentist comes to an agreement with the parent and the parent has to pay the bill. If a minor is 16 years old or older, the dentist closes the contract with the patient and the minor has to pay the bill, although at the end the parents will have to reimburse the

minor as they have to pay for the upbringing of their child. The same occurs when the parents want to abstain from further treatment and the minor (a 12 year old) persistently wants to be treated. As a consequence the dentist faces two potential challenges: how to get payment from a minor without an income or how to cope with parents who have to pay for treatment they did not want or in which they were not involved. These challenges are caused by the fact that in Holland and in many other countries health law is designed for the medical care for which costs to minors are usually covered in full by insurance.³

A legal solution for these challenges is to avoid any disagreement between a 12 year old and his parents. As orthodontics and crowns are not seen as emergency treatment a dentist will ask minors how they plan to pay for the treatment they want.

CONCLUSION

Many patients and many dentists are not familiar with the complexity of the health law on informed consent when treating minors. As a consequence many Dutch minors are treated under the general principle of not being competent to make decisions. Many Dutch dentists negotiate treatment of minors with their parents omitting the involvement of the minor. Improved discussion with the parties both independently and together as appropriate, will solve many of the problems that are discussed in this paper.

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