

Registrar's Notice

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

Emergency contraception medication such as Plan B was switched from Schedule II to Schedule III in May 2008. Even though the medication is no longer required to be stored in the dispensary, pharmacists are expected to counsel patients requesting advice or assistance. When providing care to 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 responsibilities of 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. Under the *Criminal Code*, 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 the reporting obligations. If the nature of the minor's relationship with the partner is disclosed, the pharmacist cannot 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 conversation. 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 the 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 obligation for the pharmacist to be involved with the sale of a Schedule III drug, but if a person requests a product, the pharmacist is responsible to assess the patient's knowledge about the product and provide additional information if required. If a person requests assistance in product selection, the pharmacist must collect information to assess the patient's knowledge and needs before providing advice.

There is no legal barrier to prevent a minor from purchasing emergency contraception without involving a pharmacist.

There is no legal obligation to inquire as to the nature of the relationship with the partner leading to the request for emergency contraception (EC).

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> The nature of the relationship with the partner leading to the request for EC is not disclosed;	<u>Patient is age 14 to 17:</u> 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; **

<i>No Duty to Report</i>	<i>Duty to Report</i>
Patient Age is Unknown	
Patient is age 18 or older	
It is disclosed that the nature of the relationship was with a partner who did not hold a position of trust or authority;	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> The nature of the relationship with the partner is not disclosed; There is less than 2 years difference in the age of the minors and the partner is aged 12 to 15; The partner was age 12 to 13 and no violation of trust and authority was involved;	<u>Patient is age 12 to 13:</u> It is disclosed the nature of the relationship with the partner was with a partner aged 16 or older; ** It is disclosed there is two years or more age difference in the minors; ** It is disclosed that the partner violated a position of trust and authority even though the partner is age 12 to 13; ** 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> All incidents;** 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.

May 9, 2005 (Updated Jan 2014)

The background of the information in this document is based on a legal opinion from the College lawyers