Informed consent of the minor. Implications of present day Spanish law

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In January 2001, Catalonia, which has regional autonomy, introduced a law on patients’ rights. This law, which is solely applicable to Catalonia and not to the rest of Spain, states that adolescents of sixteen and over must personally give consent (art 7).

PROBLEMS

One of the problems which may arise as a result of taking into consideration Spanish law as it stands is that a doctor may be obliged to ask for the consent of a minor’s legal representative before carrying out even trivial treatment. This is clearly going against the tide in a society which grants increasing freedom of action to minors in accordance with their maturity and level of understanding. Since the Spanish civil law and the Code of Ethics and Deontology for Physicians only refer to “sufficiently mature” and “age and maturity”, and make no mention of specific situations or ages, it is evident that the whole situation as regards minors’ consent is confusing.

If we wish to accept the consent of minors with sufficient judgment, how do we set about this? Do we consider the consent of both minors and legal representative to be necessary, in which case the consent of the representatives alone is not sufficient or do we consider that minors with sufficient judgement can authorise the action without the representatives’ consent?

PROPOSALS

The tendency of present day Spanish law is to favour the doctrine of the mature minor and so the competence which adults are supposed to have is, in questions of health, frequently extended to sixteen year olds. In our opinion, the presumption of competence should not refer to a specific age but to sufficient maturity. To make an individual evaluation of a minor’s capacity protocols should be drawn up for application in medical practice. Unfortunately, there is little consensus as to how the capacity of minors can be assessed in this respect.

In case of conflict between an adolescent and parents, or when decisions which will greatly affect the patient’s life must be taken, a clinical ethical committee should be consulted. Only as a last resort should the case come before a judge. In the mean time, however, the most obvious and straightforward solution would be to reduce the age of consent in medical matters, either by the promulgation of a new law similar to the Catalanian model or by modification of the Spanish General Act on Health accompanied by similar modification of Spanish penal law.

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