Pregnant minor – medical and legal aspects

Original article

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Summary
Introduction. In everyday language, in order to define a person who is under 18, we intuitively and interchangeably use several terms: underage, minor or juvenile. In legal language, these terms have their clear definitions, and differences between them are significant.
Aim. Elaboration on the pregnant minor patients' legal situation.
Over the last decades, a continuous decline in the age of women's sexual initiation has been observed. It is difficult to quantify the real scale of the problem of minor pregnant women. Official statistics show only birth rates. For the full picture, miscarriages and abortions should be included. Pregnancy in a minor is a high-risk pregnancy since pregnancy itself and perinatal complications are more frequent.
Legal situation of a minor patient: minors function in the area of parental authority. In the case of a minor patient, it is necessary to try to establish guardianship of such a patient. In the absence of the guardian, the guardianship court should be informed. After reaching the age of 16 years, minors gain limited patient rights and can co-decide on their treatment. The hospital has a duty to notify the District Attorney's Office about every minor patient suspected of becoming pregnant under the age of 15 years – the minor patient is not subject to any criminal liability.
Legal situation of a newborn: a minor mother under 18 years of age cannot be discharged from the hospital with a newborn. A legal guardian for the baby must be appointed by the family court. In practice, it is usually the newborn's grandmother or grandfather. As soon as the child's mother turns 18, she obtains full parental rights. The only exception is when the patient is already married. This is possible if the woman is at least 16 years old and the family court has given permission for contracting a marriage.
Conclusions. Provisions of law are often unclear and there is a problem with their interpretation. It is therefore worthwhile to know the basics of law which will make it possible to follow the right procedures.
Key words: pregnant, minor, patient's rights, jurisprudence

INTRODUCTION

In everyday language, in order to define a person who is under 18, we intuitively and interchangeably use several terms: underage, minor or juvenile. It turns out, however, that in legal language these terms do not carry identical meaning. Each one of them has its clear definition and differences between them are significant. Which of the terms listed above should we use in everyday clinical practice?

AIM OF THE PAPER

The aim of the paper is to present the problems relating to the procedures to be followed by doctors in the case of patients under 18 and to discuss this issue taking into account, in particular, its legal aspects.

According to the Polish Civil Code an adult is a person who has attained the age of 18 and who, as a result, has acquired full capacity to perform acts in law. Such a person is, therefore, fully able to take all

decisions by him- or herself and to make contracts. Furthermore, such a person is freed from parental control [1]. Majority can also be acquired before a person turns 18 by contracting a marriage. This applies only to women who are at least 16 years old. However, such marriage can be contracted only upon consent of a guardianship court which can give such a consent only for strong reasons and by acting in the best interest of the family. It is worth noting that majority acquired in such a way is not withdrawn in the case of a divorce or annulment of marriage [2]. In civil law, the term minor (*małoletni*) is also used and it means a person who is not 18 years old yet and has not entered into marriage. The fact of being a minor means a limited capacity to perform acts in law. To sum up, a man ceases to be a minor only after reaching the age of 18, whereas in the case of women, minority ends when the woman turns 18 or enters into marriage [1].

The term underage (*nieletni*), on the other hand, is used in criminal law. Its definition can be found in the Act on Juvenile Delinquency Proceedings. An underage is a person who at the moment of committing a punishable act was at least 13 but not more than 17 years old [3]. An underage person is generally tried before a family court and sometimes before the court of general jurisdiction, but only in the case of a particularly serious felony, such as a murder [4].

The term juvenile (*młodociany*) is also used in criminal law. According to the definition included in the Polish Penal Code, it is an offender who has not reached the age of 21 at the time of committing the prohibited act and was not 24 yet at the time of disposition being made by a court of first instance. When awarding punishment to a juvenile, the court will take into account a very young age of the person, high susceptibility to the people around him or her as well as the possibility that the person may have not reached full mental maturity. Hence, if there are educational grounds for it, the court may decide on putting the juvenile on probation to give him or her a chance to improve his or her behavior by applying such probation measures as extraordinary mitigation of punishment, conditional suspension of penalty or of prison sentence, or conditional early release [5]. In the following part of the paper, the term *minor* is used as the most appropriate one in the context of a pregnant woman who has not reached the age of 18.

PREGNANT MINOR

Over the last decades, a continuous decline in the age of women's sexual initiation could be observed both in Poland and in the world [6,7]. In the survey research carried out by Jarząbek-Bielecka et al. and devoted to sexual behaviors, a significant decrease of the average age of women's sexual initiation was observed: in the case of women born between 1975–1980, it was 19.1 years of age whilst in the case of those born between 1991–1995 – 16.4 years [6]. This, however, does not translate into an increase in the number of minor girls getting pregnant and being patients of obstetrics and gynecology wards [8]. On the one hand, it is related to the general demographic trend in our country. On the other hand, the increasing sexual awareness of adolescents and the growing widespread character and availability of contraceptives definitely plays a part here [9]. Nevertheless, minor pregnancies are still a serious problem both from a medical and social point of view, in particular in developing countries [10–12].

What is the present scale of the problem in Poland? According to official data provided by the Central Statistical Office in its Demographical Yearbook (*Rocznik Statystyczny*), the number of deliveries in Poland has been gradually decreasing over the past decades. In 1980 in Poland, there were 701,553 deliveries, in 1990 551,660 childbirths, in 2000 380,475, and in 2011 390,069 [13]. This means a 40% decrease over the period of the last 30 years. A similar tendency is shown in the analysis of the number of childbirths by mother's age over the last 30 years. In 1980, the deliveries by teenage girls made up 6.4% of the total number of live births, in 1990 – 8%, in 2000 – 7.3% and in 2011 – 4.2% [13]. These, however, are official data which do not correspond to the actual situation because they do not include miscarriages and abortions. It is true that the said abortions are performed also in minors but it is difficult to quantify the extent of the problem. To sum up, the actual number of pregnancies in minors is definitely higher than the number of live births provided in official sources.

Due to the higher risk of a series of complications, a pregnancy in a young, not fully mature (from the biological point of view) woman should be treated as a high-risk pregnancy. This is mainly due to immaturity of a pregnant minor's body and malnutrition. A physical underdevelopment of reproductive organs, on the other hand, may result in perinatal complications. Minor women very often do not use medical care, which increases the possible risk of both pregnancy and perinatal complications [14]. Ezegwui et al. analyzed 4,422 childbirths in the years 2000–2005 in Nigeria. In a retrospective analysis, it was established that pregnant minors are at a higher risk than older pregnant women of: anemia (32.4% vs. 24.8%, $P=0.001$), C-section (18.9% vs. 10.5%), cephalopelvic disproportion (9.4% vs. 3.8%, $P = 0.001$), preterm delivery (18.9% vs. 11.4%, $P = 0.001$), low birth weight (23.0% vs. 10.5%, $P = 0.005$), perineotomy (61.7% vs. 28.7%, $P = 0.001$), assisted delivery (6.8% vs. 2.9% $P = 0.001$) and low score on Apgar scale in the 1st minute (35.1% vs. 19.1% $P = 0.005$) [15].

In his publication, Sirakov states that pregnancies in minors involve a higher risk of congenital defects in fetuses, in particular defects of the neural tube and heart [16]. Not all research, however, confirms the forego-

ing. In the paper published by Rycel et al., the authors analyzed the cases of 345 women at the age of 15–25, treated in 2000–2007 in Łódź, Poland. In a retrospective analysis, no increased risk of a premature birth among pregnant minors was found. Furthermore, no increased risk of congenital defects in fetuses was identified. The authors suggest, however, that despite the fact that the course of pregnancies in minors is in most cases normal, pregnant minors do require a particularly good perinatal care [8]. Similarly, in Suwal's publication, the results of the analysis of 100 deliveries by pregnant minors under 19, treated in the years 2008–2010 in Naples, do not show any statistically significant increase in the risk of anemia, low birth weight, premature birth or pregnancy-induced hypertension. It was found, however, that the risk of perinatal mortality is higher in the case of newborns delivered by adolescent mothers [17].

According to the research conducted by Reronia et.al., childbirths given by women under 17 made up 0.2% of the total number of deliveries (13,994), and only 0.1% of minors were provided with prenatal care [18]. This might confirm the hypothesis referring to the lack of appropriate obstetric supervision resulting, most probably, from the lack of knowledge about the possible consequences of premature maternity and unwillingness to stay under medical care provided by specialist perinatal centers. Minors are not ready for maternity and most usually their social and living situation is poor [18]. Taking into consideration the foregoing, this group of patients should be provided with a particularly good care.

LEGAL SITUATION OF A PREGNANT MINOR

A pregnant minor does not enjoy full civil rights. According to Polish law, such a person functions under guardianship of a parent or legal guardian. Therefore, in every case of a minor patient, such patient's guardianship should be established and the parent or legal guardian should be informed of the situation. If there is no such a guardian or if it is impossible to contact him or her, the guardianship court should be notified [2,19]. After reaching the age of 16, a minor gains limited patient's rights. This means that a minor may co-decide about herself together with her parent or legal guardian, and therefore, apart from a consent for a medical procedure given by the parent or legal guardian the doctor should, in the first place, obtain the patient's consent. It is the so-called parallel or double consent. The lack of any of them will result in unlawfulness of the medical benefit, and if the decisions made by the minor patient and her parent or legal guardian differ, the decision should be taken by the guardianship court [20,21]. A consent to any medical procedures does not necessarily need to be in writing. It may be, for example, oral or even implied (understood as a lack of objection). This applies to the situation in which the patient very clearly gives the doctor to understand that she is willing to undergo a medical procedure. In the case of medical interventions, surgeries, and other increased risk situations, a written form is required [20–22].

There is an additional problem in the case of a pregnant minor – there may be reasons to believe that the pregnancy may be a result of a crime under Article 200 § 1 of the Polish Penal Code. According to the article referred to above, whoever subjects a minor under 15 years of age to sexual intercourse or makes him/her submit to another sexual act or to perform such an act shall be subject to penalty of the deprivation of liberty for a term of between 2 and 12 years. It should be emphasized that it does not make any difference whether the minor gave her consent for sexual intercourse or not. Sexual intercourse with a minor under 15 years of age is prosecuted *ex officio*. The only exception is when the offender is underage, that is has not reached the age of 17 – in such a case the juvenile court will decide on charging the minor. Additionally, if the pregnant minor did not give her consent for sexual intercourse the perpetrator will also be liable for rape under Article 197 § 3. What is important is that the patient will not incur any criminal liability for the fact of becoming and being pregnant [5].

According to the Criminal Procedure Code, state or local government institutions which, in connection with their activities, have been informed of an offence prosecuted *ex officio* are obliged to take certain steps. Should it be suspected that the patient became pregnant before she reached the age of 15, these institutions are obliged, pursuant to Article 304 § 2 of the Criminal Procedure Code, to inform the District Attorney's Office competent for the medical institution of a suspected criminal offence under Article 200 § 1 of the Penal Code. In the discussed situation, the legal obligation to inform about the suspected criminal offence rests, first of all, with the person in a managing position in the given institution (e.g. the head of a hospital department) or another person holding particular responsibility based on any other grounds [23].

NEWBORN'S SITUATION

Most authors agree that the newborns delivered by minor mothers more often have a lower birth weight [24,25]. The Apgar score of the newborns delivered by minor mothers is significantly lower than of those delivered by 20–30 year-old women. Additionally, the average weight of the placenta of minor mothers is significantly lower than the average weight of the mature women's placenta [25].

In the case of a minor patient, at the moment of delivery the problem of parental control over the newborn arises. The minor mother herself will still be under parental control until she reaches the age of maturity. As a minor who does not enjoy full civil rights and full rights to make her own decisions, she cannot become a legal guardian of her child. The legal guardian for the

newborn must be appointed by the guardianship court [2]. In practice, it is usually the newborn's grandmother or grandfather. The person appointed by the court will take all decisions concerning the newborn and may take the child from the hospital. In the majority of cases, upon reaching the age of 18, the mother of the child gains full parental rights. The exception to that situation is when the patient contracted a marriage before giving a birth. Polish law provides for a possibility of contracting a marriage by a minor woman who has reached the age of 16. However, a consent of a guardianship court is required in order for such a marriage to be contracted [2]. In such a case, due to the majority obtained in such a way, the patient will gain full parental control over her child immediately after delivery, even if she is not 18 years old yet.

CONCLUSION

Despite the fact that the number of pregnant minors has not been growing, the problem is significant. Nevertheless, gynecologists and obstetricians encounter such patients quite often in their medical practice. The medical problem here is the fact that pregnancies in minors are high-risk pregnancies. The risks include a significant percentage of premature births, lower height and lower body mass index. Educating teenagers to protect them from premature maternity and its consequences still remains a great problem. It is worth noting that provisions of the law applicable in Poland are frequently ambiguous and there is a problem with their interpretation. It does not, however, release the doctor from an obligation to abide by applicable law which will allow him or her to take right decisions.

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