

While we await a new method of determining the age of young asylum seekers

MEDICAL ETHICS

SVEIN AARSETH

E-mail: svein.aarseth@vikenfiber.no

Svein Aarseth (born 1950), specialist in general practice and occupational medicine. He is a GP and chair of the Medical Ethics Council since 2014.

The author has completed the ICMJE form and declares no conflicts of interest.

STINE KATHRIN TØNSAKER

Stine Kathrin Tønaker (born 1981), secretary of the Medical Ethics Council and lawyer/special advisor in the Norwegian Medical Association.

The author has completed the ICMJE form and declares no conflicts of interest.

The Norwegian Medical Association and the Medical Ethics Council advise doctors against participating in the age assessment of young asylum seekers. Current methods are insufficiently accurate, and it is difficult to safeguard the principles of voluntary participation and informed consent. Age is crucial with regard to rights and the further process, and methods of determining age should only be used if they are accurate. Such methods are not available to us today.

The Norwegian Directorate of Immigration (UDI) informs us on its website that if there is doubt as to the age of a young asylum seeker, it may request his/her consent to carry out an age assessment. This 'consists of two parts; an X-ray of your hand and of your teeth. A doctor will look at these X-rays and evaluate

your correct age. If you do not wish to undergo such an examination, it can have a bearing on whether your asylum application will be granted or rejected.' (1).

Determining the age of young asylum seekers raises several fundamentally important questions in terms of the rule of law, human rights, ethics and social responsibility. What margin of error is acceptable for the results? Is it possible to obtain informed, voluntary consent to such an examination when withholding consent 'can have a bearing on whether your asylum application will be granted or rejected'?

In September 2010, the Norwegian Medical Association made the decision to recommend that 'doctors ought not to participate in the age assessment of unaccompanied minor asylum seekers based on an x-ray of the hand and wrist (...) The central board recognises that the authorities have a legitimate need to clarify which asylum seekers have the rights afforded to children and which are adults and therefore have different and fewer rights. In different contexts, doctors fulfil the role of therapist as well as that of expert and are thereby subject to different rules. Nevertheless, the central board's opinion that doctors should not participate in age testing of unaccompanied minors is based particularly on the inaccuracy of the methods and the extent to which consent is informed and voluntary' (2).

In 2016, the Advocacy and Ethics Group of the European Academy of Paediatrics advised doctors against participating in age assessment for the same reasons (3).

In December 2016, the Medical Ethics Council dealt with a complaint against a doctor who had interpreted x-rays of the hand and wrist and undertaken age assessments for six years on behalf of the Norwegian Directorate of Immigration.

The complaints put forward point out that the Directorate of Immigration has used age determination extensively despite disagreement in the medical profession, and that while it was initially used only in cases of doubt, it is now performed on almost all asylum seekers who purport to be under the age of 18 years (4). The complaints refer to the fact that the Norwegian Medical Association has advised its members against participating in x-ray examinations with a view to determining the age of unaccompanied refugee minors, and question whether the activity of the doctor concerned contravenes the Code of Ethics of the Norwegian Medical Association.

In his response, the doctor who was the subject of the complaint reports having undertaken the age assessments based on 'the best available methods'. He agrees that 'the methods are not as reliable as might be desired, but unfortunately much of this lies in the well-known variation in biological development, particularly in the relevant age groups for unaccompanied minor asylum seekers'.

The Medical Ethics Council has no mandate to give an opinion on questions of medical science, cf. Code of the Medical Ethics Council section 2 (5). The Council therefore based its response on the Norwegian Medical Association's medical assessment and clear recommendation in its letter of 28 October 2010

(2), which in turn is based on internal statements and report no. 13–2006 (6) from the Norwegian Knowledge Centre for the Health Services. Its views are also consistent with international advice (7).

Based on the Code of Ethics for Doctors, chapter I, sections 1, 2 and 9 (8), as well as chapter IV, section 3 (box 1), the Medical Ethics Council stated: "The Council concluded that the doctor who was the subject of the complaint performs a very particular expert role for the Directorate of Immigration, that there is no medical indication for the examinations, and that the method used is disputed. Age assessment by means of x-ray of the hand and wrist and dental examination requires valid consent, i.e. that the consent is given on an informed basis by a person with the capacity to give that consent. There is reason to question whether voluntary, informed consent is possible to achieve for these examinations. As the Norwegian Medical Association states, according to the Directorate of Immigration an individual's refusal to permit his/her age to be assessed may have consequences for the asylum application. This is first and foremost a rights issue for the person being examined, but it may also be problematic for the healthcare personnel undertaking the examinations.

Box 1 Relevant sections in the Code of Ethics for Doctors

Chapter I, section 1, 1st paragraph

A doctor shall protect human health. A doctor shall cure, alleviate and console. A doctor shall help the ill to regain their health and the healthy to preserve theirs.

Section 2, 1st paragraph

A doctor shall safeguard the interests and integrity of the individual patient. Patients must be treated with caring and respect. Cooperation with patients should be based on mutual trust and, where possible, on informed consent.

Section 9, paragraphs 1 and 2

In examinations and treatment a doctor shall only employ methods indicated by sound medical practice. Methods which expose the patient to unnecessary risk shall not be employed. If a doctor does not possess the skill a method calls for, he or she shall ensure that the patient receives other competent treatment. A doctor must not use or recommend methods which lack foundations in scientific research or sufficient medical experience. A doctor must not allow him- or herself to be pressed into using medical methods which he or she regards as professionally incorrect.

Chapter IV, section 3

A doctor shall base his/her certificates on the necessary information and on examinations that are sufficiently extensive for the purpose.

The Council believes that a particular responsibility rests with the examining doctor to ensure that the requirements according to the Code of Ethics for Doctors, chapter I, sections 1 and 2 are met.

The Medical Ethics Council finds that by performing age testing of unaccompanied minor asylum seekers based on inaccurate methods which he himself states 'are not as reliable as might be desired', and with no possibility of ensuring valid consent, the doctor who is the subject of the complaint has contravened the Code of Ethics for Doctors, chapter I, sections 2 and 9. The Council furthermore believes that he has made expert statements which in the opinion of the Council are not based on 'examinations that are sufficiently extensive for the purpose', cf. chapter IV section 3'. The case is reported in the Medical Ethics Council's *2016 Annual Report* (9).

The doctor who was the subject of the complaint withdrew 'following a general assessment' in December 2016 (10), and the Norwegian Institute of Public Health was given national responsibility for evaluating and improving the methods (transferred to the Department of Forensic Medicine, Oslo University Hospital on 1 January 2017) (11). They reported that current age testing is not sufficiently based on science, and that therefore they cannot take professional responsibility or continue the practice (12). In collaboration with the Norwegian Knowledge Centre for the Health Services, Norwegian Institute of Public Health, the expert group for forensic medicine has conducted a systematic survey of the scientific basis for several methods used for medical age assessments (13, 14).

Pending new methods, the Directorate of Immigration is assessing hand and wrist x-rays itself (15). In June 2017, the Department of Forensic Medicine, Oslo University Hospital launched the Bioalder instrument (16, 17). This method produces an interval estimate for age with a probability of 75 % and 95 % respectively, based on different methods for determining age (18, 19).

We understand that these methods are based on dental images and images of the hand/wrist. These are interpreted by a dentist and radiologist respectively, and the result can then be entered into the Bioalder instrument by case officers in the Directorate of Immigration. The report that is generated is used in processing the case further.

The question is thus: Is there a sufficient focus on genuine informed consent? Has the inaccuracy of the method been reduced, and how does the Directorate of Immigration relate to this uncertainty?

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