

Parental Access To Records

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... The issue of parental access to the mental health records of a child can be a thorny one, depending upon a variety of factors, not the least of which is the manner and extent to which state law addresses the subject. When must or may the practitioner allow the parent to inspect the minor patient's records? When must or may the practitioner deny access to the parent? What rights, if any, does the minor child (the patient/client) have with respect to parents accessing the records? What if a parent lacks physical custody of a child – may that parent be denied access to the mental health records of the child? How, and to what extent, does the law in your state treat this subject matter? In California, for example, the psychotherapist is quite well protected, as are the minor patient's privacy rights.

First, the law in California requires a therapist to deny parental access to a minor patient's records if the minor could have lawfully consented to the mental health services being provided. Because the law in California was recently liberalized, psychotherapists can treat a minor without parental consent if the minor is twelve or older, provided that the therapist determines that the minor is mature enough to participate intelligently in the mental health treatment or counseling services – generally an easy standard to meet. The law presumes that at some point the parent will be involved, but allows the practitioner to determine, after consulting with the minor, that involvement of the parent is not appropriate. Thus, as a practical matter, for most minors who are twelve and over, access to the records by a parent would be denied if the minor were lawfully entitled to be treated without parental consent.

Additionally, and regardless of the age of the minor, California law provides that the parent shall not be entitled to access (inspect or copy) the child's records if the therapist determines that access to the minor patient's records would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. These are rather broad grounds upon which a therapist would lawfully deny parental access. Moreover, the law provides that the decision of the health care provider as to whether or not a minor's records are available for inspection or copying by a parent shall not attach any liability to the provider, unless the decision is found to be in bad faith. This latter provision essentially provides the practitioner with immunity from liability for most denials of access. Allowing parental access to a summary of the records, as opposed to the complete record, may be an option for the therapist in some states.

With respect to custody issues that may affect whether or not a parent has access to a minor's mental health records, this can be a tricky/complex area of the law. There are some in California who take the position that access to a minor's treatment records cannot be denied to a parent even though that parent is not the child's legal or physical custodian. Others believe that if a parent does not have legal custody of a child (or at least joint legal custody), that parent cannot access the treatment records of

the minor child. In California, it is often safer for the therapist to deny access to the parent on the grounds that are described in the paragraph immediately above, rather than on the basis of the custody situation. These grounds (in the paragraph above) provide a broad basis upon which a denial may be based, and also provide a form of immunity when the practitioner acts in good faith. Of course, each state may treat the subject of parental access to a minor child's records differently. What is the law in your state?