Parental Rights to Access Child's Records

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… When a child (under eighteen years of age) is the identified patient and is being treated by a mental health practitioner, what rights do the parents have to inspect, review, or obtain copies of the records of the child? Does the minor's right to confidentiality trump the parental rights to access the records? These interrelated questions may not arise often, but when they do, they present interesting and sometimes troublesome questions for the practitioner. Reference to state law (which varies from state to state) and perhaps to ethical standards (which may also vary from one professional organization to another) is essential to determining the answers to the questions that may arise in a particular situation.

As a general matter, the mandatory and permissive exceptions to confidentiality applicable to the treatment of adults may also be applicable to minors. For example the duties to report child abuse, elder abuse, or dependent adult abuse apply whether or not the patient is a minor or an adult. Once the practitioner has reasonable suspicion or knowledge of any such abuse, a report is required. With respect to dangerous patients, whether the danger is to self or to others, the practitioner may be permitted or required to break confidentiality regardless of the age of the patient.

Access to the minor patient's records by a parent presents a slightly different situation. Because the parent is legally responsible for the overall well-being of the minor child, the parent has a legal interest in the health and treatment of the child. Sometimes, a parent can be informed about the condition or the progress of treatment of their child in general terms, often with the knowledge and consent of the minor. But there are many situations where confidentiality must be maintained and where a request for access from a parent must or should be denied.

There is a statute in California that provides that access to records and information pertaining to a minor child, including, but not limited to medical, dental, and school records shall not be denied to a parent because that parent is not the child's custodial parent. There is some dispute in California as to the meaning of the term "custodial parent," and difficult situations can be presented where a parent with legal and physical custody objects to the therapist allowing access to a parent who has no legal or physical custody of the child. In such situations, the therapist is usually well-advised to look at another set of laws that govern the right or duty of the practitioner to deny access to the requesting parent.

In California, the law provides that the representative of a minor (a parent or guardian, for example) shall not be entitled to inspect or obtain copies of the records of their minor child if the minor child is allowed under state law to inspect the records. As a practical matter, that means that almost all patients who are twelve years of age or over would control whether a parent could have access to the

child’s treatment records. Additionally, the law provides that the parent shall not be entitled to access the minor’s records if the therapist determines that such access would have a detrimental effect upon the provider’s professional relationship with the minor or the minor’s physical safety or psychological well-being. This law also provides that the decision of the health care provider as to whether or not a minor’s records are available for inspection or copying shall not attach any liability to the provider, unless the decision is found to be in bad faith.

What about parental access in your state? When may you deny access? When must you deny access? Is there any protection afforded you when such a decision is made? At what age does the minor control whether or not access by the parent is appropriate?

For more information related to this topic, please visit our Treating Children and Selected Legal Issues blog.