Privileged Communications

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… Assuming that the psychotherapist-patient privilege (or similarly titled privilege) exists in your state for your license or certification, who is the holder of the privilege when you are treating a minor? Is there a different answer if the minor patient is six rather than sixteen? In some states, the answer is that the child, regardless of age, is the holder of the privilege, since the child is the patient. Thus, therapists would be duty bound to assert the privilege and resist releasing the minor's records pursuant to a subpoena from one of the parents in a custody or visitation dispute, for example.

If the court has appointed an attorney to represent the interests of the minor during the custody or visitation dispute (perhaps called a "guardian ad litem" or some other name), the attorney will likely be able to exercise the privilege on behalf of the minor. Check this out in your state. Remember, we are not talking about confidentiality and which parent signs an authorization form on behalf of the child, but rather, we are talking about privilege – which involves the right and duty to withhold records and testimony in a legal proceeding – until the privilege is waived (by the "holder") or the court orders otherwise.