

“Keep This Between Us”

Medical Legal Issues in Pediatrics

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Overview

- Legal Issues: Consent, Privacy
- Unique Challenges
- Clinic Policies and Communication

Consent – Oregon Law

Age of Majority: 18 (ORS 419B.550, 109.510) Right to consent

Mental health and chemical dependency (ORS 109.675)

A minor who is **14 years** or older may access outpatient mental health, drug or alcohol treatment (excluding methadone) without parental consent. These services may include:

- *Seeking help from a psychiatrist or psychologist;*
- *Seeking mental health therapy from a doctor or social worker; and*
- *Seeking help for drug or alcohol use.*

Consent

Medical and dental services (ORS 109.640)

Minors who are **15 years** or older are able to consent to medical and dental services without parental consent. This includes hospital care, as well as medical, dental, optometric and surgical diagnostic care. This would include services such as:

- *Treatment for illnesses or injuries (colds, sprained ankle);*
- *Sports or camp physicals;*
- *Dental visits (check-ups, cleaning, fillings);*
- *X-ray services;*
- *Emergency room visits;*
- *Vision care (except for first time contact lens visit); and*
- *Immunizations.*

Consent

Family planning/sexual and reproductive health (ORS 109.610, ORS 109.640, ORS 109.650)

Minors of **any age** are allowed to access birth control-related information and services as well as testing and treatment for sexually transmitted infections (STIs) including HIV, without parental consent.

Privacy – HIPAA and State Law

Parental Access to Minor's PHI: 45 CFR 164.502(g)

Generally, a parent or legal guardian can access a minor's PHI because they are considered the minor's personal representative.

Defines “*personal representative*” (includes parent or guardian) and specifies that a covered entity (healthcare provider) must treat a PR as the individual for purposes of the HIPAA Privacy Rule when the PR is authorized to act on behalf of the individual in making healthcare decisions..

Exceptions to Parental Access: 45 CFR 164.502(g)(3)

There are exceptions to this general rule. For example, if a **minor can consent** to treatment under **state law** (e.g., specific rights, emancipated minor), their parent may not have access to their PHI without the minor's consent.

HIPAA Exceptions: required by law, threat of serious imminent harm **164.512(j)**

Oregon Law: ORS Chapter 109 (re **minor's right to consent**)

Unique Challenges

- “*Keep this between us*”
- Communicating Clinic Policies
- Split families

Clinic Policies

POLICIES YOU SHOULD BE AWARE OF

- **Billing & Financial Policy:** This is an outline of our financial policies and expectations, including our missed appointment policy.
- **Chaperone Policy:** This policy discusses your right to have a medical chaperone present during any sensitive physical exam.
- **Grievance Policy:** This policy outlines our approach to addressing and resolving patient grievances promptly and effectively.

- **Notice of Privacy Policy:** This policy tells you how we can and cannot use and disclose the health information you have given to us or that we have learned. It tells about your rights and our legal duties concerning your health information.
- **Access to Minors Health Information:** Access granted by default to the legal parents/guardians of a minor child, unless otherwise indicated by court order . . . you may allow others access to your minor child's health info, by an ROI form
- **Separated & Divorced Parents Policy:** Outlines our process for communication, billing, authorizations, and disputes for families with separated or divorced parents.

Divorce, Separation & Custody Matters:

- We believe that such matters should not enter into a child's medical treatment.
- The individual accompanying the child, who is requesting medical treatment, is responsible for payment of medical bills, co-pays and deductibles. We are not a party to your divorce agreement, you are.
- “*Joint Custody*” means that each parent has equal access to the child's medical care records. Without a court order, we will not stop either parent from access to their child's chart, obtaining test results, advice, or making an appointment
- Subject to a court order to the contrary provided to us, we will not call the absent parent for consent prior to treatment.
- We will discuss with the accompanying parent information pertinent to the child's history, present exam and proposed treatment.
- Should the issues that come between parents become disruptive to our organization, we will consider discharging the patient from further treatment.

Conclusion

- Legal Issues: Consent, Privacy
- Unique Challenges
- Clinic Policies and Communication Questions?

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