

Releasing children's records



MPS



Putting members **first**

Advice correct as of December 2013

MPS receives many queries from members about releasing children's records. A doctor's primary duty of care is to the child as a patient, but there are legal and ethical duties owed to that child's care givers. These duties may conflict, for example, where one parent is not providing day-to-day care for a child because the parents are estranged, and they request access to his/her child's medical records. Parents do not have an automatic right of access to information about their children.

The law

- Rule 6 of the Health Information Privacy Code (HIPC) grants all individuals (no age limit applies) a right of access to information held about them by a health agency with limited exceptions.
- Section 22F of the Health Act 1956 and rule 11(4) (b) of the HIPC entitles an individual's representative to request access to their health information, where the individual is under 16 years of age.
- Rule 11(4)(b) of the HIPC allows for the refusal of a request for disclosure, where the doctor has a reasonable belief that the child either does not want the disclosure to occur or where the disclosure would not be in the child's interests.

Before responding to a request

Recognise that you have a discretion when responding to requests for a child's health information from any parent or representative. When a request for information is received, there is a need to ensure that there is trust and confidence between the provider, the child and their family.

When a child's parent who is not the day-to-day carer of the child requests access to the child's health information, there are a number of preliminary steps to take before considering whether the information should be released.

Points to consider:

- You have 20 working days from the time of the request to respond, unless the request is urgent, and individuals are obliged to explain why a request is urgent
- Establish the identity of the person making the request; you are entitled to ask the individual for identification. It is possible that the estranged parent requesting access will not be known to you

- Consider whether that individual has the authority to make the request. A parent is entitled to request access, but it may be necessary to establish that they really are the child's parent (eg, by producing a birth certificate).

Consent

As the HIPC does not recognise an "age of consent" children are presumed competent to refuse disclosure of information to their parents. Consider the age and maturity of the child when considering a request for disclosure.

The general approach is that a child is entitled to give consent to the release of information to the extent appropriate to the child's level of competence. If it is appropriate to consider the views of a competent child with respect to treatment, it is also appropriate to do the same with their health information.

Disclosure

Where disclosure of information would not be in the child's best interests, the HIPC gives

doctors discretion to refuse a request by the parents or guardians. The Privacy Commissioner has upheld decisions by health agencies to withhold information from parents on many occasions (see further information).

When considering whether to disclose information, it is important to consider:

- whether the disclosure would prejudice the physical or mental health of the child
- the views of the child, if relevant
- the purpose for which the disclosure is required
- the type of information contained in the notes (eg,

whether the information is sensitive, or there is information about other individuals, whether the parent or representative attended consultations with the child)

- knowledge of the child's day-to-day living arrangements
- whether the relationship between the parents is amicable and how any disclosure may impact on the child's future care.

Disclosure may not be in the child's interest where there are custody/access proceedings in the pipeline and the child's health may be used as "leverage" by one or both parents.

A lawyer (Counsel for the child) may be appointed by the Court to act for the child or children in active custody and access proceedings and is able to act as a representative for the child.

Deciding whether to disclose the health information must be determined on what is in the child's best interests. All requests should be dealt with on a case-by-case basis, drawing upon knowledge of the family circumstances.

Guardians and information access

Generally a child's guardian is entitled to request disclosure of medical information, regardless of whether the child resides in his or her day-to-day care.

The Care of Children Act 2004 sets out the duties, powers, rights and responsibilities of guardians.

Points to consider:

- Often both parents will be joint guardians, although there may be some exceptions
- Individuals other than the parents (eg, grandparents, foster parents, partners of parents) can apply to the court to be appointed guardians. In such cases, a sealed court order should be available for inspection to determine if a person requesting access to a child's notes is indeed a guardian
- Guardianship rights may also be removed by the courts.

In New Zealand, it is not uncommon for there to be informal arrangements for the care of children by persons other than the parents, eg, whangai arrangements within Maori families.

Unless court orders have been made, the birth mother and father usually remain the child's guardians.

Adoption

Where children are adopted, the birth parents' legal rights are extinguished and legally it is as though the child was born to the adoptive parents.

Members are encouraged to contact MPS if they have any doubts about how to exercise their discretion and respond to such requests.

Further information:

- Privacy Act (1993)
- Care of Children Act (2004)
- Case notes of the New Zealand Privacy Commissioner – *Dealing with Child's Health Information When Parents are Separated* – (<http://privacy.org.nz/news-and-publications/case-notes-and-court-decisions/case-note-235239-2013-nz-privcmr-1-dealing-with-childs-health-information-when-parents-are-separated>)
- DHB Denies Father Access to Health Information About His Son – (<http://privacy.org.nz/news-and-publications/case-notes-and-court-decisions/case-note-95042-2008-nz-priv-cmr-1-dhb-denies-father-access-to-health-information-about-his-son/>)
- Gray B, Child's play, Casebook, Vol. 18, No. 1, Jan (2010)

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This factsheet provides only a general overview of the topic and should not be relied upon as definitive guidance. If you are an MPS member, and you are facing an ethical or legal dilemma, call and ask to speak to a medicolegal adviser, who will give you specific advice.

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