

## Working with Children and Adolescents

*Answers to questions about privacy, consent to treatment and access to records*



**T**his article addresses several key issues that may arise when treating minor clients. Psychologists who work with children and adolescents must familiarize themselves with relevant state law, recognize the potential benefits and limitations of written confidentiality agreements, understand considerations that may apply when the minor's parents are separated or divorced and be knowledgeable about applicable provisions of the Health Insurance Portability and Accountability Act (HIPAA).

Working with minors requires balancing the privacy rights of the child with keeping the parents\* appropriately informed about treatment. In order to successfully initiate and conduct treatment, especially with older children and adolescents, psychologists should have a clear understanding from the outset about the specific types of

information that will be considered confidential and the circumstances under which such information may be disclosed.

Following are answers to questions that psychologists frequently ask us about working with minor children.

### **QI: Who needs to consent to treatment of a minor?**

**A:** Typically a parent or legal guardian must consent to health services for a minor child. In many states, however, older adolescents may independently consent to psychological or substance use treatment on their own. State law may also authorize minors to independently consent to other specific types of health care services that minors might otherwise avoid seeking, such as for HIV or reproductive health.

State laws vary considerably, so it is important to be familiar with the law in your area. Helpful sources of information may include state government websites, your state psychological association, the state board of psychology, your malpractice insurer, a private attorney familiar with health care law in your state and knowledgeable colleagues.

In addition to obtaining appropriate permission from a legally authorized person, psychologists who render services to individuals legally incapable of giving informed consent are required by the American Psychological Association's (APA) *Ethical Principles of Psychology and Code of Conduct* to provide an appropriate explanation and to seek the individual's assent to treatment (Ethics Code, Section 3.10b).

### **Q2: What if the parents are unmarried, separated, divorced or involved in a custody dispute?**

**A:** Obtaining consent to treatment from one parent may not be sufficient when psychologists treat a minor whose parents are divorced or separated. State law or court order may specify the rights of custodial and non-custodial parents to consent to treatment and to access treatment records. Both parents may be required to consent to the treatment if there is court-ordered joint custody. Even if it is not legally required, you may choose to request the consent of both parents—especially if you are initiating treatment of children in high-conflict families or in instances where parents are undergoing separation or divorce.

### **Q3: What should be included in the consent form for the treatment of minors?**

**A:** Many issues related to treatment of minors and access to their clinical records can be avoided by addressing these issues in advance. Consent forms should specifically outline the types of information that will be shared with parents (or others) and under what circumstances, as well as the types of information that will be kept private. The contents of the consent form should be thoroughly discussed with the parents at the outset of treatment and, in an age-appropriate manner, with the child. Usually parents are amenable to signing such agreements if they understand how protecting a zone of privacy can improve

the effectiveness of treatment, especially for older children and adolescents. For example, parents may agree to receive only general progress reports and notification of dangerous or emergency situations.

The "Additional Resources" list on page 5 includes several sample consent forms designed for use in treating minors that might be adapted for use in your practice.

### **Q4: Who has the right to access a minor's treatment records?**

**A:** Typically a parent or legal guardian has the right to access a minor's records, but there are exceptions. For example, state laws that allow adolescents to give independent consent for health care services may also allow adolescents to protect the privacy of their treatment records. Other state laws allow parents to access treatment records even in situations where the minor independently consented to treatment or the laws leave the decision about disclosure to the provider's discretion.

### **Q5: How does HIPAA affect a parent's right to access a minor's treatment records?**

**A:** The HIPAA Privacy Rule indicates that parents are generally considered the "personal representative" for their minor children, thereby allowing access to the minor's treatment records (45 CFR 164.502g). Exceptions include the following circumstances: when state law allows a minor to access mental health treatment without parental consent; when state law denies parents access to the minor's records; when a court authorizes someone other than the parent to make health care decisions for the minor; or when the parent or guardian signs an agreement of confidentiality that waives his or her right to access the child's treatment records. Additionally, the psychologist may deny parental access to treatment records under HIPAA if the psychologist reasonably believes, in his or her professional judgment, that the minor has been or may be subjected to parental abuse or neglect or may be endangered by the disclosure of treatment information.

Additional information about the HIPAA Privacy Rule is available online in the APA Practice Organization publication, "The Privacy Rule: A primer for psychologists," found at [bit.ly/hipaaprivacy](http://bit.ly/hipaaprivacy).

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### Q6: What if parents don't agree about who should have access to records?

**A:** This is a complex situation that is most likely to arise in the context of a separation, divorce or child custody dispute. When parents are divorced or separated, the rights of custodial and non-custodial parents to access treatment records may be specified by court order or may be covered by state law.

For example, a parent involved in a custody dispute may not be entitled to access the child's records if the court determines that this would not be in the child's best interests. Similarly, parents engaged in a custody dispute may not be allowed to waive the privilege of keeping the child's mental health records confidential in court proceedings. In these situations, you may want to contact the court for guidance. If it is unclear whether you should release your client's records, you may need to obtain additional guidance, such as from your malpractice insurer or an attorney in your state.

### Q7: What if a minor does not want parents to see his/her records?

**A:** In some situations, the parent may not have a legal right to access the minor's record. For example, some state laws allow adolescents to block parental access to records. If the

parent does have authority to access the child's record, and you do not have in place a written agreement outlining the types of information that will and will not be shared with parents, you can try offering to provide limited information rather than releasing the full record. By maintaining a focus on the best interests of the child, you may be able to satisfactorily address the parent's concerns while keeping detailed treatment information confidential.

### Q8: How do the rights of older adolescents differ from younger children?

**A:** In many states adolescents have the right to independently consent to outpatient mental health or substance abuse treatment. A minor's right to consent to treatment often, but not always, corresponds with the right to protect the privacy of treatment records. "Emancipated minors" or "mature minors" have the right to make decisions about their own health care. State statutes generally define emancipated minors to include those who are married, in the armed forces or declared emancipated by a court of law. Some states also recognize the rights of minors to make their own health care decisions without obtaining permission from a parent if a court determines the minor has sufficient intelligence and maturity to do so.

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*"The goal is to promote effective therapy while keeping parents appropriately informed."*

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When parental consent is required for treatment, it is advisable to discuss in advance with the parents and adolescent client your recommendations regarding what types of information should and should not be kept confidential. The goal is to promote effective therapy while keeping parents appropriately informed. All involved parties should sign an informed consent agreement setting out the parameters of confidentiality at the outset of treatment (see also Q3).

### Q9: What about information related to possible child abuse or neglect?

**A:** The psychologist must be aware of and comply with the mandated reporting laws in his or her state. These laws generally require psychologists to report to the appropriate authorities if they have a reasonable suspicion of child

abuse or neglect. This exception to confidentiality should be discussed with the parents and child, as appropriate, when obtaining informed consent to treatment.

**Q10: What if I believe it would be detrimental to release treatment information about a minor to his/her parent?**

**A:** Discussing your concerns with the parent and/or offering to release limited information rather than the full record is often the best approach. If you are unable to come to a mutually agreeable solution, refusal to disclose treatment information that the parent is authorized to receive may be a legally supportable course of action. In such situations, it is advisable to consult with a knowledgeable health care attorney in your state (see also **Q5**).


For example, a 2009 Iowa Supreme Court case (*Harder v. Anderson*) denied a mother's request to access her child's treatment records because such access was deemed not in the child's best interest. The APA Psychology Defense Fund provided support for the mental health professionals involved in this case.

**Q11: What if I am unsure about whether to release information about a minor client's treatment?**

**A:** This is a complex area of practice, involving the intersection of ethics, law and clinical care. If you are unsure about whether to release information about a minor's treatment to his or her parents, guardian or another third party, we suggest contacting a professional colleague, your state board of psychology, a health care attorney in your state, your malpractice insurer or the APA Practice Organization for further guidance.

\* In this article, the term "parent" may be used generically to refer to parents or other legal guardians.

For more information about working with minor children, contact the Legal and Regulatory Affairs Department at [praclegal@apa.org](mailto:praclegal@apa.org) or 800-374-2723.

**Please note:** Legal issues are complex and highly fact-specific and require legal expertise that cannot be provided by any single article. In addition, laws change over time and vary by jurisdiction. The information in this article should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions regarding individual circumstances. 



**ADDITIONAL RESOURCES**

American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. Available at [apa.org/ethics/code/code-1992.aspx](http://apa.org/ethics/code/code-1992.aspx).

American Psychological Association. (2007). Record keeping guidelines. Available at [bit.ly/RKguidelines](http://bit.ly/RKguidelines).

APA Insurance Trust. Child therapy contract. Available at [apait.org/apait/download.aspx](http://apait.org/apait/download.aspx).

APA Practice Organization. A matter of law: Privacy rights of minor patients. Available at [bit.ly/privacyminors](http://bit.ly/privacyminors).

Behnke, S. (2007). Adolescents and confidentiality: Letter from a reader. Available at [apa.org/monitor/febo7/adolescents.aspx](http://apa.org/monitor/febo7/adolescents.aspx).

Bennet, B.E., Bricklin, P.M, Harris, E., Knapp, VandeCreek, L., & Younggren, J.N. (2006). *Assessing and Managing Risk in Psychological Practice*. Rockville, MD: The Trust.

Ellis, E.M. (2009). Should a psychotherapist be compelled to release an adolescent's treatment records to a parent in a contested custody case? *Professional Psychology: Research and Practice*, 40(6), 557-563.

The Guttmacher Report on Public Policy (2000). *Minors and the Right to Consent to Health Care*. Available at [guttmacher.org/pubs/tgr/03/4/gr030404.html](http://guttmacher.org/pubs/tgr/03/4/gr030404.html).

Koocher, G.P. (2008). Ethical challenges in mental health services to children and families. *Journal of Clinical Psychology*, 64(5), 601-12.

Pope, K. Informed consent in psychotherapy & counseling: Forms, standards & guidelines, & references. Available at [kspope.com/consent/index.php](http://kspope.com/consent/index.php).