



Learning Works

Some related background reading and points for discussion

Discussion Starter 1: Access to Medical Records

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These research notes are of a general nature, and are provided only as background and as discussion starters. Readers should check the relevant laws in their own state or territory.

Background:

The *Privacy Act 1988* (Cth) protects people's confidentiality in relation to medical records. It prevents information from being disclosed to others, with limited exceptions such as in the case of an emergency, and prevents information being used other than for relevant purposes.

It is not specified in the Act what age a child must be before he or she is considered sufficiently mature to make his or her own privacy decisions, therefore, this is something that a Doctor must assess on an individual basis. Doctors recognize the importance of maintaining confidentiality in all situations, including with minors, therefore will deny parents access to medical records where they believe confidentiality should be upheld. The Doctor will have regard to the child's maturity, degree of autonomy and understanding of the relevant circumstances in deciding whether a child is sufficiently mature to deny the parents access to his or her medical records.¹ Generally, when a child reaches his or her teenage years, the Doctor will decide that allowing parent's access to medical records may be a breach of confidentiality.

Where children are considered to be in charge of their own privacy decisions, they have a right to access their own medical records under the *Freedom of Information Act 1982* (Cth). In the case of a child not considered sufficiently mature, the *Privacy Act* provides that health information can be disclosed to a "person who is responsible" for the child. This includes custodial parents and non-custodial parents, as well as non-parental guardians. Doctors are under no duty to disclose information to parents if it is not for medical or compassionate reasons, and when they believe that disclosure will place the child in a situation of danger.²

Issues:

- If parents can access children's medical records, the children may avoid seeing doctors about sensitive issues
- Particularly serious are mental health issues – if children fear that their parents may have access to psychiatric records, they may not get help that they need which has potentially disastrous consequences
- May damage trust that children have for doctors
- Parents may consider it their right to know about their child's health

¹ Privacy Resource Handbook 2003

²<http://www.racgp.org.au/Content/NavigationMenu/Publications/AustralianFamilyPhys/2008issues/afp200806/200806bird.pdf>

Questions:

- What can a parent do if they want access to their child's medical records?
- Will access to medical records be granted if parents believe their child is in some kind of trouble?
- How can a child prevent parents from accessing medical records?
- Can a child have access to their own medical records?
- Can a child be sure that his or her confidentiality will be protected?
- Are there certain procedures that parents are entitled to know about and others that they aren't?
- Can parents tell doctors to deny children access to their own medical records?
- What third parties are entitled to access children's medical records? For example schools
- Do parents have the right to disclose their child's medical records to any third party?
- Can parental consent/refusal to disclose medical records be overturned by a Court?

Further Information:

Privacy Act 1988 (Cth)

Freedom of Information Act 1982 (Cth)

Access to Children's Medical Records, at:

<http://www.racgp.org.au/Content/NavigationMenu/Publications/AustralianFamilyPhys/2008issues/afp200806/200806bird.pdf>

Guidelines for Doctors on Providing Patient Access for Medical Records, at:

<http://www.ama.com.au/web.nsf/doc/SHED-5FTVCR>

Youth Health – Doctors, at

<http://www.ama.com.au/youth/code/doctors.html>