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Access to children's medical records

Case histories are based on actual medical negligence claims or medicolegal referrals; however certain facts have been omitted or changed by the author to ensure the anonymity of the parties involved.

When the parents of a young child are separated or divorced, it is not uncommon for general practitioners to receive requests from one of the parents for information about the medical management of the child, including a request for a copy of the child's medical records. The role of the GP is to provide medical care to the child and act in the child's best interests. This article outlines some strategies for GPs to minimise the possibility of becoming 'piggy in the middle' of a dispute between the parents.

■ Amendments to the *Privacy Act*, 1988 introduced on 21 December 2001, give patients a general right of access to their health information, including the medical records. In the case of children who are not capable of giving consent, the GP can disclose health information to a 'person who is responsible' for the child, including a parent. The *Privacy Act* does not specify that a parent must be a 'custodial parent'. This allows flexibility in judgment when determining to whom to disclose information.

Disclosure can occur:

- because it is necessary for the provision of appropriate care or treatment to the individual, or
- for compassionate reasons.

In exceptional cases, a GP may decide not to disclose health information collected from a young child. This would generally relate to a risk of serious and imminent harm posed to the child, or others, if disclosure took place. For example, if a parent is abusive toward a child or other family members, a GP may decide there are reasonable grounds to believe disclosure of the child's health information would result in greater danger.¹

In this case, the GP was advised to contact the children's mother to inform her of the request from the father for a copy of the children's medical records. The GP should determine if there was any court order in place and/or if the provision of the medical records may pose a risk of harm to the children or other family members. If none of these circumstances were present, the GP could proceed to provide a copy of the children's medical records to the father. The GP was informed that he was entitled to request a 'reasonable' fee to cover the cost of providing a photocopy of the medical records. Alternatively, the GP could respond to the father's letter asking him to write to Ann to obtain her written consent to release a copy of the children's medical records to him.

Discussion

In situations in which the parents of a young child are separated or divorced, it is not uncommon for GPs to become 'piggy in the middle' of the dispute between the parents.

Case study

The general practitioner had looked after the 33 year old patient, Ann Pollard, and her two children, aged 7 and 4 years, for a number of years. The children always attended the surgery with their mother and the GP was aware that the patient was separated from her husband. The GP received a letter from Ann's husband asking for a copy of his children's medical records. The letter stated that he was entitled to receive a copy of the medical records in accordance with the *Privacy Act*. The letter gave no reason why the request for the records was being made. The GP was not sure whether he should comply with the request and he sought advice from his medical defence organisation.

In general terms, either parent of a young child is able to obtain information about the medical management of their child. However, exceptions may apply when there is a court order that grants sole responsibility for the medical care of the children to one parent, or where the general practitioner believes that disclosure of the information may pose a risk of harm to the children or other family members.

Consider the following cases:

- the father of a 3 year old child wrote to the child's GP stating that he expected to be informed every time his child was brought to the surgery. The father also wanted to be consulted before any treatment was given to his son and demanded that the GP send him a copy of the clinical notes following each consultation. In this situation, the GP has no legal obligation to inform the father about the nature of any consultations with the child. Nor is it necessary for the GP to obtain the father's consent before providing treatment to the child. Either parent can give consent to the medical treatment of a young child. Unless there are court orders to the contrary, the consent of both parents is not required. The GP responded to the father's letter stating that he should ask the child's mother to provide him with the information he was seeking
- the father of a 5 year old patient saw the GP and during the consultation he asked the GP to give him a prescription for an EpiPen® Jr for his son. The father said that he needed the EpiPen® Jr when his son had weekend access visits with him, in view of the patient's severe peanut allergy. The GP printed a prescription for the child and gave it to the father. A complaint was subsequently received from the patient's mother who stated that her ex-partner had sent her a copy of the prescription and 'taunted' her with the fact that he now knew her address. Apparently there was a court order against the father which prohibited him from making any contact with the mother and the prescription provided by the GP had included the mother's address. Unfortunately, there was no information in the child's medical records to alert the GP to this situation.

Risk management strategies

- Be wary of requests for a copy of a child's medical records, or a

medical report, where the parents are separated or divorced

- In certain situations, it may be reasonable not to disclose information and/or medical records of a young child to a parent. This situation may arise if disclosure is not required for medical or compassionate reasons; or if disclosure may be harmful
- If in doubt about how to proceed, seek advice from your medical defence organisation or a solicitor – you may be able to avoid becoming 'piggy in the middle' of a dispute that does not involve you or your practice.

Conflict of interest: none.

Reference

1. Guidelines on Privacy in the Private Health Sector. Office of the Federal Privacy Commissioner. November 2001. Available at www.privacy.gov.au.

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