COPIC Tip:

COPIC Case Study:

Minors and Risk—Issues with Treating Young Patients

This article is part of an ongoing series that examines de-identified closed claims and seeks to derive lessons that improve patient safety.

Case Study #1
An 8-year-old boy with flu-like symptoms presents to a family practice clinic accompanied by his father. When the patient checks in, the front desk learns that the parents recently went through a contentious divorce, and the mother is unaware of the child’s current condition. Dr. Jones, the boy’s physician, is informed of this update prior to seeing the patient. Can Dr. Jones provide care and treatment to the minor without the other parent’s consent?

Case Study #2
A 16-year-old minor accompanied by her mom presents to Dr. White’s office. The mom demands that the minor be tested for sexually transmitted infections (STIs) and a drug screening, suspecting her child has been “hanging around the wrong crowd.” The minor adamantly opposes being tested. Can Dr. White test for STIs or illicit drugs without the minor’s consent? Is the consent and demand of the parent enough? What if the parent secretly asks Dr. White to screen for STIs or drugs without the minor’s knowledge or consent incidental to some other tests that she was running.

Health care requires medical providers to deal with the legal landscape, and this can be very challenging when the patient is a minor. This article uses information from COPIC’s “Minors and Risk” booklet, which is a resource to help insureds understand complex issues when treating minors.

PARENTS RIGHTS AND DUTIES
Parents of minor children generally have the right to exercise custody and control of their children and their affairs. Parents, in turn, have the responsibility to ensure their children have proper medical/dental care, and to provide consent for necessary treatments.

“Legal custody” may be taken from a parent by a court order as a result of a divorce or child neglect proceeding. Consequently, in the absence of a court order to the contrary, a parent may be presumed to have “legal custody” of his or her minor children. Save certain exceptions (see Confidentiality and Parents section), parents with legal custody have the right and authority to make medical decisions on their minor child’s behalf. A health care provider who fails to obtain the informed consent of a custodial parent before performing non-emergency medical procedures may be held liable.

DIVORCED PARENTS AND CUSTODY DISPUTES
Under Nebraska law, a court may award custody of a minor child to one parent or to both. Following a divorce or legal separation, the custody determination will dictate which parent(s) will have authority to make medical decisions regarding the minor.

Since enactment of the Parenting Act in 1993, the courts have been increasingly willing to give medical decision-making authority to both parents. Health care providers should request a copy of a court order to confirm that only one parent has decision-making authority.
Under the Parenting Act, a court may develop a parenting plan based on the best interests of the child. The parenting plan should include determinations of legal custody and physical custody of the child. Should joint custody of a minor be awarded to the parents, both parents are entitled to make medical decisions on behalf of the child.

When a dispute arises in such a situation about the type or necessity of medical treatment, either parent is allowed to obtain necessary medical treatment without violating the joint custody order. However, the parenting plan is required to have procedures for making decisions regarding the day-to-day care and control of the child and, when in the best interests of the child, may encourage mutual discussion of major decisions regarding parenting functions, including the child’s health care.

If custody has been awarded to only one parent, the custodial parent has the authority to make all major decisions regarding the minor’s education, health care, and religious upbringing. Typically, if one parent produces a court order awarding custody and sole decision making authority to that parent, the noncustodial parent may not consent to the medical treatment of a minor.

Regardless of the custody determinations in a parenting plan, unless parental rights are terminated, both parents have the right to full and equal access to the child’s medical records, and either parent may make emergency decisions affecting the health and safety of the child while the child is in the physical custody of that parent.

Case study #1 illustrates a situation where a health care provider is entitled to rely on the statements of the parent who presents his or her child for medical care. In the absence of knowledge that the father’s authority has been taken away by court order, Dr. Jones should provide the care requested. In an emergency, either parent can authorize medical treatment. In addition, in an emergency, the health care provider can provide medical treatment without either parent’s consent.

CONFIDENTIALITY AND PARENTS

As a general rule, parents may access their children’s medical records without special authorization. This right of access stems from the parent’s ability to provide consent for a minor’s treatment and extends to both parents after a separation, absent a court order to the contrary.

However, there are certain times when a minor can consent to his or her own medical care such as when a minor is emancipated or married.

In regards to sexually transmitted diseases, any physician who has the consent of a minor patient may perform a diagnostic examination for sexually transmitted diseases and may prescribe for and treat such minor for sexually transmitted diseases without the consent of or notification to the parent, parents, or guardian of the minor.

“Sexually transmitted diseases” include syphilis, gonorrhea, chancroid, and others specified by the Department of Health and Human Services (DHHS). Under DHHS regulations, sexually transmitted diseases include HIV infection.

The physician shall incur no criminal or civil liability by reason of having made such an examination or rendered such treatment but may be liable for negligent acts or omissions. The parents are liable for the costs of such treatment to minors under their custody.
Generally, a minor cannot be tested for any sexually transmitted infection without the minor patient’s knowledge and consent. In case study #2, the situation described does not fall within any of the narrow exceptions allowed under the law for testing without consent and the STI test cannot be performed, whether the parent demands that you do it openly or secretly.

The drug testing is less clear from a legal standpoint. The law is silent on whether the minor must consent to a drug test if a parent has consented. COPIC advises against drug testing of minors without their knowledge or consent, however, because this can erode the relationship of trust between the physician and patient. It is appropriate to understand the parents’ concerns and proceed accordingly, which may include having a confidential discussion with the patient regarding substance abuse.

For more information on liability issues with minors, COPIC-insureds may download the “Minors and Risk (Nebraska)” booklet from our website under Practice Management Resources on www.callcopic.com/resources/pages/medical-guidelines-and-tools.aspx