

Patients expect that their personal medical records will be kept strictly confidential. Having this level of trust is important, because it is vital for patients to talk freely with their doctor to ensure that there is full understanding of the patient's medical condition and concerns. In this way, the patient will receive reasonable and appropriate care. Doctors are taught in medical school about the importance of maintaining the confidentiality of the doctor/patient relationship. In addition, federal (HIPAA) and state law both mandate doctor/patient confidentiality to legally protect the doctor/patient relationship, and the patient's privacy. These laws protect patients from having their protected health information released or shared without the patient's consent. This helps protect against discrimination, embarrassment, or disgrace based upon a particular disease, condition or disability.

There are special rules to protect the confidentiality of minors. For instance, when a minor reaches a certain age (usually twelve), or is emancipated under state law by marriage, pregnancy or parenthood, the doctor/patient relationship does not necessarily have to include parents. If a minor wishes to discuss sex-related issues with the doctor, such as birth control, pregnancy or termination of pregnancy, or the treatment of sexually transmitted diseases, the minor can be assured that New York State laws do not permit the minor's parents to obtain this information or the medical record without the minor's consent. Those laws act to protect the relationship between the minor and doctor so that the doctor can help the minor to avoid health risks.

***What information may be included in a patient's medical records?***

All aspects of the patient's health history, health assessments, diagnoses and results of laboratory tests, treatments, and the doctor's progress notes are part of the medical record. The history taken by the doctor may include:

- Social history, including family relationships
- Sexual history, including birth control method(s), sexual activity and any treatment which is pregnancy-related or to treat sexually transmitted diseases.
- Any history, diagnosis of or treatment for substance abuse (drug or alcohol), or the diagnosis and/or treatment of mental illness
- HIV status.

***In addition to the patient and the doctor, who may request access to these records?***

Minors over age 12 may request that doctors not share medical information with their parent(s). The doctor may agree to do so, but unless the information is specially protected by law, is not obligated to abide by the minor's request.

If the records contain the specially protected by law (including, but not limited to treatment for sexually transmitted diseases, and HIV-related information), only the minor patient and doctor can access the medical record. Doctors generally must obtain written permission to release medical information to someone other than the patient. This includes other doctors to whom the minor is referred. However, if a doctor feels the minor poses a serious threat of harm to him/herself or someone else, that information may have to be shared with appropriate individuals, and if necessary law enforcement officials. Mental Hygiene Law 333.139(c) (6).

Although this is a rare occurrence, doctors are required to act in the best interests of both the patient and the public. Further, if the medical information in the minor's record does not involve sex-related or other specially protected information, parents may obtain access to the patient's record without the minor's consent if the doctor believes it is reasonable to do so.

***The doctor may disclose medical information to the following:***

- **Parent(s)** or court-appointed legal guardians, if the patient is under 18 years of age, and the information in the record does not meet any of the previously described legal exceptions to do so.
- **Other treating physicians**, with the patient's permission
- An attorney acting on the minor's behalf
- The insurance company, and/or government agencies or other parties who may be paying for or subsidizing the health care for the minor.
- The doctor's medical staff. The information disclosed must not exceed the minimum necessary for the staff member to perform his/her job function.
- Any individual to whom the minor gives written permission to view the records.

Examples of situations when the doctor may share medical information with others without the minor's written consent:

- If the patient is unable to fully understand the diagnosis or proposed treatment plan, the doctor may discuss these issues with the patient's parents(s) or guardians(s).
- If the patient exhibits suicidal or homicidal behavior, the doctor is required to protect the patient and others, and must disclose this information to health providers and other;
- If there is evidence that a crime has been committed, such as child abuse or neglect, appropriate government agencies by law must be notified;

-If the patient has been diagnosed with certain contagious diseases, the doctor is required by law to report this to the proper state and local health departments. Keep in mind that these situations are the exception and not the norm. Health information usually remains confidential between the patient and the doctor.

In an emergency, if the minor is unable to consent and no parent is available to do so, and there is danger to the life and limb of the minor, the requirement for consent to treatment or testing is waived.

***Examples of situations when the doctor must share medical information with others without the minor's written consent:***

- Every bullet wound or injury that results from discharge of a firearm must immediately be reported to the police. Penal Law 265.25.
- Every wound that may result in death which appears to have been inflicted by a knife, ice pick, or other pointed instrument must immediately be reported to police Penal Law 265.25.
- Certain burn injuries and wounds must be reported to the State Office or Fire Control and Prevention. Penal Law 265.26.
- Suspected child abuse and/or neglect cases must be reported to Child Protective Services. Social Services law 413.

***What information must the doctor NOT share with minor parent(s) without the minor's written consent?***

New York State law permits a minor with reasonable capacity (ability to understand the nature and consequences of proposed treatment) to consent to certain treatment and then prohibits a doctor from giving the information about the following treatment to a minor's parent(s) without the minor's written consent. Examples of such treatment include, but are not limited to:

- Sex-related treatment, including abortion, contraception, birth control, pregnancy, and diagnosis and treatment of sexually-transmitted diseases or if the minor is married or is the parent of a child.
- Parents cannot obtain access to or consent to the release of any portion of their child's medical records which contain this sensitive information. The consent of the minor must first be obtained.

-A minor may choose to consent to the release of this and other protected information to parents, but is not required to do so.

-Any information the doctor feels would interfere with the doctor/patient or parent/child relationship.

-HIV testing and test results.

-Clinically indicated assessment and treatment for mental health and chemical dependency if necessary for the minor's wellbeing, where the parent is not available to consent, or has refused consent or parental consent and/or involvement would have a detrimental effect on the course of treatment of the minor.

-A minor 16 years or older may consent to the administration of drugs to treat mental illness if the doctor determines the minor understands the treatment sufficiently to consent and the minor meets one or more of the criteria listed above for giving consent to mental health treatment.

### **What are a minor's rights?**

- A minor has the right to expect confidentiality from his/her doctor as described above. The disclosure of protected health information without the minor's written consent may be considered a breach of this relationship. New York State Law and HIPAA prohibit disclosure of any "protected health information" acquired during the treatment of a minor patient which, by law, cannot be released without the minor's consent (i.e. sex-related treatment). This prohibition applies to all licensed health professionals, such as doctors, nurses, dentists, podiatrists, chiropractors, psychologists, and other.

- If a minor patient is over the age of 12, he/she has the right to request that the medical record not be disclosed to certain people, such as parents. However unless the information in the record is specially protected (i.e. sex-related treatment) the doctor may disclose it if, in his/her judgement, it is appropriate to do so.

- A minor has the right to consent to waive this privilege of confidentiality and allow his/her doctor to share information with those people the minor has designated in writing.

- A minor waives the doctor/patient privilege, if he/she commences a personal injury or malpractice lawsuit and the minor's health is in question.

### **What can a minor do to promote confidentiality?**

- Tell the doctor all information necessary to receive proper treatment.

- Be very clear about what, if any, information the doctor may tell others. For example, let the doctor know if he/she is free to discuss health issues (diagnoses, medications) with parents. Provide consent to release this information in writing on the doctor's HIPAA consent forms.

- Carefully read all documents the doctor asks him/her to sign. Such documents may authorize release of protected health information to others, such as insurance applications

or contracts, and employment contracts. The minor patient should be encouraged to ask questions if he/she does not understand the documents.

- Ask the doctor if the medical records can be accessed from outside the office. If so, ask the purpose of such access and who might do so.

- The minor patient should ask the doctor's office to notify him/her of requests or subpoenas for medical records made by third parties to whom he/she has not given consent to obtain access.

### **What about divorced parents?**

The divorce of a minor's parents has no effect on the minor's right to the previously described confidentiality of health information specifically protected by law. As with any release of a minor patient's medical records, the doctor must review the medical record to determine whether it contains specifically protected health information. If the records contain no specifically protected health information, OR the minor is under age 12, OR the minor grants his/her parents access to or a copy of medical records contain such information, the following rules apply:

- Prior to legal separation, divorce or temporary order of custody, both parents may have equal rights to access the minor's medical records as previously described in this pamphlet.
- A separation agreement or divorce decree may grant primary legal custody to one parent, and may (but not always) provide for the non-custodial parent to have access to the medical records of the children.
- If access to the minor's medical records has not been granted to the non-custodial parent, consent to release protected health information must be obtained from the parent with legal custody or via court order before any medical information can be released.

The minor must keep the lines of communication open with the doctor. This helps him/her receive the most appropriate treatment possible and fosters a comfortable and open relationship with the doctor, which can benefit the health of the minor.

#### References:

*Donnaline Richman, Esq., Release of Medical Records in Divorce, Death, and Other Unusual Circumstances, The Bulletin, July/August 1994.*

*Medical Record Privacy, Electronic Privacy Information Center, available at <http://www.epic.org/privacy/medical/>.*

*NY Public Health Law 17, 18*

*NY CLS CPLR 4504 (1998)*

*Judy E. Zelin, Physician's Tort Liability Unauthorized Disclosure of Confidential Information About Patients, 48 A.L. R. 4<sup>th</sup> 668 (1998).*

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# **Doctor-Patient Confidentiality for Minors**

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