

MINORS AND CONFIDENTIALITY

Sondra C. Panico

When providing psychological services to minors, psychologists need to consider the following issues: (1) the minor's ability to consent to psychological services; (2) the minor's access to his/her own psychological treatment records; and, (3) the release of the minor's psychological treatment records to others.

A minor is defined in North Carolina as a person who is under the age of 18, has not been emancipated by the courts or by marriage, and is not serving in the armed forces of the United States. A minor is subject to the care, custody and control of the minor's parents, unless a parent forfeits these rights.

In general, prior to providing psychological services to a minor, a psychologist must obtain consent to provide treatment to the minor. The minor's parent, legal guardian, or other legal custodian must give his/her consent before the psychologist can provide psychological services to the minor. In addition, a parent, legal guardian, or other legal custodian is entitled to have full access to a minor's psychological treatment records. A parent, legal guardian, or other legal custodian also needs to consent in writing to the release of the minor's mental health records to others.

When working with minors, it is important to explain to them at the outset what the limits of their confidentiality rights are and what rights their parents have. Psychologists should be mindful of Standards 4.02(a) and 10.01(a) of the *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association, 2002), which state as follows:

4.02 Discussing the Limits of Confidentiality

(a) Psychologists discuss with persons (including, to the extent feasible, persons who are legally incapable of giving informed consent and their legal representatives)...(1) the relevant limits of confidentiality and (2) the foreseeable uses of the information generated through their psychological activities.

10.01 Informed Consent to Therapy

(a) When obtaining informed consent to therapy as required in Standard 3.10, Informed Consent, psychologists inform clients/patients as early as feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers.

Exception when treatment is provided by a physician

However, a minor may consent to certain treatment when provided by a physician. Specifically, as set forth in N.C. Gen Stat.

Vol. 15, No. 3

§ 90-21.5, a minor "may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135 (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance." This provision does not protect the psychologist who provides treatment to a minor without parental consent, unless the psychologist is working under the direction and supervision of a physician. 47 N.C. A.G. 83 (1977).

Chapter 122C Facilities

In mental health facilities that are covered by Chapter 122C of the North Carolina General Statutes, there may be other special provisions with regard to consent to treatment, and access and release of psychological records. Chapter 122C should be reviewed when providing treatment in a facility which is governed by this Chapter.

Individuals over 18 years of age

Once a person reaches the age of 18, he/she can consent to his/her own mental health treatment, and to the release of his or her own mental health records. His/her parents can no longer consent to his/her treatment, except under certain circumstances (such as mental incompetence), or to the release of his/her records. The parents can no longer access his/her mental health information without his/her consent or a court order.

Emancipation

Pursuant to N.C. Gen. Stat. § 90-21.5(b), "Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child." If a minor becomes emancipated, his parents no longer have any right to consent to treatment on his behalf, access his medical records, or consent to release of his records. A minor over the age of 16 years may become emancipated by filing a petition with the court for emancipation. The Court must determine if emancipation is in the minor's best interest. A minor may also become emancipated through marriage.

Divorce and Child Custody Orders

Psychologists should take whatever steps are necessary, including a review of the custody orders, to determine who can consent to treatment. In the situation where parents are divorced, a psychologist should look to the child custody order or agreement regarding parental rights. N.C. Gen. Stat. § 50-13.2(b) states that, "Absent an order of the court to the contrary, each parent shall have equal access to the records of the minor child involving the health, education and welfare of the child." In general, parents may access their children's treatment records unless their parental rights have been terminated or modified by a court.

However, in releasing psychological records, the psychologist should be mindful of Standard 9.04 of the *Ethical Principles of Psychologists and Code of Conduct* (American Psychological Association, 2002), which states, in part, as follows:

Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. *Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test*, recognizing that in many instances release of confidential information under these circumstances is regulated by law. (Emphasis added).

Other noncustodial situations

If the Department of Social Services (DSS) has custody of a child, then determinations regarding psychological services are made pursuant to a court order. A psychologist should review the court order to see what, if any, rights the parents may have retained, and whether there are any specific psychological services or-

dered for the minor.

Other considerations

This article did not address any issues that may arise under the Health Insurance Portability and Accountability Act, Privacy Rules, (HIPAA) which governs who has access to individually identifiable health information and which covers all health information in the possession of covered entities. HIPAA preempts state law except when state law is more protective than HIPAA. The HIPAA regulations can be found in the Code of Federal Regulations, beginning at 45 CFR 160.101.

This article also did not address any special considerations regarding the confidentiality of alcohol and substance abuse patient records. The federal guidelines for confidentiality of alcohol and drug abuse patient records are found in the Code of Federal Regulation beginning at 42 CFR 2.1. Specifically, 42 CFR 2.14 governs the confidentiality of minor patients' substance abuse records.

NOTE: This article was prepared for the North Carolina Psychology Board by Sondra Panico, Assistant Attorney General and Counsel to the Board. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.