Adolescent Consent and Confidentiality Issues

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Most issues that relate to adolescent confidentiality and consent are straightforward and easily resolved. That said, on occasion, an adolescent patient will present with an unusual set of circumstances. The following is intended to be a guide for those instances for these important areas with the caveat that although the various jurisdictions generally treat these matters the same and hopefully with common sense, however, there are some differences. As such, the following is not intended as legal advice, counsel or interpretation. The pediatric dentist should discuss specific issues with legal counsel familiar with the jurisdiction in question.

As a pediatric dentist, orthodontist, physician, lawyer, law professor and as a judge, the author offers his unique perspective and experience in the hopes that the readers' adolescent patients will benefit and all involved will be spared the devastation which can occur from the failure to adhere to these basic principles.

Confidentiality

At first blush, pediatric dentists may feel that the issues we are about to review present little if any problem for them. In fact, dentists in general have expressed their belief that their physician colleagues are the ones who should be concerned. In fact, with so many medical issues that impact the dental care of adolescents, medical history forms completed in the dental office are as detailed if not more detailed that in medical offices. This is particularly so since physicians generally do a systems evaluation as part of the interview and have rather brief medical history forms completed by patients or parents in the reception area. Whatever the case, much personal, sensitive and certainly confidential information is provided on the adolescent dental office medical history form and is also provided during the examination. Some examples: HIV/Aids, herpes, other STD's, use of contraceptives, psychotropic medications, drug and/or alcohol use, pregnancy, etc.

Based on discussions with medical and dental practitioners, a general misunderstanding of the requirements for confidentiality under HIPAA (Health Insurance Portability and Accountability Act) as well under state law have resulted in their implementing

unnecessary, costly and overly complex procedures which frequently do not focus on the heart of the matter. One of the goals of this article is to have dentists who treat adolescent patients understand that each practitioner should have the same information as the patient's physician so as to best care for their patients' dental needs. In order to do so, it is suggested that practitioners take a more personal look at the bigger picture and focus on the building of a relationship with the patient, parent(s) or guardian founded on trust. Trust is established by honest and candid discussions about what you can and cannot or will not do. Trust comes in large measure with demonstrating that you care about them and that they are special and unique. With regard to confidentiality, especially with insurance coverage, documents are sent to the insured, usually a father, mother or guardian, which may disclose certain information. Unfortunately, that is a consequence of our society. It is therefore most important that these likely disclosures in expected and unexpected manners be candidly presented to all interested parties.

In addition, because consent is needed for every treatment, and because minors, including the majority of adolescents, are unable to provide consent (we will discuss some exceptions in the next section), some disclosure of confidential information will be necessary. Adolescent patients understand and appreciate this honesty. A few may prefer that the minimum disclosure occur. In such instances, each practitioner needs to decide for themselves to what extent they feel comfortable with the requested limitations on disclosure and as such, whether they can treat or decline treatment under those circumstances.

On a more generalized basis, the office protocols and procedures dealing with confidentiality should be carefully reviewed, including staff training in collecting, storing, access and sharing confidential patient data. This should also be an integral part of a regular review and continually monitored by supervisory personnel.

Without intending to frustrate or alarm the reader, lawsuits are a reality for breach of privacy and confidentiality. Some of these lawsuits result from intentional disclosures and may not be covered by malpractice insurance that is generally limited to negligence actions. Your specific policy should be reviewed and your carrier contacted for more detailed information. Two such cases come to mind. In the first case, wherein the practitioner sent

confidential medical information to the employer as well as the insurer, the unauthorized disclosure of confidential information was alleged to have caused great distress to the patient. Herman v. Kratche, 2006 WL 3240680 (Ohio). The second case involved unauthorized disclosure of psychiatric records and resulted in embarrassment and infliction of emotional distress, a separate cause of action in a legal complaint for damages. Acosta v. Byrum et al, 638 S.E. 2d 246, 2006. Both of these cases illustrate the need for careful and thoughtful precautions to be taken by the professional and the entire staff.

Consent

As mentioned above, no discussion of adolescent dental care would be complete without the other integral aspect of consent. For as much as confidentiality is an important and legally present requirement, the practical aspects of obtaining the patient, parent or guardian's consent may conflict with the reality of providing needed care without breaching the duty of confidentiality.

In most jurisdictions, the age of majority when the patient has the legal right to determine what if any treatment to have is 18. Some exceptions exist even for those over 18 and each state's law should be reviewed and understood. Generally, such instances are rare, but in pediatric dental practices, special medical conditions are more frequently encountered than in general dental offices that also treat adolescents. This may change as access to care becomes more available. However, one of the points of the article is dealing with situations where adolescents under 18 are able to provide consent and the impact of confidentiality concerns for those patients.

Without attempting to minimize the complexity of this interaction, below are several categories offered to better familiarize the dental practitioner with some exceptions to the age of 18 consent requirement, and where an underage adolescent may give consent or where no consent is needed. Again, each practitioner must refer to the specific jurisdiction's requirements as well as the overlay of federal law, most particularly HIPAA, to determine a more complete jurisdiction specific listing.

Frequently cited examples include emergency services, where the parent or guardian is unavailable. This may different than being a Good Samaritan. Also, suspected child abuse or neglect, where state law may impose an affirmative duty on the healthcare practitioner; and, diseases required to be reported by law.

Fortunately, such situations are infrequent. However, they do occur and when they do, time may be of the essence. It is suggested that local and state associations and or groups, provide the state specific information necessary knowledgeable legal counsel who will prepare and disseminate resources to its members with guidelines for how to respond under various circumstances in that jurisdiction. This is helpful for several reasons. First, it will serve as a guideline for the practitioner. And, second, they will also serve as a "safe harbor" in the event that the practitioner is involved in a professional and/or legal action, either with the state licensing board or with the courts since it will serve as a basis for the actions taken.

The need for detailed medical information in the adolescent dental treatment setting has never been more important and will continue to increase in importance as more sophisticated treatments are performed which likely will impact current patient medical conditions, prescribed medications taken and drugs and alcohol being consumed. Catastrophic consequences can occur without a full and thorough evaluation of any current medical conditions and potential interactions.

Developing a relationship with the adolescent and with the parent(s) or guardian based on trust is the fundamentally critical step. This can only be accomplished by spending some time at the beginning of the relationship and discussing with all involved what you can and will do and then by keeping your word.

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