

When Kids Are Involved: Selected Legal & Risk Management Issues

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Disclosures

Neither I nor my spouse/partner has a relevant financial relationship with a commercial interest to disclose.

Agenda

- Custody & Divorce
- Informed Consent
- Confidentiality
- Mandatory Reporting

Vignette #1

- **Dr. J**, a child psychologist, is asked to evaluate **Sam**, a 10-year-old boy whose parents are in a difficult divorce.
- **Sam** shows signs of anxiety and gives mixed messages about each parent.
- **Ms. K**, his mother, reports emotional neglect by the father, while, **Mr. L**, the father, accuses **Ms. K** of alienation.

- **Dr. J** recognizes the emotional and legal complexity of the case.
- She **declines to make recommendations about the parenting plan**, documents carefully, consults with colleagues, and shares her concerns with both parents.
- She recommends a formal custody evaluation and stays focused on **Sam's** well-being.

- **Dr. J** is mindful to maintain **clear clinical boundaries**, avoiding forensic opinions and clarifying her role as a treating psychologist.
- She navigates shared custody dynamics by focusing on **Sam's** emotional needs, coordinating care across households when appropriate, and ensuring that her involvement remains therapeutic—not evaluative or legal.

Issues Related to Custody and Divorce

Determining Paternity

- When married parents have a child, parentage is presumed.
- When parents are not married, only mother's parentage is established by birth of the child.
 - Typically, paternity is established through:
 - Voluntary agreement by mother/father of child, or
 - By court order with finding of paternity

Physical Custody

- Physical custody:
 - Role & responsibility of providing day-to-day care.
- Primary Physical Custodian:
 - Individual providing majority of day-to-day care.
- Parenting Plan:
 - Court-ordered division of physical custody between custodians.

Legal Custody

- Legal custody:
 - Authority to make major life decisions for a child.
 - Healthcare, education, religious upbringing, etc.
- Legal custody typically is binary.
 - You have it or you don't.
- When parenting capacity is a concern, a court may alter or sever legal custody.

Other Forms of Custody

- **Guardianship:**
 - Judicially appointed individuals with various arrangements of physical and legal custody of children.
 - State Custody (Child Welfare/Foster Care/ Correctional)
- **Emancipated Minor:**
 - Judicial act to free a minor from control of parents, and parents are freed from responsibility for the child.
- **Mature Minor:**
 - A minor may possess the maturity to choose or reject a particular health care treatment and it is in their best interest to not involve parent/guardian as typical.

When Parents are Divorced: Treatment Concerns

- Divorce almost always alters physical custody, and may alter legal custody.
 - Typically, parents share both physical and legal custody.
- Working with divorced parents sharing legal custody is analogous to working with married parents.
 - Parents are expected to collaborate in decisions.

When Parents are Divorced: Treatment Concerns

- Recommend at a minimum ‘other’ parent assents to treatment of child.
- In emergencies or critically acute situations, one parent’s consent is sufficient.
- Where parents sharing legal custody disagree about treatment, your role is to not negotiate their discord.

High Conflict Divorce: Considerations

- ~10% of all divorces are high conflict (involve extension litigation).
- Children's treatment is often a nexus of conflict.
- Maintain your focus on the needs of your patient.
- Risks:
 - Being enlisted as partisan.
 - Being misperceived or misrepresented.

Maintain your Neutrality

- Ensure both parents have equal access to you.
- Provide both parents with the same timely information.
- Unless acting in a formal forensic capacity, do not:
 - Critique parent's behavior/decision-making,
 - Critique parenting plans,
 - Offer opinions regarding parenting capacity.

Vignette #2

- **Dr. M**, a child psychiatrist, evaluates **Kelly**, a 13-year-old girl diagnosed with moderate OCD.
- After reviewing treatment options, **Dr. M** recommends starting fluoxetine along with cognitive behavioral therapy.
- She meets with **Kelly's** parents to explain the diagnosis, treatment plan, potential benefits, risks, and alternatives.
- The parents provide informed consent, which **Dr. M** documents.

- **Dr. M** also speaks directly with Kelly, using age-appropriate language to describe how the medication works and what she might expect.
- **Kelly** asks thoughtful questions about side effects and whether the medication will change her personality.
- **Dr. K** answers honestly, encourages Kelly's input, and ensures she feels involved in the decision.
- **Dr. K** documents Kelly's **assent**, showing she understands and agrees to the treatment plan.

Informed Consent: Considerations

- Minors are presumed incapable of informed consent.
 - Important to obtain assent (expression of willingness or agreement) of child if developmentally appropriate.
- Aim to balance the perspectives, autonomy, and wishes of the parent, child, and the clinician

Are the parents competent?

- Parents are assumed competent to make treatment decisions regarding their children.
- However, one or both could be incompetent.
 - Incompetent: Status of an individual defined by functional deficits (due to mental illness, mental retardation, or other mental conditions) judged to be sufficiently great that the person cannot meet the demands of a specific decision-making situation at the time, weighed in light of its potential consequences.

Presumption of Incompetence in Children: Exceptions

- Emergency
- Mature Minor
- Statutory exceptions:
 - STD, HIV, family planning/reproductive health, mental health treatment, or substance abuse treatment
- Judicial bypass in minor seeking abortion

Vignette #3

- **Dr. J**, a psychologist, learns during a therapy session that **Alex**, a 15-year-old patient, has been using cannabis regularly.
- **Alex** asks **Dr. J** not to tell his parents.
- **Dr. J** weighs the need to maintain trust and therapeutic privacy against concerns about safety and potential harm.

- After consulting with a supervisor and reviewing ethical guidelines, **Dr. J** decides to have a collaborative conversation with **Alex** about involving his parents, aiming to support safety while respecting **Alex's** voice.

Confidentiality Considerations

- Those with the legal authority to consent to treatment have the legal authority to access all the information disclosed in treatment and to the pertinent medical records.

Balancing Spheres of Privacy

- At the outset of treatment, delineate with the adolescent and the parents the expectations around disclosure of information.
- Treators should encourage developmentally appropriate fostering of adolescents' growing independence.
 - Encourage parents to do the same.

Disclose Information that is Relevant to Wellbeing

- Never withhold information from parents that may help protect patient from serious harm.
- Considerations:
 - Legal and ethical obligations to disclose,
 - Potential value of parents being aware,
 - Impact of disclosure on treatment
- Strategize and collaborate with patient on how best to disclose.

Maintaining Confidentiality with Children--Exceptions

- Mandated reporting of abuse and neglect
- Emergency
- Safety of patient/others
- Malpractice suits
- Civil commitment
- HIPAA Exceptions
- Judicial waiver of privilege

Vignette #4

- **Dr. K**, a psychologist, is working with **Jordan**, a 14-year-old patient, who discloses during therapy that a family member has been physically abusive.
- **Jordan** asks **Dr. K** not to tell anyone. **Dr. K** feels the weight of maintaining trust but recognizes the legal obligation to report suspected child abuse.

- After reviewing state reporting laws and consulting with a clinical supervisor, **Dr. K** documents the disclosure and files a report with the child welfare agency.
- **Dr. K** then explains the decision to **Jordan** with care, emphasizing safety and support while attempting to maintain continued therapeutic engagement.

Mandatory Reporting

- Typical obligation to report abuse and neglect of a child (or vulnerable person) to State Child Welfare Agency.
 - If, in your professional capacity, you have reasonable cause to believe the child is being physically, emotionally, or sexually abused or is being neglected.

Thank you!