



Child Treatment, Parents and Privacy: What Rights Do Children Have?

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Psychologists have a primary obligation to protect the confidentiality of those that they serve (APA, 2002). Although confidentiality must sometimes give way before reporting laws and other duties, psychologists are trained not to discuss confidential information with third parties except in narrowly drawn circumstances. Psychologists treating children face more complicated responsibilities and loyalties. Because most children are brought to therapy by one or both parents, there exists considerable confusion as to how much knowledge and involvement a parent may have in the child's treatment. This consideration raises legal and ethical, clinical and theoretical questions. Many psychologists treating children are unclear as to how to apply what they know about confidentiality and privilege to the treatment of children, and are uncertain as to who determines what is protected information.

Most children and adolescents are brought to treatment by their parents, who consent to treatment and typically control the disclosure of records. A divorced or separated parent may bring a child to treatment with or without the knowledge or consent of the other. Some children are self referred and can consent to their own treatment and disclosure of their records (Simmons, Shalwitz and Pollock, 2003), while others are referred for treatment services by social service agencies or foster parents. Each situation presents the treating psychologist with varied and sometimes conflicting duties regarding confidentiality, privilege and informed consent.

In his recent article *Access to Minor Patient Records and Therapist Testimony*, attorney Gary Wittenburg (2005), described the complex issues raised when therapists are requested to disclose confidential information. Wittenburg noted that different laws, the legal status of the child and the purpose for the disclosure all effect the determination of who has the authority to waive the privilege or authorize disclosure of confidential material. Wittenburg also offered an important clarification, and one that is unfamiliar to many psychologists; it is the treating psychologist who must make the initial determination as to whether to disclose information about a child's treatment, and how much information to disclose. This is true even when disclosures are made to the child's parents.

Many psychologists treating children believe that they must tell parents what is going on in the treatment if a parent demands to know, and must release records if a parent tells them to. One of the most pervasive mythologies the author has encountered as an educator in law and ethics for psychologists is the belief that parents are

the holders of the privilege for their child and can mandate the release of records and force a therapist to discuss the details of their child's therapy. The complicated rules and court decisions regarding children's medical records and privilege (that Wittenburg so carefully detailed) serve to protect the privacy of children in psychotherapy. Psychologists should not defer to parents and disclose information received in psychotherapy from children without considering the right of the child to have that information protected. Psychologists routinely discussing such information have misunderstood their role in protecting client information and have surrendered their responsibility to protect the child's right to a private relationship.

Privacy is no less a fundamental right of children in psychotherapy than adults (Koocher and Keith-Speigel, 1990). The ethical principals, laws and regulations regarding confidentiality and privilege serve to protect those rights, while providing psychologists with the tools to balance the right of children to a private relationship against the need to involve a parent. If discussing details received from children is necessary for effective treatment, it is permissible to do so. While it may make good clinical sense to include parents in the treatment of a child, psychologists should appreciate that doing so is a clinical decision, not a legal mandate. Confronted by demanding parents, psychologists may defer to dimly recalled courses, misinformation and a superficial understanding of the law. As a result, they sometimes believe they must surrender the very thing they are most thoroughly trained to provide, clinical decision making.



Psychologists treating children should not lose sight of their ethical obligation to their patients; laws and regulations support them in that endeavor. Laws and regulations about confidentiality offer psychologists guidance and the opportunity to balance the right to privacy with the need for effective treatment. The ethical principles of beneficence (do good) and non-maleficence (do no harm) offer guidance. Prior to disclosing confidential information to a parent, a psychologist should consider the following: is it likely to harm the child if the information is disclosed, and does it do good? A child psychologist should carefully consider these principles prior to determining whether the laws and regulations permit any disclosures.

References

American Psychological Association Ethical Principles Of Psychologists and Code of Conduct (2002).

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