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Get the Custody Order – Before Treating

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A frequent call to our risk management helpline goes something like this:

Physician: I'm treating a minor patient whose parents are divorced. Dad has not been involved in treatment but is now requesting a copy of my chart. Mom doesn't want me to share anything with dad, so what do I do?

Risk Manager: Do you have a copy of the custody order?

Physician: No

So we then start the discussion of why the physician needs to see the custody order. Not only will the order likely address who has access to the minor's medical records, but the order will also spell out which parent(s) can consent to treatment.

Typically, unless parental rights have been terminated, both parents can access treatment information, even a parent without custody. If the issue of consent to treatment and consent to release of treatment information is not addressed in the order, the parents should seek resolution from their attorneys.

Physicians treating minors may want to consider the following:

- Make it your office policy to request a copy of the custody order at the first visit.
- When an appointment is made for a new patient who is a minor, ask if the parents are divorced. If so, advise that a copy of the custody order will need to be brought to the first appointment. Without the order, the physician cannot see the patient because there is no proof that the parent bringing the minor has the legal authority to consent to treatment.

Once you have determined who has authority to access treatment information, there may be additional factors to consider, such as the clinical impact on the patient.

Originally posted on February 17, 2015

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