

Avant factsheet:

Children's care and separated parents

Quick guide

1. The best interests of the child should be paramount at all times.
2. Both parents have equal rights to request access to their child's medical records unless there is a court order to the contrary.
3. Either parent can consent to treatment but if a dispute arises, recommend that parents resolve it between themselves, or through the Family Court of Australia process if necessary.

Separated parents

When parents are separated there may be difficulties for you in delivering care to their child or children. You may be placed in the middle of a disagreement about how the child will be managed medically, or there may be questions about access to medical records and other information that relates to the child or children.

Irrespective of the nature of the relationship between the parents, both retain their individual rights as parents. This means that either parent can consent to treatment and request access to their child's medical information. The two main exceptions to this are:

- the presence of a court order to the contrary
- the child is a mature minor.

Parenting orders

It is rare but in some cases the court, for a variety of reasons, may take away some or all of a parent's rights and responsibilities. If the court does this, it would always be confirmed in the form of a court order. Generally, the guardian parent will ensure the practice is aware of this information to protect their child's interests. If you are aware parenting orders exist it is important to ask for a copy and keep them on file.

If you are unfamiliar with the family, ask either parent if parenting orders exist and make a note of this in the medical records. If a new family comes to the practice and the parents are separated or divorced, it might help to have an early discussion with the parents about how to deal with these situations and make a note of it in their file. Again, if there are parenting orders, you should ask for a copy and keep them in the records for the child or children.

Child as a mature minor

An exception to parents making decisions about a child's care or accessing their medical information, is if the child is considered to be mature enough to make their own decisions. There is no set age when this occurs as it depends on the child, the decision to be made and your assessment of their ability to make the decision.

More information on this issue can be found in our factsheet on [children and consent](#). In relation to the My Health Record (MHR) you can get more information on our [MHR landing page](#).

Parents disagree about treatment

Sometimes a parent may request treatment you know the other parent opposes. An example is the administration of certain vaccinations. We recommend you advise the parents to try to resolve the issue. In many cases, after further discussion, the parents do come to an agreement. If not, it may be necessary for them to obtain legal advice and perhaps involve the Family Court for a resolution. The court will determine those issues based on what is in the best interest of the child. You can then rely on any court orders regarding the treatment in question.

Sometimes you may treat a child with one parent's consent and later become aware of the contrary views of the other parent. It is legal to proceed on the basis of one parent's consent, but you may have to justify your position after the event in response to a complaint.

One parent requesting a medical record

The legal position is that either parent has equal access to the child's medical records. However, there are some concerns to be considered. The first step to help navigate these concerns is to ask the parent requesting access to the record to put the request in writing.

Identity

You need to confirm the identity of the person making the request. We recommend a three-point ID check, such as name, date of birth and address. A current driver's licence covers all these check points and has the added advantage of a photo.

Privacy

It is possible that information in a child's records may impinge on the privacy of one of the parents. For example, the address of the guardian parent in a domestic violence situation or mention of a parent's history with depression. This should always be a consideration when writing a child's medical records.

There may also be information about the child that poses a risk to the child if released to a parent, such as their relationship with or feelings about the requesting parent.

In these cases, the general exemption under the privacy legislation should be considered. If providing information poses a serious threat to the life, health or safety of the child (or someone else), you should withhold this information.

If one parent makes a request for the child's medical record, it is important to check the records before providing information to ensure privacy is maintained. If the risk of disclosing a child's records can be addressed by redacting or covering parts of the record, or providing a summary of treatment, this should be done rather than not providing any information.

Remember, if you deny access to a child's information without a valid reason, this may lead to a complaint being made against you. Depending on the circumstances and your location, you should follow the framework in the relevant privacy legislation when responding to the request for access.

Notifying the other parent

There is no legal compulsion to inform the other parent of a request to access the child's records. You may choose to do so, or your practice policy may indicate this should be done. If you are notifying the other parent a request has been made, we advise you to also inform the parent who made the request that you will be doing so as a courtesy.

Conflict of interest

If you were treating the entire family before the relationship broke down, you may find yourself in a difficult situation. Conflicts can arise when parents attempt to convince the doctor to support their cause. It's very important to remain neutral and to understand your role is to assist your patient to maintain good health.

If a parent comes to you with concerns that the information in the records might be used as ammunition during a custody battle, you have limited grounds to refuse the other parent access to the records. Being suspicious of a parent's motives is not sufficient grounds to refuse access.

If the feuding parents are also your patients and you believe the situation is placing you in a position of conflict, we recommend you cease treating both parents (or continue treating one parent if the other doesn't object). Make it clear to the parents that you will give the health of the child priority.

Management of the issues surrounding separated parents can be complex. We recommend you establish a procedure on how to manage these issues and ensure all practice staff are aware of the process.

This publication is not comprehensive and does not constitute legal or medical advice. You should seek legal or other professional advice before relying on any content, and practice proper clinical decision making with regard to the individual circumstances. Persons implementing any recommendations contained in this publication must exercise their own independent skill or judgment or seek appropriate professional advice relevant to their own particular practice. Compliance with any recommendations will not in any way guarantee discharge of the duty of care owed to patients and others coming into contact with the health professional or practice. Avanti is not responsible to you or anyone else for any loss suffered in connection with the use of this information. Information is only current at the date initially published. © Avanti Mutual Group Limited [November 2019]. MJN-188 11/19 (0983)

For more information or immediate **medico-legal advice**, call us on **1800 128 268**, 24/7 in emergencies.