



Privacy and Disclosure - Release of Confidential Records of Minors to Parents/Guardians

In this document, unless the context indicates otherwise, “member(s)” includes licensed pharmacist(s) and pharmacy technician(s).

BACKGROUND

These guidelines are intended to supplement the Saskatchewan College of Pharmacy Professionals guidelines entitled, “Patient Confidentiality and the Release of Confidential Records.” For the purpose of these guidelines, the term “minor” means an individual who is under 18 years of age.

The Code of Ethics of the Saskatchewan College of Pharmacy Professionals states that “a member shall protect the patient's right of confidentiality.” During the course of practice, members acquire “personal health information,” including medication, medical and other personal information about their patients. A member is ethically obliged to respect the confidential nature of this information, regardless of age.

Subsection 56(d) of *The Health Information Protection Act* (“HIPA”) provides that the legal custodian of a minor can exercise the child's HIPA rights and powers in situations where, in the opinion of the member, it would not constitute an unreasonable invasion of the minor's privacy.

Further, subsection 56(c) of HIPA provides that a minor can exercise his/her own rights or powers under HIPA where, in the opinion of the member, the minor understands the nature of the right or power and the consequences of exercising such right or power.

The purpose of this document is to provide general guidance to members on how to apply these two sections of HIPA. This includes consideration of the following two questions:

- *Under what circumstances should additional proof of legal custody be required by a member from someone claiming to be the legal custodian of a minor?*
- *What factors should a member take into account when determining whether the exercise of a minor's HIPA rights/powers by the minor's legal custodian is an unreasonable invasion of the minor's privacy?*

GENERAL GUIDANCE

At minimum, pharmacies should develop and follow a consistent policy outlining how privacy issues related to minors will be handled. An ad-hoc approach to the handling of such matters may lead to errors and/or inconsistency.

Under what circumstances should additional proof of legal custody be required?

1. The general rule under Saskatchewan law is that a child's parents are the joint legal custodians of the child. This is subject to situations where a court orders otherwise, one parent has never cohabited with the child, or the parents have entered into a valid agreement dealing with custody matters.
2. Members should always be cautious when considering the release of personal health information to an individual purporting to be the legal custodian of a minor.
3. If unsure whether the person making the request is actually the legal custodian of the minor, the member should make additional inquiries in order to establish proof of legal custody.

What factors should a member take into account when determining whether the exercise of a minor's HIPA rights/powers by the minor's legal custodian is an unreasonable invasion of the minor's privacy?

1. Generally speaking, a legal custodian will have the power to engage a member for the purpose of filling a prescription for his/her child and to have access to, and receive, information relating to that prescription.
2. However, pursuant to section 56 of HIPA, a member cannot allow a legal custodian to act on behalf of the minor where doing so would, in the opinion of the member, result in an unreasonable invasion of the minor's privacy.
3. Although each situation must be considered on its own particular facts, the following is a list of factors a pharmacist should take into account in determining whether such an unreasonable invasion of privacy would result:
 - a) **Nature of the prescription(s) involved.** Generally, the more sensitive the nature of the prescribed drug, the more sensitive the member should be to protecting the minor's privacy.
 - b) **Age/maturity of the minor.** Generally, the older the minor, the more likely it is that the minor will have an expectation of privacy with respect to the handling of his/her personal health information.
 - c) **Past experience with the minor and the legal custodian.** For example, the legal custodian may have been present with the minor when the prescription was filled in the first instance and, therefore, is aware of the prescription. This may be a factor weighing in favour of concluding that an invasion of privacy will not result since the legal custodian knows about the prescription.
4. Where a minor has expressly requested that a member **not** release information relating to that minor, the member must not release such information to a legal custodian **unless** in the reasonable professional view of the member, the member believes that the minor does not have the capacity to understand the nature and consequences of his/her request.
5. These guidelines apply to **all** requests for information relating to minors, including requests made by legal custodians for duplicate receipts for income tax purposes.

For all other requests for the release of confidential information, members should refer to the guideline entitled, "Patient Confidentiality and the Release of Confidential Records."

Members requiring assistance in interpreting these guidelines are encouraged to contact the Saskatchewan College of Pharmacy of Professionals at 306-584-2292.

Questions?

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