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Teen Privacy Rights and Drug Testing

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One of the more confusing areas of the law for adolescent practitioners is what to do when a teenager is brought into the office or emergency department with a substance abuse/overdose issue. For example, is the use of drugs, alcohol or other illegal substance confidential? Can a parent request a toxicology screen without the minor's consent? This month's MLPP News addresses this interesting area where law and clinical practice intersect.

Case Study – The Emergency Department Visit

Johnny, a fifteen year old boy, is complaining of severe stomach pains and enters into convulsions. His mother rushes him to the nearest emergency department. The emergency department physician orders a toxicology screen which comes back positive for cocaine. His mother insists on knowing why her son is so sick. Can the ED physician share Johnny's drug test results with his mom without Johnny's written consent?

Federal vs. State Requirements

The above case exemplifies the real tension that exists between a teenager's confidential right of privacy in the health care realm and a parent's right to information about her child's health condition. The federal Public Health Services Act (PHSA) strongly encourages drug abusers, including teens, to seek treatment. Thus, the PHSA includes regulations that strictly protect drug and alcohol abuse treatment records. These federal regulations may conflict with many state statutes and/or regulations that actually allow parents and/or guardians access to a minor's drug records. Therefore, it is critical that an adolescent, and the health provider, understand the applicable state law versus the PHSA and recognize when each would apply to them.

In Connecticut, the law is silent with respect to a physician's duty to report to a parent the result of a drug test taken as part of a routine comprehensive examination.[1] Knowing this, physicians carry with them an ethical duty to promote the autonomy of minor patients and thus, should treat the confidentiality of a minor as they would any adult. However, according to the American Medical Association guidelines[2], confidentiality for immature minors may be ethically breached when necessary to enable the parent to make an informed decision about treatment and/or when such breach is necessary to avoid serious harm to the minor patient.

In the case of a minor seeking drug treatment with a licensed substance abuse counselor (versus routine drug testing), however, Connecticut law falls in line with the PHSA, which specifically restricts access to drug treatment records without the patient's consent, even a minor patient.[3] At any rate, the PHSA allows for disclosure to a parent when there is a serious threat to the incompetent minor's life or physical well-being and it is determined that this threat can be diminished by disclosure to the parents. Please note the aforementioned does not compel disclosure, it simply exempts physicians from the federal requirement of obtaining written consent.

When must a physician abide by the PHSA versus state law? Federal law only applies to providers and/or facilities that are "federally assisted." In general, if a provider or facility is funded, in whole or in part, by the federal government, they are federally assisted and must abide by federal law. However, in the case of drug treatment records, PHSA also requires the provider and/or facility to hold itself out as providing drug abuse diagnosis, treatment, or referral.[4] If these requirements are met, the physician and/or facility must abide by both the PHSA *and* state law. If not, only state law applies.

Overall, Connecticut law is silent with respect to the disclosure of a minor's routine drug test results, however, drug tests obtained in the course of drug treatment are protected by both federal and state law and these results must be kept confidential, unless one of the state/federal law exceptions applies.

A Hypothetical for Clinicians – Send Us Your Response

One final question that arises is in the scenario where a parent requests a provider to screen a minor whom the parent believes is using illegal substances. In this hypothetical, a parent pulls the treating provider aside and asks her to test the child without the child's knowledge or consent. How should the clinician handle this request? What if the child presents with no indication of substance use/abuse during the visit? The MLPP attorneys would like your feedback on this issue – and we would like to provide our clinician partners' responses to this scenario in one of the next issues of the *MLPP News*. To respond to this question, please e-mail to Jay Sicklick at *jsicklick@kidscounsel.org*. The sources of the responses will be kept confidential unless otherwise indicated.

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MLPP Case Spotlight: Autism & the Appropriate Educational Setting

This month's Spotlight features the case of Joseph P., a teenage boy whose anti-social behavior emanating from this severe autistic condition resulted in a middle school issuing repeated suspensions and expulsions. A pediatrician affiliated with a federally qualified health center in Hartford referred the case to the MLPP on-site attorney in a desperate attempt to return Joseph to the classroom. Here is a summary of this thought-provoking case:

Joseph P., a 16 year old boy with a diagnosis of autism, had been languishing in the public school system for years without an appropriate educational plan and necessary related services. In the fall of 2006, an affiliated MLPP pediatrician at a local federally qualified health center contacted the MLPP attorney to inquire about whether the school system had a right to suspend Joseph for anti-social behaviors (aggressive actions, hitting, biting, etc) that were manifestations of his autistic condition. The physician also informed the MLPP attorney that Joseph's parents, although formally uneducated, had been advocating with the school system for several years to ensure that he receive appropriate services, but had been repeatedly rebuffed by school administrators and special education personnel. As a result of his autistic condition, Joseph had not progressed in school, and was presenting a danger to himself and others in the school setting.

The MLPP attorney, utilizing the pediatrician's expertise, immediately sent a demand letter to the school district's director of special education requesting an emergency meeting to examine Joseph's placement and program. In addition, the MLPP team reviewed Joseph's records, and determined that he had been denied appropriate educational services for at least the seven preceding years. As a result of this intervention, the school system indicated that they would be willing to consider an alternative program for Joseph, but would not specify where that program would be located, or if he would be sent to an out-of-district placement specializing in autism.

At the special education planning meeting, the MLPP attorney enlisted the expertise of the health center pediatrician, who passionately advocated for Joseph and answered all questions posed by school personnel. In addition, the MLPP attorney provided significant evidence that the school had not provided Joseph with the range of services required for a child with a diagnosis of severe autism. At the conclusion of the meeting, the special education administrator from the Board of Education agreed that the local district could not meet Joseph's educational and behavioral needs, and that his autistic condition requires placement at a school that specializes in autistic spectrum disorders.

While an outplacement for Joseph may have been the correct decision, not all autistic children should be placed in out-of-district environments. In fact, the law mandates that the school district provide a program which is the least restrictive environment for a child with special needs. In many cases, however, children suffering from an autism spectrum disorder are not educable in the regular classroom, nor do the school districts provide the full range of services necessary to appropriately educate these hard-to-serve children.

For more information about special education services and the severely disabled child, please contact the MLPP at *jsicklick@kidscounsel.org.*

MLPP Notes

Adolescent Confidentiality and Teenage Legal Rights: A Primer on Reproductive Health Issues Presentation on the Web

A webcast of the MLPP's June 21, 2007 presentation at Saint Francis Hospital's Chawla Auditorium on *Adolescent Confidentiality and Teenage Legal Rights* is available on the web at *www.saintfrancisdoctors.com/mediasite/viewer***.** The presentation lasts approximately ninety minutes.

MLPP Partner Community Health Services Opens New Pediatric Space and Adolescent Clinic

Community Health Services (CHS), located on Albany Avenue in Hartford's North End, recently expanded into a new clinical pediatric space on the newly renovated third floor of the building. In addition, CHS, under the director of medical director and pediatrician Robert Zavoski, MD, now offers an Adolescent Medicine clinic on-site, directed by Johvonne Claybourne, DO, a family medicine specialist. CHS and Dr. Claybourne may be reached at (860) 249-9625.

Footnotes from front page article

[1] Adolescent Health Care: The Legal Rights of Teens, Center for Children's Advocacy, Page 4
[2] American Medical Association, E-5.055 Confidential Care for Minors
[3] See Conn. Gen. Stat. § 17a-688d.
[4] 42 CFR 2.11; 42 CFR 2.12 Youth Law News, Federal Privacy Protection for Substance Abuse Treatment Records: Protecting Adolescents, by Rebecca Gudeman.

We want to hear from you!

If you have a case to refer to the MLPP, call Jay Sicklick at 860-714-1412 or email *jsicklick@kidscounsel.org*

Please submit questions for the next edition of MLPP News to jsicklic@kidscounsel.org or, call Jay Sicklick at 860-570-5327.
For information about the Medical-Legal Partnership Project, check the MLPP website at www.ccmckids.org/mlpp or, the CCA website at www.kidscounsel.org.

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