

## RISK MANAGEMENT ARTICLE

### Special Considerations for Treating Minors

#### Part One: Informed Consent, Unaccompanied Minors & Refusal of Care

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Most healthcare professionals are well-versed when it comes to the requirements for consent, privacy, and confidentiality in the treatment of adult patients. However, there are special considerations for pediatric patients, including infants, children, and adolescents, that dental professionals must keep in mind.

Part One of this article will discuss the basic principles of obtaining informed consent to treat minor patients, and will provide general risk management recommendations to help dental professionals navigate these concerns.

#### Informed Consent

Most dentists are aware of the consent requirements for adult patients. Minors have special considerations that dental professionals should keep in mind. When is informed consent needed? What if a teenager is not accompanied by an adult? What if care is refused?

Consent laws vary by state. Some require written consent before treatment, while others allow verbal consent. This article offers general guidance, but it is still important to check your state's specific requirements.

The American Dental Association (ADA) states dentists are:

*"Required to provide information to patients/parents about the dental health problems the dentist observes, the nature of any proposed treatment, the potential benefits and risks associated with that treatment, any alternatives to the treatment proposed, and the potential risks and benefits of alternative treatments, including no treatment."*

In order for a parent or guardian to give informed consent they must:

- Be informed that any treatment or diagnostic procedure is voluntary.
- Understand the potential benefits and risks of treatment.
- Have an opportunity to ask questions.

#### Who can consent to care?

In the case of a minor, the informed consent process must involve a parent or legal guardian. If a parent has a shared custody agreement, they may or may not have been given legal authority to consent to dental care by the court. Be sure to confirm and document whether a parent has this authority.

In the case of a legal guardianship, a guardianship establishes a legal relationship between a child and an adult who isn't the child's parent, but it does not end the legal relationship between the child and the child's biological parents. The biological parents can still be legally required to provide financial support for the child, while a legal guardian may care for the child on a daily basis.

The dentist has the right to ask for a copy of a custody order or guardianship agreement. Do NOT simply take the word of an individual that such an order exists. A copy of the document should be kept in the patient's dental record, and should be checked annually to ensure it is up-to-date.

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For instance, when a child lives with a grandparent, but not their biological parents, it is advisable to document in the health care record a copy of the court order that appointed the guardian in order to verify that the guardian is authorized to consent to dental treatment on behalf of the minor child.

### **Who is not able to consent?**

Just because an adult is accompanying a minor patient, does not mean they are legally able to consent to their dental treatment without showing proof of that legal authority. This includes:

- Grandparents
- Step-parents
- Babysitters
- Child care workers
- Adult siblings
- Family friends
- Biological parents who have lost the legal authority to consent to treatment

Determining who can consent to a child's dental care is an especially salient issue today, when blended and nontraditional families are more commonplace than ever. It can be helpful to distinguish who is the legal guardian, the financially responsible party, and who is merely a "responsible adult".

- A **legal guardian** is legally authorized to grant consent for the minor's care as a parent or proxy.
- A **financially responsible party** is someone who is financially responsible for the minor, and they may or may not be authorized to grant consent for the minor's care.
- A **responsible adult** is someone who accompanies the minor to their appointment.

It's okay for an older sibling, grandparent or family friend to accompany the minor to the appointment. Just be aware these individuals may not be authorized to grant consent. If they are, ask to see a copy of the court order which details their consent abilities and retain a copy in the patient's dental record.

### **How is consent documented?**

Some states allow oral discussions, which should be documented in the patient's dental record, while others require written consent. If you use an informed consent form to help document the consent process, it should include:

- Legal name and date of birth of patient
- Legal name and relationship to the person granting consent
- Copy of court order detailing ability to consent to dental care (if applicable)
- Patient's diagnosis
- Nature and purpose of the proposed treatment
- Potential benefits and risks associated with treatment
- Alternative treatments (including no treatment)
- Place for parent to indicate that all questions have been asked and adequately answered
- Places for signatures of the parent or legal guardian, dentist, and a staff member as a witness

### **Unaccompanied Children**

If a minor arrives for an appointment for a simple or routine treatment that has already been discussed and consented to by the parent or guardian, it is permissible to proceed with treatment if you are comfortable.

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However, issues may arise:

- Absence of a parent or guardian can delay treatment.
- There could be behavior management issues with the child.
- In the event of an emergency, it is helpful to have a parent or guardian present.

In order to avoid potential issues, consider implementing a policy requiring a parent, legal guardian, or responsible adult be present in the office during the entire appointment.

Although a 16 or 17 year-old may be old enough to drive, they cannot consent to their own dental care as they are still considered to be minors. If they arrive alone for routine care, it is acceptable to proceed if the care has already been consented to by a parent or guardian, and it is documented in the patient's health care record.

### **Refusal of Care**

When a parent or guardian refuses the recommended treatment plan, avoid becoming defensive and try to determine the reason behind the refusal. They may not understand the plan, lack money or insurance, or it may be problematic to return for follow-up appointments.

Parents or guardians who refuse treatment for a minor should be asked to sign an informed refusal form. The form should include the same information as an informed consent document, with these additions:

- The risks of not accepting treatment.
- A statement that the parent is voluntarily refusing treatment for the minor child.
- The signature of a witness.

If you feel failing to provide the recommended treatment places the minor at risk, to protect them and yourself, refer the parent and child to another dentist for a second opinion.

### **Risk Management Recommendations**

- Learn your state's laws regarding informed consent for minor patients.
- Require a parent or guardian attend the initial appointment with the minor.
- Distinguish who is the legal guardian, financially responsible party, and/or responsible adult.
- Request a copy of the guardianship decree from divorced parents or a legal guardian prior to initiating treatment and place it in the minor's records.
- Learn whether your state requires written or verbal consent prior to treatment.
- Require adult patients, parents or guardians to sign an agreement consenting to routine dental procedures and diagnostic tests.
- Contact a parent or guardian prior to making any change in the plan of care when minors show up for care without a parent/guardian.
- Consider implementing a policy that requires a parent or guardian to be present in the office during the entire appointment.

#### **Resources:**

American Academy of Pediatric Dentistry (AAPD). Reference Manual: Guideline on Informed Consent. *Pediatr Dent* 2015;37(special issue):315-7.  
CNA, NSO, HPSO. Adolescent Patient: Safeguards Protect Rights and Help Minimize Liability. *Healthcare Perspective*. 2017;(13):1-8.  
English, A. and Ford, C.A. The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges. *Perspect Sex Reprod Health*. 2004 Mar-Apr;36(2):80-6.  
National District Attorneys Association. Minor Consent to Treatment Laws. 2013. [http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20\(2\).pdf](http://www.ndaa.org/pdf/Minor%20Consent%20to%20Medical%20Treatment%20(2).pdf)

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