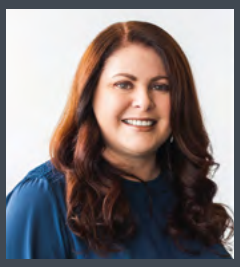

Family disputes

MDA National
Support Protect Promote

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Doctors from a range of specialties can get caught up in family disputes – whether they choose to or not. While a new patient may provide full disclosure of an ongoing family dispute, often a dispute or separation occurs within a family you've been treating for many years.

In the absence of court orders to the contrary, it's generally accepted that either parent can consent to treatment or access their child's medical record. If your patient is the subject of a court order, it's important that the practice has a copy of the most recent orders on file.

The court orders most often seen in family disputes are Parenting Orders (Family Court), or Violence or Misconduct Restraining Orders. The court orders usually bind the parties to the dispute, not third parties such as doctors.

It can be difficult if you're treating all members of the family when the family unit breaks down. It's best to address this as soon as you become aware of the separation, as it can create a conflict of interest if you continue to see both parties – particularly if the separation is acrimonious. It's almost unworkable if a restraining order prevents one patient from coming within 100m of their former partner.

Family disputes can be complex, and the issues are very personal to the parties involved. This can provoke a heightened response if either party feels they are being stonewalled or denied access to a child's medical information.

These more challenging aspects of family disputes are best discussed with your MDO early, particularly in relation to domestic and family violence, or repeated and inappropriate contact from one or both parties.

You might receive a subpoena to either produce notes or appear in person and give evidence in the Family Court.

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It's important to remember you are there to give evidence for the benefit of the court, not one specific party, and you should seek advice if you have any concerns.

The best interests of the child are the primary consideration. If parents have equal rights when it comes to medical decisions for the child, and their inability to agree on your treatment recommendations results in the child not receiving necessary care, either parent can take this discreet issue back to the Family Court for judgment. You are the child's treating doctor, not a referee. ■

TOP 5 TIPS

1. Ensure you're aware of current court orders, and how they might affect consent for treatment, access to notes, etc.
2. Suggest the parents bring an exercise book into which you can add a copy of the notes after each consultation. The notebook goes with the child, which means all parties are kept up to date and remain focused on the child's best interests. Many parents now use a parenting app to share this information.
3. Familiarise yourself with the mandatory child abuse guidelines, as well as the OAIC's Guide to Health Privacy, the Medical Board's Code of Conduct, and the concept of the 'mature minor' which may apply to older children.
4. When writing your notes, remember there's a good chance your notes will be subpoenaed and read out in court.
5. You're not legally obliged to provide reports or letters – but if you choose to do so, you can find guidance in our articles on writing medico-legal reports and writing letters of support, on our website.

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References available on request.