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### Litch's Law Log

## Getting Informed Consent from the Right Person in the Era of the "Drop Off" Visit

This is not a new topic for *PDT*, especially given contemporary parenting issues and challenges. There was an article back in a 2002 issue of *PDT* that you can read at <http://www.aapd.org/assets/1/7/RiskManagementMarch2002.pdf>.

However, it is a topic where I get enough ongoing questions from AAPD members that a refresher column seems like a good idea.

The challenge with someone other than a parent or legal guardian bringing in a child for a dental appointment is that informed consent must be obtained by the patient's legal decision maker, such as a parent, guardian or personal representative. The child's grandparent may not qualify as such.

Per AAPD Recommendations: Best Practices for Informed Consent ([http://www.aapd.org/media/Policies\\_Guidelines/BP\\_InformedConsent.pdf](http://www.aapd.org/media/Policies_Guidelines/BP_InformedConsent.pdf)):

"One option to consider is obtaining a parent's authorization via a consent by proxy or power of attorney agreement for any other individual to make dental treatment decisions for a child.<sup>5,9</sup> In situations where individuals other than the parent regularly bring the child to the dental office, this can help eliminate doubt as to whether such individual has the legal authority to provide informed consent. Practitioners, however, should consult their own attorney in deciding whether to utilize such a form in their own practice. Another option for obtaining authorization for treatment is a telephone conversation with the parent.<sup>10,11</sup> The parent should be told there are two people on the telephone and asked to verify the patient's name, date of birth, and address and to confirm he/she has responsibility for the patient.<sup>10,11</sup> The parent is presented with all elements of a valid informed consent followed by documentation in the patient's chart with signatures.<sup>12</sup>"

In recent years pediatric dental practices have noticed an increasing number of "drop off" dental visits. This of course raises challenges because during the course of the visit treatment issues might arise requiring additional informed consent from the parent or guardian. Some practices may decide to simply have a no drop-off policy, or set parameters for when such a drop-off is allowed.

Thanks to the Florida Academy of Pediatric Dentistry's Public Policy Advocate Dr. Manav Malik, we have received some very useful insight on this matter from the Florida

Academy of Pediatric Dentistry's legal counsel Edwin Bayó of Grossman, Furlow, & Bayó in Tallahassee, Fla. Bayó indicates that the "drop off" issue is ultimately a risk management issue. There is probably little risk for a routine/preventive care visit, but there is still some risk. For example, there could be seizure or allergic reaction requiring emergency treatment (although implied consent for emergency treatment is recognized in most states). Along with risk management decisions comes sound professional judgement. Allowing a parent to drop off a five year old is probably not a good idea. Nor for a minor of any age when undergoing a significant procedure.

Bayó offers some practical considerations for dental offices. Please note that informed consent laws vary by state, so consultation with your own attorney or an attorney familiar with informed consent laws in your state (such as counsel to the state dental association) is recommended before finalizing such office policies.

### OBTAINING PERMISSION TO TREAT MINORS

- When the parent brings the child in for the exam and restorative needs are discovered, get "blanket" permission to do any and all of the diagnosed treatment. Always document that permission in the patient's chart, and have the parent sign it.
- The parent or legal guardian may send a signed note granting permission to treat.
- If someone other than the parent or legal guardian brings the child in, and you don't already have permission to treat, call the parent and get permission over the telephone. Be sure the conversation is documented in the patient's chart.
- When treating a child of divorced parents, you must find out who has legal custody and get permission from that person.
- If a grandparent brings the child in for treatment, ask the question, "Does this child live with you?" If the answer is "no," you must contact the parent and get verbal permission before treating.
- When treating foster children, get permission from the caseworker. In some situations, the caseworker has to get permission from an absentee parent, which can be complicated.



## OFFICE POLICY ABOUT MINORS

From a practical perspective, some offices may feel comfortable being more “liberal” in their policies. Here is a sample letter that could be used:

Dear Parent/Guardian:

It is the office policy that the parent/legal guardian may leave the facility while the minor is being treated, provided that:

- the minor is over the age of 10 years; or
- the procedure to be done involves routine dental treatment, such as cleaning, fluoride treatment or fillings;

### AND THE PARENT/LEGAL GUARDIAN . . .

- **Is available by phone.**
- **Has signed all the required documentation.**
- **Has informed the office beforehand that he/she will be leaving the facility or that he/she will not be present.**

We will inform the parent/legal guardian at what time the treatment is expected to be completed. In case the minor is being picked up, we expect the parent/legal guardian to return on time.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169 ext. 29, or [slitch@aapd.org](mailto:slitch@aapd.org).

*This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members.*



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