

### ***The Family Law Act***

The *Family Law Act 1974* clearly states that a parent has ‘parental responsibility’ for his or her child regardless of the marital status of the parents (i.e. separated, divorced, de-facto). The only exception is if a valid Court order is in effect.

The term ‘parental responsibility’ includes all duties, powers, responsibilities and authority which, by law, parents have in relation to children. This definition effectively means that a parent has a right to participate in decisions that affect their children.

It is generally accepted that parents can consent to medical treatment, for their children and to obtain information about medical treatment from their children’s treating medical practitioners.

### ***Practical Advice***

The principle that each biological parent has equal rights in respect of their children does not mean that a medical practitioner has to send medical reports to both parents (who are separated) nor that the medical practitioner has to obtain consent from both parents (who are separated) for treatment to be carried out upon a child.

### **The following guidelines may be of assistance:**

- If the other parent (with whom the patient child does not reside) requests copies of medical reports, or wishes to discuss the patient child’s treatment, then the medical practitioner should comply unless there is a Court Order preventing these discussions from taking place.
- Prior to speaking to, or providing medical reports to, the parent with whom the child does not reside, the medical practitioner should contact the parent with whom the child does reside to inform that parent that the medical practitioner is going to provide information to the other parent and that unless there is a Court Order, the medical practitioner has no option than to do so.
- If the parent with whom the child resides states there is a Court Order, the medical practitioner should request a copy and if a copy cannot be provided, then the medical practitioner should provide the information requested by the non-resident parent.

### ***Examples of Common Court Orders***

- That the resident parent cause the non-resident to be informed of the details of the child’s medical treatment
- That the non-resident parent be excluded from interfering with the medical treatment of the child
- That the resident parent inform the non-resident parent of details of the child’s treating medical practitioners.

You will note that the burden of compliance rests with the parents/parties to the proceedings and not with the medical practitioner. This is because the medical practitioner in most instances is not a party to the family court proceedings.

It is acknowledged that there are many varying circumstances where a medical practitioner may be asked to provide information about a child patient/guardian, and that such circumstances are normally difficult due to the emotion involved.

Please note that patient/parent access to medical information is now governed by the *Privacy (Private Sector Amendment) Act 2000* .

There may be certain instances where the medical practitioner is legally entitled to withhold access.

Access to health information must be determined on a case by case basis.

Parent consent required for providing medical treatment to a child is an issue better dealt with by the Guardianship Tribunal. The Guardianship Tribunal can be contacted on 9556.7600.

Under very particular circumstances and at the doctor's discretion (following the individual's request), aspects of a child's health information may be kept private and confidential from both parents. The law does not specify an age after which it is deemed that an individual can make their own decisions about their privacy and the confidentiality of their health information.

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## **ACCESS TO CHILDREN'S MEDICAL RECORDS**



**Australian  
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