

Consent for Treatment of Minors



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Consent for Treatment of Minors



- All non-emergency health care requires consent before treatment can be provided.
- The following is the legal standard used to judge the effectiveness of consent:
 - *“To be effective, consent must be knowing, intelligent, and voluntary, **by a person with capacity to provide consent.**”*

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- **Who may consent:**

- California law permits parents and others to consent to the mental health treatment of minors, and such law also authorizes minors, in certain statutorily prescribed circumstances, to consent to their own mental health treatment.

- ✦ A minor is an individual who is under 18 years of age (Cal. Fam. Code § 6500).



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- Actions you should take:
 - Determine the minor's age.
 - Determine the relationship of the individual requesting the service on behalf of the minor and/or accompanying the minor to your office.
 - Review any applicable court documents.
 - ✦ This means you must instruct your clients, and/or their representatives, to bring any relevant documents to the appointment.
 - ✦ You might also ask your clients to submit the documents to you in advance of the appointment.



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- **What to do with this information:**
 - With this information you can determine whether California law allows the minor to consent to his or her own treatment, and/or whether the person making the request for services, and/or accompanying the minor, is legally authorized to consent to treatment.

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- Laws that give minors the right to consent to their own mental health treatment:
 - Cal. Family Code § 6924
 - Cal. Health and Safety Code § 124260

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- Cal. Family Code § 6924 (b):
 - “A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if *both* of the following requirements are satisfied:
 - ✦ “The minor, in the opinion of the attending *professional person*, is mature enough to participate intelligently in the outpatient services or residential shelter services.”
 - ✦ “The minor A) would present a danger of serious physical *or* mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or B) is the alleged victim of incest or child abuse.”



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- You should use your clinical judgment in determining whether a minor meets these requirements.

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- Cal. Family Code § 6924(b) continued:
 - The section requires the mental health treatment or counseling of a minor to involve of the minor's parent or guardian *unless*, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate.
 - The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person's opinion, it would be inappropriate to contact the minor's parent or guardian.



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- Cal. Family Code § 6924(b) continued:
 - This section also provides that the minor's parent or guardian is *not* liable for payment for the mental health treatment or counseling services provided, *unless* the parent or guardian participates in the mental health treatment or counseling, and then *only for services rendered with the participation of the parent or guardian*.
 - This means the provider would have to seek payment for services from the minor.

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- Cal. Health and Safety Code § 124260:
 - “A minor who is 12 years of age or older may consent to [outpatient] services if, the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services.”
 - ✦ This law is less restrictive than Cal. Family Code § 6924 because it does not contain as many requirements.
 - ✦ Under this law, an attempt to notify a parent or guardian must be made, except when the provider believes it is inappropriate. In that case, a therapist should document in the record why parent/guardian was not notified.
 - ✦ For services provided under this new minor consent law, providers must consult with the minor before deciding whether to involve parents.



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- Other circumstances under which the laws gives minors a right to consent:
 - Minors who are married (Cal. Civ. Code § 25.6)
 - Minors who are serving in the armed services (Cal. Civ. Code § 25.7)
 - Minors who are emancipated by a declaration of emancipation pursuant to Cal. Civ. Code § 64 by the superior court of their county of residence

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- Other circumstances under which the laws gives minors a right to consent:
 - Minors 12 years of age or older who are seeking treatment for drug or alcohol dependency (Cal. Family Code § 6929(b); Cal. Civ. Code § 34.10).
 - ✦ Minors may not consent to receive replacement narcotic abuse treatment with methadone or levoalphacetylmethadol (“LAAM”).
 - ✦ Minors do not have the right to refuse medical care and counseling for a drug or alcohol related problem when the minor’s parents or guardian consents for that treatment (Cal. Family Code § 6929(f)).



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- **Critical Reminders:**
 - Minors under the age of 12 cannot consent to mental health treatment under ANY circumstances.
 - Minors may not consent to convulsive therapy, psychotropic drugs or psychosurgery.

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- **Persons other than the minor client who may be authorized to consent to minor's treatment:**
 - Biological Mother
 - Biological Father
 - Adoptive Parent
 - Legal Guardians
 - A Qualified Relative

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- **Biological Parents:**
 - Biological mother and biological father never married and no custody order:
 - ✦ Either parent may consent
 - Biological mother and paternity at issue:
 - ✦ Only mother may consent
 - Biological mother and biological father married:
 - ✦ Either parent may consent

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- Biological mother and biological father, never married but custody order in place **OR** Biological mother and biological father are divorced
 - ✦ When considering issues related to child custody, it is important to distinguish between legal and physical custody:
 - ✦ Legal vs. Physical Custody:
 - Legal custody speaks to the authority of a parent to make decisions on behalf of his or her child, including mental health treatment.
 - Physical custody addresses where the child will be spending his or her time.
 - Physical custody is irrelevant as it pertains to issues around consent for the treatment of minor.
 - The fact that a minor lives with one parent does not mean the other parent lacks the authority to make decisions on behalf of that child.
 - Therapist should always focus on legal custody when addressing consent issues for minor children.



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- If mother and father have Joint Legal Custody:
 - The language in the custody order will often specify who will make mental health treatment decisions or non-emergency medical decisions.
 - If there is no such language, then EITHER PARENT can consent.
- Biological mother or biological father has Sole Legal Custody:
 - ONLY that parent may consent

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- **Best Practice:**
 - In most cases, even if the consent of only one parent is required, it is clinically appropriate to obtain the consent of BOTH parents.
 - ✦ Therapists can inadvertently alienate a parent by failing to seek the consent of that parent prior to the commencement of treatment. This alienation can lead to mistrust of the therapist, which may undermine the treatment of the minor.

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- **Parents who disagree:**
 - If the therapist has sought the consent of both parents and the parents disagree about the appropriateness of treatment, it is in the therapist's best interest to suggest that the parent seeking treatment for his or her child approach the court to decide whether treatment is in the child's best interest.

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- **Withdrawal of Consent:**

- When there is Joint Legal Custody requiring the consent of both parents, and both parents initially consent, the withdrawal of consent on the part of one parent will not necessarily mean the treatment must cease.
- Where one of the parents withdraws his or her consent after the commencement of treatment, one could argue that if a decision to begin treatment could not be made unilaterally, the decision to terminate the treatment also cannot be made unilaterally.
- If the joint legal custody order does not require that both parents consent to the treatment, then the therapist may continue to treat with the consent of one parent even if the other parent withdraws or refuses to give consent.



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- **Adoptive Parent:**
 - Adoptive parents have the same rights as biological parents regarding mental health treatment decisions.
- **Legal Guardian:**
 - Legal guardians generally have the same rights as biological parents regarding mental health treatment decisions.
- **Foster Parent:**
 - Foster parents do not generally have the right to make health care decisions for their foster children, with the exception of ordinary medical and dental treatment.
 - Generally, the legal guardian of a child in foster care would make such decisions.



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- **Parents who are minors:**
 - A minor who is a natural parent has the authority to consent to mental health treatment for his or her minor child.
 - However, it is also important to make sure that the minor parent understands the nature of the treatment in order to give informed consent.
- **Parents with children under the jurisdiction of the court but living at home:**
 - Generally, parents retain the right to make health care decisions for their children even when the court has taken jurisdiction due to neglect or child abuse, UNLESS the court order specified to the contrary.
 - Given there are some legal uncertainties about this issue, providers should seek guidance from the juvenile court or a social worker involved in the case.



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- **Qualified Relative:**

- A qualified relative includes, but is not limited to, a brother, a sister, an uncle, an aunt, a grandmother or grandfather IF, pursuant to Section 6550 of the Cal. Family Code, a “Caregiver’s Authorization” has been duly prepared and signed by the qualified relative.
 - ✦ The affidavit is valid for not more than a year from the date on which it was signed.
 - ✦ The caregiver’s consent for, or refusal of treatment, shall be superseded by any contravening decision of the parent or other person who has LEGAL custody of the minor, so long as the decision does not jeopardize the life, health, or safety of the minor.



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- **Qualified Relative continued:**

- Perhaps the most important component of Section 6550 of the Cal. Family Code is the following:
 - ✦ “No person who acts in good faith reliance on a caregiver’s authorization affidavit to provide mental care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance IF the applicable portions of the affidavit are completed.”
 - This immunity from liability element of the statute permits therapists to rely on what the caregiver states in the affidavit without worrying about a parent coming after him or her.
 - The statute provides that health care providers who rely on the affidavit have no obligation to make any further inquiry or investigation.



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- **Qualified Relative continued:**
 - Should the minor stop living with the caregiver, the caregiver is to notify the provider of health care.
 - Cal. Family Code § 6552 provides guidance as to what information must be included in a Caregiver's Authorization.
 - For an example of a Caregiver's Authorization, visit camft.org.
- **Stepparent:**
 - Stepparents have no legal authority to consent to the treatment of minor stepchildren, unless the stepparents have adopted the children.



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- Scenario 1: A mother of a 6-year-old girl contacts a therapist seeking treatment for her daughter. She also tells the therapist that the father is against psychotherapy and would not approve of treatment. The mother believes the daughter should have someone to talk to professionally about how she is dealing with the divorce. She indicates that the child has been having nightmares and cries whenever she has to visit her father. The mother states that she has custody of the child and the father visits her every other weekend.

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- Scenario 2: Stepfather calls therapist seeking therapy for his 13-year-old stepson. He states that he and his wife have sole custody of the minor and that the minor has no relationship with his biological father.

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- Scenario 3: Grandmother brings her 11-year-old granddaughter in for treatment. She indicates that the child's mother ran off to Europe with her boyfriend leaving her with the sole responsibility of caring for the minor and that the child is having a difficult time coping with the absence of her mother.

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- Scenario 4: 14 year old minor comes to a residential shelter seeking services after having run away from home because her father beats her all of the time.

Articles to Read



- Guidelines for Treatment of Minors
- Treatment of Minors Without Parent Consent
- Consent for Treatment of Minors with Divorced Parents
- Consent for Treatment of Minors: Caregiver Authorization
- Blue Levis and White T-Shirts: When Treating Minors 12 Years of Age or Older

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THIS TOPIC OR ANY OTHER LEGAL,
OR ETHICAL QUESTIONS, PLEASE
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