

TREATMENT OF MINORS: With Parental Consent

For minors who CANNOT legally consent to their own outpatient mental health treatment, consent to treatment guidelines vary, depending mostly on who has legal custody of the minor.

MARRIED BIOLOGICAL (OR ADOPTIVE) PARENTS: Either parent alone can give consent. If the parents disagree about giving consent, get guidance from the court, which may order the treatment or appoint a guardian ad litem to make treatment decisions.

DIVORCED BIOLOGICAL (OR ADOPTIVE) PARENTS: Whenever a minor client's parents are divorced, it's good practice to get a copy of the custody agreement.

1. **The Divorced Parents SHARE LEGAL CUSTODY:** Either parent alone can give consent, unless the custody order says something different. Even when the custody order confirms that consent is needed from only one parent, it's often a good idea to seek it from both. If one parent refuses consent, and your efforts to resolve the matter with both parents are unsuccessful, you can recommend that they have the court decide if treatment is in their child's best interests.

2. **One Divorced Parent Has SOLE LEGAL CUSTODY:** That parent has decision-making authority over the minor's health care, and can give consent alone. If that parent doesn't consent, don't treat the minor.

UNMARRIED PARENTS: Either parent can consent if paternity has been established. If paternity is in dispute, only the biological mother can consent. If the biological parents disagree about treatment, you may need a court order before treating the minor.

STEPPARENT: A stepparent cannot consent unless s/he has legally adopted the minor. With adoption, the stepparent gets the same authority as a biological parent with legal custody.

LEGAL GUARDIAN: A legal guardian can give consent – s/he has the same rights as a parent with legal custody to give consent.

CAREGIVER: A caregiver (a relative age 18 or older who has signed a Caregiver's Authorization Affidavit) can give consent.

Finally, when a minor is in the juvenile dependency system, the court establishes who has the right to consent: (a) Sometimes, the parent(s) or legal guardian still has the right. Other times, you must get consent from the court or its agent or from a caregiver named by the court. (b) **FOSTER PARENTS** do NOT usually have the right to consent to a minor's mental health treatment (they can, however, give consent for basic medical and dental procedures).

TREATMENT OF MINORS: Without Parental Consent

In California, the law defines certain conditions that allow minors age 12 or older to consent to their own outpatient mental health treatment.

FAMILY CODE (FC) SECTION 6924: This law permits a minor who is 12 YEARS OF AGE or older to be seen for outpatient psychotherapy without parental knowledge or consent if the minor (a) is mature enough to participate intelligently and (b) “would present serious physical or mental harm to self or others without the services or ... is the alleged victim of incest or child abuse.”

HEALTH AND SAFETY CODE (H&SC) SECTION 124260: This more recent law omits the FC 6924 requirement to demonstrate danger or abuse. It allows a minor to consent to his own outpatient psychotherapy if the minor (a) is 12 YEARS OF AGE or older and (b) is, in the opinion of the attending professional person (e.g., the psychotherapist), mature enough to participate intelligently in mental health treatment or counseling services.

NOTE 1: Even when a minor age 12 or older is mature enough to consent to treatment on her own, you still must make contact with her parents UNLESS you can document a reason why that would be harmful to the minor. Specifically, FC 6924 and H&SC Code 124260 both require therapists to document in their notes why they either couldn't locate the minor's parents or guardian, or why they considered it “inappropriate” to involve the parents or guardian. H&SC Code 124260, for example, says treatment authorized under this section “shall include the involvement of the minor's parent or guardian, unless the professional person who is treating or counseling the minor, after consulting with the minor, determines that the involvement would be inappropriate.”

NOTE 2: H&SC 124260 doesn't replace FC 6924, but the less-demanding H&SC Code 124260 is now the law that clinicians typically apply when deciding whether a minor may be seen without parental consent.

NOTE 3: H&SC 124260(d) says a “minor's parent or guardian is not liable for payment for mental health treatment or counseling services provided pursuant to this section 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.”

NOTE 4: Another law, FC 6929(b), says “a minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.”

NOTE 5: Minors CANNOT consent for themselves to inpatient mental health treatment or to treatment using psychotropic drugs. The consent of a parent or legal guardian is required.

TREATMENT OF MINORS: Emancipated Minors

An emancipated minor can consent to medical, dental, or psychiatric care, without parental consent or knowledge.

Family Code (FC) Section 7002 says a minor is considered emancipated when s/he meets *any* of these conditions: (a) The minor has entered into a valid marriage whether or not the marriage has been dissolved.