

## Child Custody Issues – Medical Decision Making – Consent

**Minor is any person under the age of 18. There are certain types of medical care and treatment minors may consent for themselves.**

***Attached is the CHA minor consent graph for your reference on which treatments minors may consent for themselves.***

Parents have a legal obligation to provide the necessities of life for their minor children, including health care (Calif. Penal Code Section 270).

Child custody is a determination by the court regarding which parent and/or relative will have physical and/or legal control and responsibility for a minor (under the age of 18). The basic consideration on custody matters is supposed to be the best interests of the child or children.

However, there are other situations in which neither parent is fit to care for the minor. Child Protective Services is usually involved in these cases. There may be foster parents who act as parent and guardian for a child in place of the child's natural parents but without legally adopting the child. In some cases foster parents are the designated medical decision makers and other times not.

***Guardian ad litem*** is a person appointed by the court to represent the interests of the minor in legal actions. There will be legal documents to reflect this appointment.

***Joint legal Custody*** – parents have equal rights to make decisions for the child's welfare, education and health. The California courts favor this type of custody arrangement as co-parenting and communication between parents is encouraged as long as it is in the best interest of the children.

There may be a number of temporary custody orders or no orders at all while the parents are going through a divorce or separation.

***Sole physical custody*** – one parent has the right to be the primary custodian and caretaker. Sole physical custody orders do not necessarily take away all parenting time from the noncustodial parent. It is common for a sole physical custody order to be granted to one parent and visitation (parenting time) is ordered for the other.

***Sole Legal Custody*** – per California Family Code Section 3006 one parent has the exclusive right to make decisions for the child's health (medical decisions), education and welfare.

This does not mean that the parent who obtained sole legal custody gets to make all of the decisions all the time. If the other parent still has visitation rights (but not custody), that parent does still have supervisory responsibilities while the child is in his or her control. In the event the other parent does not have any visitation or contact with minor, then one could argue that this non-custodial parent has no right to medical information. Further, this section does not say that the parent with sole legal custody is the only person who can receive medical information – does not connect up with federal or state privacy laws. In most situations, we will rely on the sole legal custodian as it relates to PHI.

Sole legal custody orders are rare and not favored by California laws unless the noncustodial parent has committed certain acts of misconduct, neglect, abuse or has otherwise abandoned the child to such an

extent that it would not be in the best interest of the minor for that parent to be involved in important decision-making concerning the child.

***Ex Parte (emergency) child custody orders:*** where there is an actual abduction or threat of child abduction, or other circumstances where the child is facing an imminent risk of harm.

Child abuse allegations: CPS generally involved and investigating.

- However, the court at times will order a child custody investigation (CCI): These investigations are handled by an employee of the court. The investigator will interview parents and witnesses and reviews any relevant documents.
- Or the court may order an independent child custody evaluation: usually by forensic psychologists.
- California Family Code 3118 requires the court to order an evaluation or investigation where there has been a serious allegation of child sexual abuse.

**Always ask for a copy of the court orders and scan into APEX.**

#### Frequently Asked Questions

Q. Who may consent for the medical care of a minor?

If there is no evidence of disagreement between married parents, either parent has the legal authority to consent for a minor.

Q. What if there is disagreement between parents about treatment?

It depends on the legal rights of the parents. Treatment should not be provided until the conflict is resolved.

Q. And disagreement between divorced parents?

Always ask for the court documents in order to determine the legal rights of the parents. Once again if there is a disagreement between parents who have joint legal custody, treatment should not be provided until the conflict is resolved.

If time allows, the parents should get a court order if they cannot resolve their differences. However, if the child could be harmed by waiting, the team should strategize and try to mediate the situation. Continue to communicate with both parents, physicians should consider best interest of the child and discuss with the parents the consequences of withholding treatment. There may be ethical considerations and a consult may be needed. Confer with Risk Management if cannot resolve the situation.

Q. What if parents with the legal authority to consent for the minor refuse treatment?

Generally, parents must act in the best interest of the minor. Providers must assess when the refusal of a particular treatment rises to the level of abuse. May need to involve CPS in cases where the refusal of treatment is life sustaining or significant, the refusal of which could lead to serious harm to the minor.

Court orders for treatment: Providers will be expected to complete declarations explaining the type of care required, risks, benefits, etc.

*Other family relationships and consenting for minors*

**Stepparent:** does not have the authority to give legal consent to medical treatment for a minor stepchild unless the stepparent has legally adopted the minor or been designated a legal guardian.

**Adoptive Parents:** have the same right to consent as birth parents (Calif. Family Code Section 8616). The rights of birth parents, adoption agency and adoptive parents to consent for the minor are dependent upon what stage the adoption process is in at the time.

**Minors Born out of Wedlock:** mother has legal authority to consent. Father has the same right, however, if there is reason to doubt the status, ask for a copy of a court order establishing parental right.

**Registered Domestic Partners:** have the same rights as married spouses. However, they do not have the right to make health care decisions for the child of their partner or spouse, unless they have adopted the child or have a signed 3<sup>rd</sup> party authorization or have a caregiver authorization affidavit.

**Guardians:** rights determined by the court so always ask for the certified letters of guardianship to determine the scope of authority v. parent's authority. Unless specified otherwise:

- May consent to non-surgical medical tx (Calif. Probate Code Section 2353(a)).
- May consent to surgical tx except when the minor is 14 yrs of age or older which requires: Consent of both the guardian and minor or court order or guardian determines based on medical advice that surgery is an emergency (Calif Probate Code Section 2353(b), (c)).
- Limitations – cannot consent for: experimental drugs, convulsive treatment, sterilization, psychosurgery and mental health tx facility placement unless application is made under W&I Code, then the tx is considered voluntary and the minor is so advised.

**Third Party Consent Signed by Parent:** A parent, guardian or related caregiver may authorize an adult into whose care a minor has been entrusted to consent to medical or dental care, except: if minor is 14 or older, then the guardian rule applies (Calif. Family Code Section 6901).

See attached CHA Authorization for 3<sup>rd</sup> party to Consent Form. This form also allows hospital to release the minor to the third party.

**Caregiver Authorization Affidavit:** nonparent adult relative with whom a minor lives may complete such an affidavit. Authority for tx same as parent's except for surgical tx. Surgical tx authority is same as the guardian authority. The caregiver must advise the parents of proposed tx, and no objection by parents or the caregiver must be unable to contact the parents.

**Foster Parents:** unless otherwise specified,, parents do not lose their right to consent unless that right has been removed by the court.

**Minors who are themselves parents:** while a minor parent cannot make health decisions for herself, she can make them for her child as long as: the minor demonstrates the ability to give informed consent. If a provider determines that the minor does not have the ability to give informed consent, suggest that the minor involve the grandparents.

## Consent Requirements for MEDICAL TREATMENT OF MINORS

IF MINOR IS:	Is parental consent required?	Are parents responsible for costs? †	Is minor's consent sufficient?	May M.D. inform parents of treatment without minor's consent?
Unmarried, no special circumstances	Yes	Yes	No	Yes
Unmarried, emergency care and parents not available [Business and Professions Code § 2397]	No	Yes	Yes, if capable	Yes
Married or previously married [Family Code § 7002]	No	No	Yes	No
Emancipated (declaration by court, identification card from DMV) [Family Code §§ 7002, 7050, 7140]	No	Probably Not <sup>1</sup>	Yes	No
Self-sufficient (15 or older, not living at home, manages own financial affairs) [Family Code § 6922]	No	No	Yes	†
Not married, care related to prevention or treatment of pregnancy, except sterilization [Family Code § 6925]	No	No	Yes	No
Not married, seeking abortion	No	No	Yes	No
Not married, pregnant, care not related to prevention or treatment of pregnancy and no other special circumstances	Yes	Yes	No	Yes
On active duty with Armed Forces [Family Code § 7002]	No	No	Yes	No
12 or older, care related to diagnosis or treatment of a communicable reportable disease or to prevention of an STD [Family Code § 6926]	No	No	Yes	Probably not
12 or older, care for rape [Family Code § 6927]	No	No	Yes	Yes, usually
Care for sexual assault <sup>1</sup> [Family Code § 6928]	No	No	Yes	Yes, usually
12 or older, care for alcohol or drug abuse <sup>1</sup> [Family Code § 6929]	No <sup>2</sup>	Only if parents are participating in counseling	Yes	Yes, usually
12 or older, care for mental health treatment, outpatient only <sup>1</sup> [Family Code § 6924; Health and Safety Code Section 124260]	No	Only if parents are participating in counseling	Yes	Yes, usually
17 or older, blood donation only [Health and Safety Code § 1607.5]	No	No	Yes	Yes, usually

<sup>1</sup> Special requirements or exceptions may apply. See Chapter 2 of the *Consent Manual* or Chapter 3 of *Minors & Health Care Law*.

<sup>2</sup> Parental consent *is* required for a minor's participation in replacement narcotic abuse treatment (such as methadone, LAAM or buprenorphine products) in a program licensed pursuant to Health and Safety Code Section 11875 (now codified at Section 11839 *et. seq.* [Family Code § 6929(c)])

† Reference: Welfare and Institutions Code Section 14010

*Minors are defined as all persons under 18 years of age.*

03/13



**CALIFORNIA  
HOSPITAL  
ASSOCIATION**

1215 K Street, Suite 800 • Sacramento, CA 95814 • (916) 443-7401 • www.calhospital.org

# AUTHORIZATION FOR THIRD PARTY TO CONSENT TO TREATMENT OF MINOR LACKING CAPACITY TO CONSENT

I am the  Parent  
 Guardian  
 Other person having legal custody \_\_\_\_\_  
*(describe legal relationship)*

of *(name of minor)* \_\_\_\_\_, a minor.

I hereby authorize *(name of agent)* \_\_\_\_\_, to act as my agent to consent to any X-ray examination, anesthetic, medical, surgical or dental diagnosis or treatment, and hospital care which is recommended by, and to be rendered under the general or special supervision of, any licensed doctor or dentist, whether such diagnosis or treatment is rendered at the doctor's office or at a hospital.

I understand that this authorization is given in advance of any specific diagnosis, treatment, or hospital care being required, but is given to provide authority to the above-named agent to give consent to any and all such diagnosis, treatment, or hospital care which a licensed doctor or dentist recommends.

This authorization is given pursuant to the provisions of Family Code Section 6910.

I hereby authorize any hospital providing treatment to the above-named minor pursuant to the provisions of Family Code Section 6910 to surrender physical custody of the minor to the above-named agent upon the completion of treatment. This authorization is given pursuant to Health and Safety Code Section 1283.

These authorizations shall remain effective until *(month and day)* \_\_\_\_\_, 20\_\_\_\_\_, unless sooner revoked in writing delivered to the agent named above.

Date: \_\_\_\_\_ Time: \_\_\_\_\_ AM / PM

Signature: \_\_\_\_\_  
*(circle relationship: parent/legal representative/person having legal custody)*

Print name: \_\_\_\_\_  
*(circle relationship: parent/legal representative/person having legal custody)*

Signature: \_\_\_\_\_  
*(parent)*

(over)

**MEDICALLY RELEVANT INFORMATION**

Minor's Name: \_\_\_\_\_

Minor's date of birth: \_\_\_\_\_

Allergies to drugs or food: \_\_\_\_\_

Conditions for which minor is currently being treated: \_\_\_\_\_  
\_\_\_\_\_

Current medications: \_\_\_\_\_

Restrictions on activity: \_\_\_\_\_

Primary care physician (*name and telephone number*): \_\_\_\_\_  
\_\_\_\_\_

Insurance Company: \_\_\_\_\_

Mother's name: \_\_\_\_\_

Mother's address: \_\_\_\_\_

Mother's telephone numbers: \_\_\_\_\_  
*(work)* *(home)* *(other)*

Father's name: \_\_\_\_\_

Father's address: \_\_\_\_\_

Father's telephone numbers: \_\_\_\_\_  
*(work)* *(home)* *(other)*