

## Consent For Minors

Consent issues for minors are varied and confusing. This paper attempts to address all the issues Centers commonly encounter.

### Minors with biological parents

Most frequently, minors are brought into services by their biological parents. If the parents are married or not, both parents have the independent right to consent for psychiatric and psychological treatment for their children. Centers do not have to get consent from both parents. The Family Code states:

Family Code Sec. 151.001. RIGHTS AND DUTIES OF PARENT.

(a) A parent of a child has the following rights and duties:

(6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment.

If the parents disagree, the law still holds, either parent may give valid consent. One parent cannot "cancel out" the other.

### Minors Without Parents

If the minor is brought in by someone other than a parent, Chapter 32 of the Family Code covers most issues. Chapter 32.001(a) states:

Sec. 32.001. CONSENT BY NON-PARENT.

(a) The following persons may consent to medical, dental, psychological, and surgical treatment of a child when the person having the right to consent as otherwise provided by law cannot be contacted and that person has not given actual notice to the contrary:

- (1) a grandparent of the child;
- (2) an adult brother or sister of the child;
- (3) an adult aunt or uncle of the child;
- (4) an educational institution in which the child is enrolled that has received written authorization to consent from a person having the right to consent;
- (5) an adult who has actual care, control, and possession of the child and has written authorization to consent from a person having the right to consent;
- (6) a court having jurisdiction over a suit affecting the parent-child relationship of which the child is the subject;
- (7) an adult responsible for the actual care, control, and possession of a child under the jurisdiction of a juvenile court or committed by a juvenile court to the care of an agency of the state or county; or
- (8) a peace officer who has lawfully taken custody of a minor, if the peace officer has reasonable grounds to believe the minor is in need of immediate medical treatment.

For example, if mom or dad or both are in prison, on drugs somewhere, or just missing, and a grandparent brings the child in, the grandparent may consent to all services for the child without any paperwork from a court. Chapter 32 is enough to legally authorize consent.

Chapter 32 also covers another frequent scenario: if a stepparent or a friend brings the child in, he or she must have written consent from the person having the legal right to consent (32.001(a)(5)).

Family Code amendments now prohibit grandparents, adult aunt or uncles, and adult siblings from signing a child into an inpatient psychiatric hospital.

### Child in Crisis

Family Code 32.005 states:

Sec. 32.004. CONSENT TO COUNSELING. (a) A child may consent to counseling for:

- (1) suicide prevention;
  - (2) chemical addiction or dependency; or
  - (3) sexual, physical, or emotional abuse.
- (b) A licensed or certified physician, psychologist, counselor, or social worker having reasonable grounds to believe that a child has been sexually, physically, or emotionally abused, is contemplating suicide, or is suffering from a chemical or drug addiction or dependency may:
- (1) counsel the child without the consent of the child's parents or, if applicable, managing conservator or guardian;
  - (2) with or without the consent of the child who is a client, advise the child's parents or, if applicable, managing conservator or guardian of the treatment given to or needed by the child; and
  - (3) rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's own treatment under this section.

The law defines “child” as anyone under the age of 18. This allows Center staff to do an assessment on a child in crisis without the consent of the parent.

### Children 16 or 17 years of age

Health and Safety Code Sec. 572.001. REQUEST FOR ADMISSION.

- (a) A person 16 years of age or older may request admission to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested. The parent, managing conservator, or guardian of a person younger than 18 years of age may request the admission of the person to an inpatient mental health facility or for outpatient mental health services by filing a request with the administrator of the facility where admission or outpatient treatment is requested.
- (d) The administrator of an inpatient or outpatient mental health facility may admit a minor who is 16 years of age or older to an inpatient or outpatient mental health facility as a voluntary patient without the consent of the parent, managing conservator, or guardian.

Children 16 or 17 years of age, regardless of whether they live with their parents, may request admission for in or outpatient services. The consent is not limited by the law and includes all treatment modalities, including medication, that are appropriate.

### Consent Under Divorce Decrees

Family Code 153 et seq. covers consent by parents after divorce. The rights and duties of non-divorced parents are covered by Family Code 151.001 part of which is cited above. During a divorce, the rights and duties are divided up between the parents who are then called conservators. The titles Managing Conservator and Possessory Conservator are now

meaningless. Do not make consent decisions based on a parent's title in the decree. **It is essential and required by professional licensing boards that Center staff obtain a copy of the divorce decree and read it.**

There are three scenarios:

- 1) Only one conservator has the sole right to consent to psychiatric and psychological treatment and the other conservator does not. This means that only one has the right to consent and the other cannot consent. Often however, the decree states that both have the right to consent to emergency treatment during visitation (called possession in the decree) which would include emergency psychiatric treatment.
- 2) The conservators regardless of what they are called, each have in **independent right** to consent to psychiatric and psychological treatment. That means either can consent and consent is not needed from the other conservator.
- 3) The conservators regardless of what they are called have a **dependent right**. Consent is dependent on the consent of the other. That is, both must consent before consent is valid.

Conservators are not always parents. Other people, usually grandparents, may be appointed conservators.