

MINORS: OVERVIEW

The concept of informed consent with children:

- Although minors may have appropriate decision-making capacity, they usually do not have legal empowerment to give informed consent. Therefore, parents or other surrogate decision-makers may give informed permission for diagnosis and treatment of a child, preferably with the assent of the child whenever possible.
- In most cases, parents are assumed to act in the best interest of their child. But circumstances may occur where there is a conflict between what the parents and the health care providers feel is in the best interest. State laws cover some of these areas of potential dispute, for example, in cases of suspected child abuse.
- Other disagreements in care may result in court orders that specify what treatment should occur (for example, blood transfusions), or in the court-ordered appointment of a guardian to make medical decisions for the child.
- Most states also give decision-making authority to otherwise un-emancipated minors with decision-making capacity (mature minors) who are seeking treatment for certain medical conditions, such as drug or alcohol abuse, pregnancy, or sexually transmitted diseases.

Most states have laws that designate certain minors as emancipated and entitled to the full rights of adults, including children in these situations:

- Self-supporting and/or not living at home
- Married
- Pregnant or a parent
- In the military
- Declared emancipated by a court

Legal Issues when Counseling Children

- Age issues
- Aloneness with issues
- Suggestibility issues
- Who's the legal parent issues
- Non-custodial parents
- Parenting plans

The process of informed consent becomes more complicated when considering minors because there is only limited direct application of the doctrine of informed consent in pediatrics. Informed consent only can be given by those with legal entitlement and decisional capacity, so typically a parent or guardian must provide permission.

MINORS AND CONCERNS (Self-reflection and/or Group Discussion)

What concerns come to your mind when you think of counseling minors?

The fundamental issue in informed consent for minors is a question of how decisions should be made for those who are not fully competent to decide for themselves.

- Parents or guardians are entitled to provide permission because they have legal responsibility and, in the absence of abuse or neglect, are assumed to act in the best interests of the child.
- Part of why consent issues are so difficult with minors is that the best interests of the child are hard to define, and are often subjective.
- Additional issues include questions of how to define and assess decision-making capacity.

CAVEAT: Where a child or adolescent is the primary client, or the client is not competent to give consent, the interests of the minor or the incompetent client shall be paramount. Where appropriate, a parent(s) or guardian(s) may be included in the counseling process. The mental health counselor must still take measures to safeguard the client's confidentiality.

Legal Issues when Counseling Children

- Who's the legal parent issues
- Non-custodial parents
- Parenting plans

CUSTODY AGREEMENTS

CAVEAT: It is necessary to understand clearly the court-ordered arrangements about legal custody, regardless of who has physical custody of the child. It applies when parents seek outpatient mental health evaluation or treatment for their minor child. States vary in their laws regarding minors and the minors rights to consent to healthcare. If a minor seeks outpatient therapy on his/her own, the provider must make a case-by-case judgment about whether it is appropriate to work with the minor without parental consent, or over a parent's objection. This would involve weighing the clinical and ethical issues, and obtaining consultation about legal implications, especially if the family is engaged in a custody dispute.

WHEN IN DOUBT ABOUT ETHICAL OR PROFESSIONAL ISSUES

- Ethics texts recommend making it a rule to involve both parents whenever mental health services are being provided to a child.
- Even if one parent lives far away, it is possible to obtain written consent and gather information from that parent by phone.
- Doing so can often prevent the absent parent from later objecting to the mental health services, becoming angry about being ignored, or complaining to the licensing board about the professional's conduct.
- Exceptions to this rule may be necessary if the parent is inaccessible, unwilling to participate, or guilty of abuse or neglect and his/her involvement would be harmful to the child.

UNDERSTANDING CUSTODY AGREEMENTS

Sole legal custody

The parent with sole legal custody has the right to seek mental health evaluation and/or treatment of child without consent from the non-custodial parent.

Joint legal custody

When parents have joint legal custody, ask to see the actual court-ordered custody agreement to determine whether the other parent must be notified if one parent seeks mental health services for the child, and/or whether they must both agree about obtaining mental health evaluation and/or treatment. In some cases, depending on the custody agreement, parents who disagree can have a judge determine whether mental health services are in the child's best interest.

When in doubt about a parent's legal rights

It is recommended that, if there is any question about whether the parent initiating the evaluation and/or treatment has the legal right to do so, we do the following:

- Ethics texts recommend making it a rule to involve both parents whenever mental health services are being provided to a child.
- Even if one parent lives far away, it is possible to obtain written consent and gather information from that parent by phone.
- Doing so can often prevent the absent parent from later objecting to the mental health services, becoming angry about being ignored, or complaining to the licensing board about the professional's conduct.
- Exceptions to this rule may be necessary if the parent is inaccessible, unwilling to participate, or guilty of abuse or neglect and his/her involvement would be harmful to the child.

When the individual claims to be the sole legal custodial parent

- Get a letter from his/her attorney stating that there is nothing in the custody agreement that would prevent this individual from seeking evaluation and/or treatment of this child; OR get evidence in the form of a copy of the section of the legal custody agreement verifying that this is the sole legal custodian who has the right to make decisions regarding the child's mental health.

When the individual claims to be a joint legal custodian

- Get evidence of the joint legal custody agreement (see above) AND get consent from both parents in writing.

When the individual claims to be the non-legal-custodial parent

- The individual has the right to access the child's medical records. The individual can seek emergency medical treatment only, which probably does not include mental health treatment. The individual can petition a court for an order prohibiting the evaluation and/or treatment because it is not in the child's best interest.

SAMPLE

MINORS: SEPARATED-DIVORCED PARENTS

CAVEAT: For use in your own setting, forms must be personalized to reflect your state's relevant laws, ethical requirements for your licensing, and your own actual policies.

Separated/Divorced Parents' Agreement Form

I have brought my/our child _____, age _____, to [counselor], for evaluation and/or treatment. I understand that my child is [counselor's] client—not me, any other sibling, or my ex-spouse or current spouse. This is true no matter who pays [counselor] for the evaluation/treatment of my child. I have the authority to bring my child to and consent for psychological/mental health counseling. I have provided [counselor] with a copy of the court document that grants me this permission.

I understand that [counselor's] primary responsibility is my child's best interest and that he/she may decide to involve me in my child's evaluation/treatment at her sole discretion. I understand that if payment is not received promptly for services rendered, the services may be suspended or terminated at counselor's discretion, pursuant to the ethical guidelines governing psychological care. I understand that [counselor] is not agreeing to be an expert witness or to testify on my behalf or on the behalf of any other individual other than my child at any deposition, court proceeding, or in any other way. I understand that [counselor] may or may **not** agree to with my attorney, or any other party in any custodial or divorce proceeding at her sole discretion. He/she may also charge for the receipt of any correspondence or acceptance of any telephone calls, other than those directly from the court or counsel for my child.

I have read the above paragraphs and understand them. By signing below, I agree to the above.

This authorization constitutes informed consent without exception.

I have read, understand, and agree to the above stated policies.

REMEMBER TO:

Include appropriate lines for signature and date

Keep a copy of any document that was signed by a client in the client's file (hardcopy or electronic)

Copy to client optional, unless they request a copy

Separated/Divorced Parents' Agreement Form Sample

What would you change? Delete? Add?

What sample text in the above consent do you strongly agree with? Why?

What sample text do you strongly disagree with? Why?

ETHICAL CONCERNS ASSOCIATED WITH CHILDREN (MINORS)

- Suggestibility
- Vulnerability

AGE OF CONSENT

In the U.S., state legislation requiring parental consent for medical treatment reflects the conception that minors (typically, commonly, those under the age of 18) are incapable of understanding and making decisions about medical treatment. The state recognizes that the legal age of majority is arbitrary and that there are minors who are competent and others, of legal age, who are not; however, legislation is designed to protect minors from the consequences of poor decisions.

Minors are viewed as incompetent decision makers with a few exceptions:

- Mature minors
- Emancipated minors

MATURE MINOR DOCTRINE

Mature minors are those who meet the conditions set forth by the mature minor rule, legal doctrine that enables minors who are deemed mature (able to understand the nature and consequences of medical treatment) to consent to or refuse treatment. Determination of maturity requires a full assessment of the minor's capacities, as well as his or her understanding of the nature of treatment and the potential consequences. Usually the determination of maturity is left to physicians or judges. In some states, mature minor legislation extends older minors the authority to provide informed consent for all general medical treatment, with ages varying by state. The main difficulty of the mature minor doctrine lies in assessing maturity; there are no firm guidelines for assessing maturity or decision-making capacity.

EMANCIPATED MINORS

Emancipated minors are those who live independently of their parents. Emancipated minors may consent to medical care, and refuse it, as if they were adults. The criteria for emancipation vary by state, but generally include the following situations: marriage, military service, parental consent (parents who have surrendered their rights and responsibilities), parenthood, judicial order, and financial independence.

Conduct a search for information on the mature Minor Doctrine and Emancipated Minors' Laws for your state.

MINORS: RIGHTS TO CONSENT (Without parental involvement)

Most states allow minors aged 13 through 18 to provide consent for some medical care, including contraception, sexually transmitted diseases, pregnancy, alcohol and drug abuse, and psychiatric problems, varying by state.

- The nature of these health issues is such that some minors would choose to go without treatment rather than seek parental consent (i.e., adolescents may not want parents to be aware of the problem).
- Allowing minors to give consent in these instances ensures unrestricted access to care for those who otherwise might have been deterred from seeking help.

ASSIGNMENT

Go to <http://www.guttmacher.org/> Several paragraphs down on the home page you'll find this paragraph...The Alan Guttmacher Institute has periodically reviewed state laws pertaining to minors' authority to consent to medical care and to make other important decisions without their parents' knowledge or permission. This year its review was expanded to also take into account state court decisions and attorneys general opinions that affect young people's access to confidential services

[\(see table\)](#).

CLICK ON THE “(See Table)” Link

This will take you to a chart that explains minors and their rights to consent to: 1) State Contraceptive Services, 2) Prenatal Care, 3) STD/HIV Services, 4) Treatment for Alcohol and/or Drug Abuse, and 5) Outpatient Mental Health Services.

IS THE MINOR YOUR CLIENT?

- If a minor is old enough to sign the consent and they are paying for the care then confidentiality is owed to the minor—they are your client.
- However, they cannot use their parent's insurance or have their parents pay privately for the counseling and still be considered the sole client. If the parent is paying, then both minor and parent(s) should sign the consent. In addition, if a minor is old enough to sign the consent then they are also able to refuse treatment [Patient's Rights Act].
- Counselors who work with minors should have policies [or consent addendums] that outline the counseling relationship between counselor and parent(s) and minor.
- If you are in private practice and thinking about working with minors, consult with colleagues who provide services to minors. See what they are doing! If you are employed by an agency or organization that works with minors, follow the company's policies.

MINORS AND CONSENT FORMS

Some details you may want to cover in a consent or letter of agreement are:

- What information you would share with parent(s)
- What type of information shared by the minor you typically do not share
- Additional limits to confidentiality that you adhere to, such as: Risky behavior that is not mandatory (i.e.: duty to warn/protect and CPS) and Criminal activities

SAMPLE

CHILD THERAPY CONTRACT

CAVEAT: For use in your own setting, forms must be personalized to reflect your state's relevant laws, ethical requirements for your licensing, and your own actual policies.

CAVEAT: There is a wide variance in state laws regarding parental access to records. Another variation can be signed by both parents and the child, even in states where parents have sole decision-making authority. The therapist should note that contract ratification, particularly the parents' or client's agreement to discourage subpoenas from attorneys, is not legally binding and may not prevent a judge from issuing a subpoena. However, sufficient anecdotal evidence suggests that such a contract discourages the utilization of child therapists in the divorce process. Such a contract also serves to remind the court of the strong correlation between privacy and therapeutic effectiveness.

Child Therapy Contract

Prior to beginning treatment, it is important for you to understand my approach to child therapy and agree to some rules about your child's confidentiality during the course of his/her treatment. The information herein is in addition to the information contained in my regular consent document. Under HIPAA, I am legally and ethical responsible to provide you with informed consent. As we go forward, I will try to remind you of important issues as they arise. One risk of child therapy involves disagreement among parents and/or disagreement between parents and therapist regarding the best interests of the child. If such disagreements occur, I will strive to listen carefully so that I can understand your perspectives and fully explain my perspective. We can resolve such disagreements or we can agree to disagree, so long as this enables your child's therapeutic progress. If you decide to terminate treatment, I have the option of having a few closing sessions with your child to properly end the treatment relationship. You are waiving your right to access to your child's treatment records. I will inform you if your child does not attend the treatment sessions. At the end of treatment, I will provide you with a summary that includes a general description of goals, progress made, and potential areas that may require intervention in the future. If necessary to protect the life of your child or another person, I have the option of disclosing information to you without your child's consent. You agree that my role is limited to providing treatment and that you will not involve me in any legal dispute, especially a dispute concerning custody or custody arrangements (visitation, etc.). You also agree to instruct your attorneys not to subpoena me or to refer in any court filing to anything I have said or done.

If there is a court appointed evaluator, and if appropriate releases are signed and a court order is provided, I will provide general information about the child which will not include recommendations concerning custody or custody arrangements. If, for any reason, I am required to appear as a witness, the party responsible for my participation agrees to reimburse me at the rate of \$ _____ per hour for time spent traveling, preparing reports, testifying, being in attendance, and any other case-related costs.

REMEMBER TO:

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- ***Copy to client optional, unless they request a copy***

Child Therapy Contract Sample: What would you change? Delete? Add? What sample text in the above consent do you strongly agree with? Why? What sample text do you strongly disagree with? Why?

SAMPLE COUNSELING MINORS

CAVEAT: For use in your own setting, forms must be personalized to reflect your state's relevant laws, ethical requirements for your licensing, and your own actual policies.

CAVEAT: Take appropriate steps to know which parent or whether both parents need to sign. If the minor is at an age, in your state, that they can sign their own consent independently of their parents (and they are paying for the counseling themselves), then confidentiality is due to them alone.

COUNSELING MINORS CONSENT **Minors in therapy:** If you are under eighteen years of age, please be aware that the law may give your parents or guardians the right to obtain information about your treatment and/or examine your treatment records. It is my policy to request a written agreement from your parents or guardians indicating that they consent to give up access to such information and/or to your records. If they agree, I will provide them only with general information about our work together subject to your approval, or, if I feel it is important for them to know in order to make sure that you and people around you are safe. If I think it is appropriate, I will involve them if I feel that there is a high risk that you will seriously harm yourself or another/others. Before giving them any verbal or written information, I will discuss the matter with you, if possible. I will do the best I can to resolve any differences that you and I may have about what I am prepared to discuss. I understand that all material discussed during the psychotherapy sessions is confidential and can be released only with the permission of the holder of the privilege. I have been informed of the limitations to confidentiality relevant to mandatory reporting laws (duty to warn and protect; child and adult protective services) that are in the counselor's main consent form, which I have read and signed. In counseling minors, special sensitivity may be required in releasing information about certain topics such as drugs and sex. I will accept [counselor's] judgment in regard to releasing or sharing information obtained during the course of psychotherapy with the minor that may endanger or jeopardize the patient's well being. Additional limits of confidentiality that I include are as follows: If the minor speaks to me about their involvement in dangerous behaviors (not covered under mandatory reporting), such as fire starting, hurting animals, excessive drug/alcohol abuse, severe eating disorders, or any other activities where there is a substantial likelihood of harm to themselves or others, and if they speak to me about their direct involvement in a previous capital crime, I reserve the right to report these to appropriate sources.

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Counseling Minors Sample

What would you change? Delete? Add?

What sample text in the above consent do you strongly agree with? Why?

What sample text do you strongly disagree with? Why?

SAMPLE

ADOLESCENT CONSENT FORM

CAVEAT: For use in your own setting, forms must be personalized to reflect your state's relevant laws, ethical requirements for your licensing, and your own actual policies.

ADOLESCENT CONSENT

What to expect

The purpose of meeting with a counselor is to get help with problems in your life that are bothering you or that are keeping you from being successful in important areas of your life. You may be here because you wanted to talk to a counselor or therapist about these problems. Or, you may be here because your parent, guardian, doctor or teacher had concerns about you. When we meet, we will discuss these problems. I will ask questions, listen to you and suggest a plan for improving these problems. It is important that you feel comfortable talking to me about the issues that are bothering you. Sometimes these issues will include things you don't want your parents or guardians to know about. For most people, knowing that what they say will be kept private helps them feel more comfortable and have more trust in their counselor or therapist. Privacy, also called confidentiality, is an important and necessary part of good counseling.

As a general rule, I will keep the information you share with me in our sessions confidential, unless I have your written consent to disclose certain information. There are, however, important exceptions to this rule that are important for you to understand before you share personal information with me in a therapy session. In some situations, law requires me to disclose information whether or not I have your permission. I have listed some of these situations below.

Confidentiality cannot be maintained when:

- You tell me you plan to cause serious harm or death to yourself, and I believe you have the intent and ability to carry out this threat in the very near future. I must take steps to inform a parent or guardian of what you have told me and how serious I believe this threat to be. I must make sure that you are protected from harming yourself.
- You tell me you plan to cause serious harm or death to someone else who can be identified, and I believe you have the intent and ability to carry out this threat in the very near future. In this situation, I must inform your parent or guardian, and I must inform the person who you intend to harm.
- You are doing things that could cause serious harm to you or someone else, even if you do not *intend* to harm yourself or another person. In these situations, I will need to use my professional judgment to decide whether a parent or guardian should be informed.
- You tell me you are being abused-physically, sexually or emotionally-or that you have been abused in the past. In this situation, I am required by law to report the abuse to the Virginia Department of Social Services.
- You are involved in a court case and a request is made for information about your counseling or therapy. If this happens, I will not disclose information without your written agreement *unless* the court requires me to. I will do all I can within the law to protect your confidentiality, and if I am required to disclose information to the court, I will inform you that this is happening.

One goal of treatment is to promote a stronger and better relationship between children and their parents. However, it is often necessary for children to develop a “zone of privacy” whereby they feel free to discuss personal matters with greater freedom. This is particularly true for adolescents who are naturally developing a greater sense of independence and autonomy. By signing this agreement, you will be waiving your right of access to your child’s treatment records.

Communicating with your parent(s) or guardian(s)

I have explained to your parent(s)/legal guardian that you may reveal sensitive information regarding sexual contact, alcohol and drug use, or other potentially problematic behaviors. Sometimes these behaviors are within the range of normal adolescent experimentation, but at other times they may require parental intervention. We must carefully and directly discuss your feelings and opinions regarding “what is acceptable behavior” and concerns for your safety. If I ever believe that you are at serious risk of harming yourself or another, I will inform your parents or other appropriate reporting to help keep you and others safe. Except for situations such as those mentioned above, I will not tell your parent or guardian specific things you share with me in our private therapy sessions. This includes activities and behavior that your parent/guardian would not approve of—or would be upset by—but that do not put you at risk of serious and immediate harm. However, if your risk-taking behavior becomes more serious, then I will need to use my professional judgment to decide whether you are in serious and immediate danger of being harmed. If I feel that you are in such danger, I will communicate this information to your parent or guardian.

Communicating with other adults

School: I will not share any information with your school unless I have your permission and permission from your parent or guardian. Sometimes I may request to speak to someone at your school to find out how things are going for you. Also, it may be helpful in some situations for me to give suggestions to your teacher or counselor at school. If I want to contact your school, or if someone at your school wants to contact me, I will discuss it with you and ask for your written permission. A very unlikely situation might come up in which I do not have your permission but both I and your parent or guardian believe that it is very important for me to be able to share certain information with someone at your school. In this situation, I will use my professional judgment to decide whether to share any information.

Doctors: Sometimes your doctor and I may need to work together; for example, if you need to take medication in addition to seeing a counselor or therapist. I will get your written permission and permission from your parent/guardian in advance to share information with your doctor. The only time I will share information with your doctor even if I don't have your permission is if you are doing something that puts you at risk for serious and immediate physical/medical harm.

Signing below indicates that you have reviewed the policies described above and understand the limits to confidentiality. If you have any questions as we progress with therapy, you can ask your therapist at any time. [minor signature]

Parent/Guardian: Check boxes and sign below indicating your agreement to respect your adolescent's privacy:

- I/we will refrain from requesting detailed information about individual therapy sessions with my/our child. I understand that I/we will be provided with periodic updates about general progress, and/or may be asked to participate in therapy sessions as needed.
___/___ (initial)
- Although I/we know that I/we have the legal right to request written records/session notes since my child is a minor, I agree NOT to request these records in order to respect the confidentiality of my adolescent's treatment and progress in therapy.
___/___ (initial)
- I/we understand that I/we will be informed about situations that could endanger my/our child. I/we know this decision to breach confidentiality in these circumstances is up to the therapist's professional judgment and may sometimes be made in confidential consultation with her consultant/supervisor. **[Parent(s) Signatures]**

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