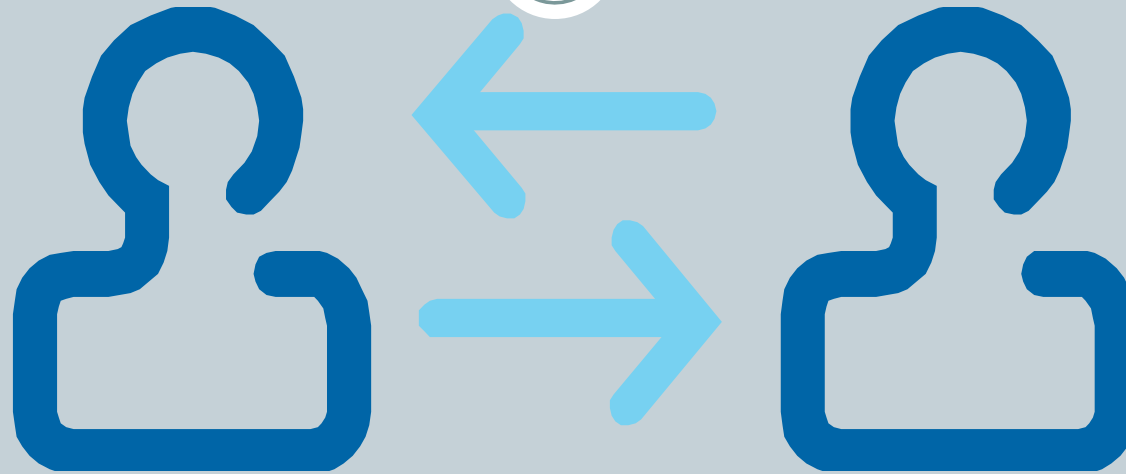


Court Dependents Sharing Confidential Mental Health Information

1



CONTINUING EDUCATION TRAINING FOR PROFESSIONALS WITH CLIENTS INVOLVED IN THE JUVENILE COURT DEPENDENCY SYSTEM

3 HOURS OF CONTINUING EDUCATION CREDIT FOR MFTS AND/OR LCSWS AS REQUIRED BY THE CALIFORNIA BOARD OF BEHAVIORAL SCIENCES, PROVIDER APPROVAL NUMBER PCE 307, THE CALIFORNIA BOARD OF REGISTERED NURSES, BRN PROVIDER NUMBER 12040, AND CALIFORNIA ASSOCIATION OF ALCOHOLISM AND DRUG ABUSE COUNSELORS (CAADAC), PROVIDER NUMBER 4C-04-0612; FOR PSYCHOLOGISTS, CREDIT GIVEN BY SACSAC AS REQUIRED BY THE BOARD OF PSYCHOLOGY

2.5 GENERAL AND 0.5 ETHICS PARTICIPATORY MCLE CREDIT FOR ATTORNEYS - ALAMEDA COUNTY OFFICE OF THE COUNTY COUNSEL (PROVIDER #11955) 1221 OAK ST, SUITE 450, OAKLAND, CA - (510) 272-6700

October 2011

The Panel

2

- ❖ **Jeff Rackmil, Assistant Director, Child & Youth Services
Alameda County Behavioral Health Care Services**
- ❖ **Roger Chan, Executive Director
East Bay Children's Law Office**
- ❖ **Victoria Wu, Senior Deputy County Counsel
Alameda Office of the County Counsel**
- ❖ **Kathleen Pacheco, Senior Deputy County Counsel
Alameda Office of the County Counsel**

Overview

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- 📖 **CONSENTS FOR TREATMENT AND AUTHORIZATIONS TO RELEASE INFORMATION**
- 📖 **WHO CAN SIGN THE CONSENT FOR TREATMENT AND WHY**
- 📖 **WHO CAN SHARE INFORMATION WITHOUT A RELEASE AND WHY**
- 📖 **WHO NEEDS A RELEASE TO SHARE INFORMATION & WHY**
- 📖 **WHO CAN GIVE PERMISSION FOR THE RELEASE OF INFORMATION WHEN NEEDED**
- 📖 **THE DIFFERENCE BETWEEN CONFIDENTIALITY AND PRIVILEGE**
- 📖 **WHAT INFORMATION NEEDS TO BE PROVIDED TO THE COURT VIA THE CWW**
- 📖 **WHAT HAPPENS WITH SHARED INFORMATION ABOUT A DEPENDENT OF THE COURT**
- 📖 **ALAMEDA COUNTY PROTOCOL FOR SHARING CONFIDENTIAL MENTAL HEALTH INFORMATION FOR COURT DEPENDENTS**

Juvenile Dependency Court Process

4



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Statewide Issue

5



Confidentiality and Privilege

6

Two independent legal barriers may limit a health care provider's ability to share medical/mental health information:

- **Confidentiality Statutes**
- **Provider-Patient Privilege**



Confidentiality vs Information Sharing

Who Wins Tug of War?

7

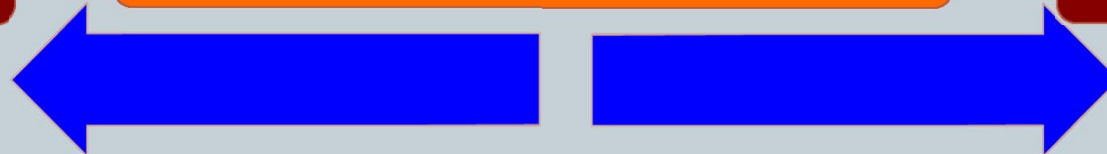
Factors that shape how much is and is not shared:

- Ethical and Professional Practice Standards
- Local Practice and Relationships
- Protocols, forms and orders

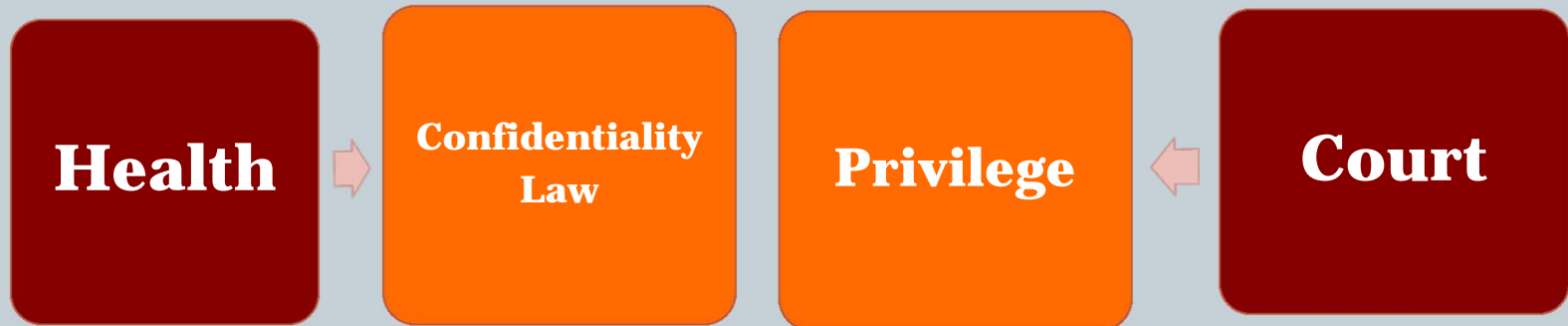
**Don't
share**

**MAY Disclose or Keep
Confidential**

**Do
Share**



Confidentiality and Privilege: When does the Evidence Code come into play?



Privilege: Psychotherapist-Patient

9

- Protects disclosures of confidential communications in court
- Covers testimony as well as records and anything else that may be used as evidence in a legal proceeding.
- While patient holds the privilege, providers are required to raise the privilege on behalf of their clients – unless the client says otherwise. Evid 1015
- May not apply to prevent sharing with “those to whom disclosure is reasonably necessary for the accomplishment of the purpose for which the psychotherapist is consulted.” Evid 1012; Kristine W.; Mark L.

Who Holds the Privilege?

10

- **The child, if capable of informed consent**
 - Presumed capable at age 12 yrs. WIC sec. 317(f)
 - Belongs to the client, not the professional. Daniel C.H.

- **The child's counsel**

Confidential Communications

11

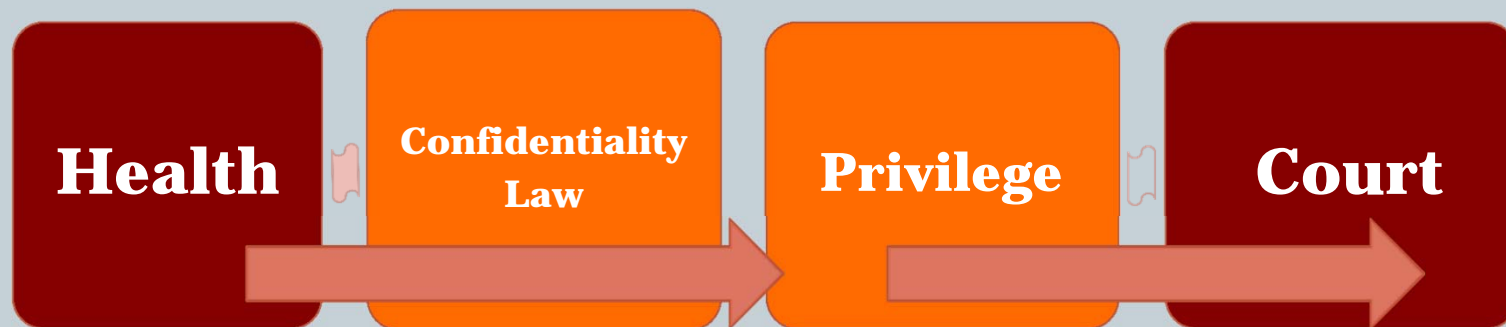
- Between patient and psychotherapist Evid 1012
 - Confidential communication between patient and psychotherapist means information, including information obtained by an examination of the patient, transmitted between a patient and his psychotherapist in the course of that relationship, and in confidence, by a means which, so far as the patient is aware, discloses the information to no third parties other than those who are present to further the interest of the patient in consultation, or those to whom disclosure is reasonably necessary for the transmission of the information **or the accomplishment of the purpose for which the psychotherapist is consulted**, and includes a diagnosis made and the advice given by the psychotherapist on the course of that relationship.
- Between patient and physician. Evid 992

Confidentiality and Evidentiary Privilege

12

- **Statutory exceptions to confidentiality law may allow or require health care providers to share medical information with child welfare workers, probation, and court, but**
- **Providers ability to disclose still may be limited by the psychotherapist-patient or physician-patient privilege**

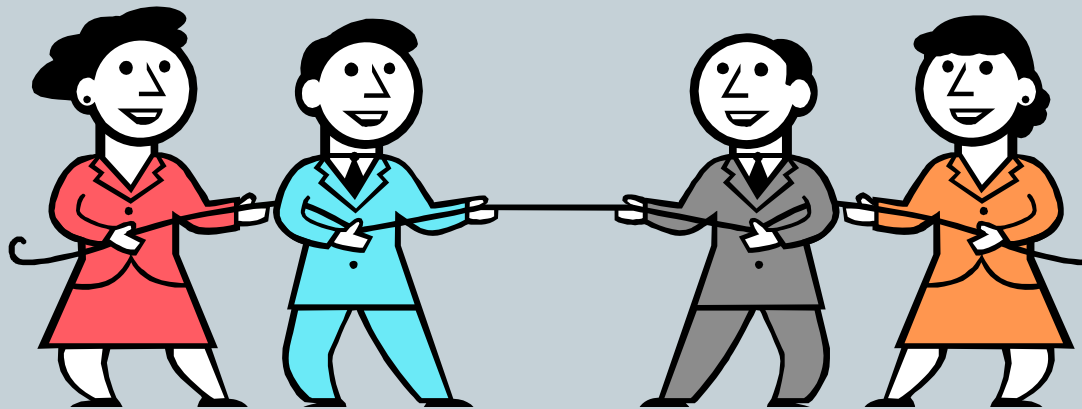
Privilege: How does information move?



How to get privileged information released?:

Consent vs. Release of Information

14



October 2011

Mental Health Treatment

15

CONSENT FOR TREATMENT THROUGH THE STAGES OF A DEPENDENCY PROCEEDING

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CONSENT: General Rule

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General Rule for Youth under Court Jurisdiction:

- Parent maintains right to consent for care unless court order specifically states otherwise. WIC 361, 369(f), 726.
- Court has authority to consent or to give consent rights to the child welfare worker. WIC 369(b)(c)
- Minors maintain their rights to consent to care.

In Addition:

- Additional persons may consent in certain circumstances
- Special rules for certain services, such as psychotropic medications, and in certain circumstances

Who May Consent to Treatment

17

- A minor may consent to his or her own medical care if the minor is 15 years of age or older and managing his or her own finances, regardless of source of income. *Family Code § 6922(a)*.
- A minor 12 years of age or older may consent to mental health treatment if the minor, **in the opinion of the attending professional person**, is mature enough to participate intelligently in the mental health treatment or counseling services and the received services are not under the Medi-Cal program. *Health & Safety Code § 124260 (2011)*.
- A minor 12 years of age or older may consent to mental health treatment under the Medi-Cal program if (1) in the opinion of the attending professional, is mature enough to participate intelligently in the services; and (2) the minor presents a danger of serious physical or mental harm to himself or herself, or others, without the service or the minor is an alleged victim of incest or child abuse. *Family Code § 6924*.

New Detention & Disposition Recommendation For Court to Order Related to WIC 369

18

The Child Welfare Worker may authorize routine medical, dental, surgical, mental health or other remedial care for the child if the parent/guardian is unable or unwilling authorize the treatment. The Child Welfare Worker may provide medical information to those persons authorized by law. The parents/guardians are advised that pursuant to Welfare and Institutions Code Section 369, the court hereby issues an order granting any request for release of information by the minor's mental health service provider should the parents/guardians be unavailable to authorize or incapable of authorizing the release of information.

Who May Consent to Treatment

STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
First 48 hours after child is taken into custody but before filing of petition	Yes.	Yes. The court may order mental health treatment if the parent objects.	<p>Yes, unless parent objects. A social worker may consent to mental health treatment <u>upon the recommendation of the attending healthcare provider.</u></p> <p>The social worker shall notify the parent or guardian of the care needed before it is provided, and if the parent or guardian objects, the care can only be given upon court order. <i>Welfare and Institutions Code § 369(a).</i></p> <p>Consent for treatment is not required for mental health assessments up to 30 days at the Assessment Center pursuant to Alameda County Local Rule 5.508. After completion of the mental health assessment, if ongoing mental health services are recommended, a written recommendation shall be submitted to the court and authorization will be obtained based on the stage of the case.</p>	No.*	No.	No.

Who May Consent to Treatment

STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Filing of Petition through Disposition Hearing	Yes, unless the court finds that there is no parent capable or willing to authorize care or treatment. <i>Welfare & Institutions Code § 369(b)</i>	Yes, with written recommendation from provider. If there is no parent capable or willing to authorize care or treatment, the court, upon written recommendation from the Assessment Center mental health clinician or Child Welfare Worker may make an order authorizing the performance of necessary mental health treatment for the minor. <i>Welfare & Institutions Code § 369(b)</i> If there is no parent capable or willing to authorize care or treatment, the court, upon written recommendation from the Assessment Center mental health clinician or Child Welfare Worker may make an order authorizing the performance of necessary mental health treatment for the minor. <i>Welfare & Institutions Code § 369(b)</i>	Yes, with court authorization. A social worker may consent to mental health treatment if the court orders that the Social Worker may authorize treatment by licensed practitioners after finding that there is no parent capable or willing to authorize treatment.	No.*	No.	No.

Who May Consent to Treatment

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STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Post Disposition Hearing including permanent planned placements	Yes, unless the court finds that there is no parent capable or willing to authorize care or treatment. <i>Welfare & Institutions Code § 369(c)</i>	Yes. If the court finds that there is no parent or guardian capable or willing to authorize mental health treatment, the court may authorize the social worker to consent to the necessary care. <i>Welfare & Institutions Code § 369(c)</i>	Yes, if unable to obtain parental consent. A social worker may consent to mental health treatment if the court orders that the Social Worker may authorize treatment by licensed practitioners after finding that there is no parent capable or willing to authorize treatment. <i>Welfare & Institutions Code § 369(c)</i>	No.*	No.	No.

Who May Consent to Treatment

22

STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Post .26 -- Legal Guardian Appointed	No.	No.	No.	No.*	No.	Yes, Legal Guardian can provide consent.
Post Termination of Parental Rights	No.	Yes.	Yes.	No.*	No.	Yes, if a prospective adoptive parent ("in loco parentis")

Who May Consent to Treatment

STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Emergency Situations (When a child, as a result of a mental disorder, is a danger to others, or to himself or herself, or gravely disabled.)	Parental consent is not required for emergency mental health treatment, although a social worker must make reasonable efforts to obtain the consent or to notify the parent prior to authorizing the care. <i>Welfare & Institutions Code § 369(d)</i>	Not required.	Yes, a social worker may authorize emergency mental health care in an emergency situation without a court order. The social worker shall make reasonable efforts to obtain the consent of, or to notify, the parent prior to authorization of the care, but the social worker may consent over parent's objection. <i>Welfare & Institutions Code § 369(d)</i>	Not applicable (see mental health provider rules).	No.	No.

Who May Consent to Treatment

24

STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Consent for Psychotropic Medications for Dependent Youth in Out-of-Home Care (post-disposition)	No, unless the juvenile court makes a specific written order delegating the authority to a parent upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications. <i>Welfare & Institutions Code § 369.5(a)</i>	Yes, after CWW submits JV-220	No.	Juvenile Court must approve any request for medication (JV220), but minor retains right to refuse medications. <i>Welfare & Institutions Code § 16001.9(a)(5)</i>	No, but the child's attorney may object in writing to the court.	No.

Who May Consent to Treatment

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STAGE OF CASE	PARENT	COURT	CHILD WELFARE WORKER	CHILD	CHILD'S ATTORNEY	CARE PROVIDER
Consent for Psychotropic Medications for Dependent Youth Living In-Home with a Parent or Guardian	Yes.	No.	No.	No.	No.	Legal Guardian may provide consent.

Mental Health Information Sharing & Confidentiality

26

**WHEN IS A RELEASE NEEDED
TO SHARE INFORMATION
RELATED TO A
DEPENDENT MINOR?**

**HOW IS THE SHARED
INFORMATION USED IN COURT?**

Legal Parameters

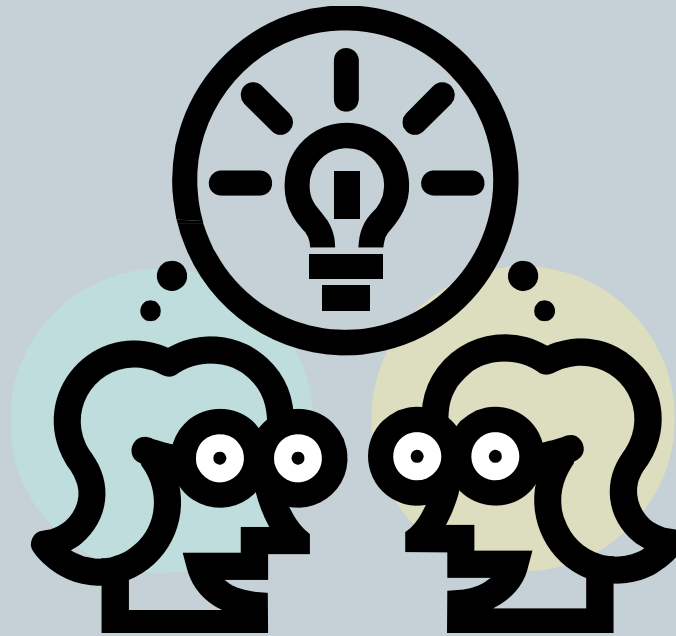
27

- **HIPAA**
- **Civil Code**
- **Welfare and Institutions Code**
- **Family Code**
- **Penal Code**
- **Evidence Code**
- **Case Law**



Sharing Without A Signed Release

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October 2011

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

29

Flow of Information	Does A Mental Health Professional Need An Authorization To Release Confidential Information?
CWW to MH Provider	NO, a release is not needed The mental health provider may review the child welfare worker's file, but not copy the documents. <i>Welfare & Institutions Code § 827(k).</i>

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

30

Flow of Information	Does A Mental Health Professional Need An Authorization To Release Confidential Information?
MH Provider to Parents/LGs	<p>NO, a release is not needed <u>if the provider determines</u> that disclosure would not have a detrimental effect on the provider's professional relationship with the minor or the minor's physical safety or psychological well-being. <i>CA Health & Safety Code § 123115(a)(2).</i></p> <p>YES, a release is needed from the minor in cases where the minor has consented to the underlying mental health services. <i>CA Civil Code § 56.11(c); H&S Code § 123115(a)(1)</i></p>

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

31

Flow of Information

Does A Mental Health Professional Need An Authorization To Release Confidential Information?

MH Provider to Foster Parents

NO, a release is not needed when the provider determines that the disclosure of medical information concerning the diagnosis and treatment of a mental health condition of a minor is reasonable necessary to assist in coordinating the treatment and care of the minor. A foster parent is a person who is “legally authorized to have custody or care of the minor.” *CA Civil Code § 56.103(e)(1)*

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

32

Flow of Information	Does A Mental Health Professional Need An Authorization To Release Confidential Information?
MH Provider to MH Provider (When child is not conserved)	NO, a release is not needed. Without first obtaining an authorization, a mental health provider may disclose medical information to other providers engaged in providing direct mental health care services to the child for purposes of diagnosis or treatment. <i>CA Civil Code §§ 56.10(c)(1)</i>

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

33

Flow of Information

Does A Mental Health Professional Need An Authorization To Release Confidential Information.

MH Provider to Child's Attorney

NO, a release is not needed.

The child's juvenile dependency attorney shall have access to all records with regard to the child maintained by a health care facility, as defined in *§ 1545 of the Penal Code*, health care providers, as defined in *§ 6146 of the Business and Professions Code*, a physician or surgeon or other health practitioner, as defined in former *§ 11165.8 of the Penal Code, as that section read on 1/1/00, or a child care custodian, as defined in former § 11165.7 of the Penal Code, as that section read on 1/1/00. CA Welfare & Institutions Code § 317(f)*

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

34

Flow of Information	Does A Mental Health Professional Need An Authorization To Release Confidential Information?
MH Provider to CASA	<p>NO, a release is not needed upon presentation of the CASA worker's order of appointment.</p> <p><i>CA Welfare & Institutions Code § 107.</i></p> <p>Because the CASA must report the results of his/her investigation to the court, the provider may refuse to disclose confidential communications to the CASA by claiming privilege including, but not limited to, when the provider determines that disclosure would have a detrimental effect on the provider's professional relationship with the minor or the minor's physical safety or psychological well-being. <i>CA Welfare & Institutions Code § 104; CA Evidence Code § 1014(c).</i></p>

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

35

Flow of Information

Does A Mental Health Professional Need An Authorization To Release Confidential Information?

MH Provider to Child Welfare Worker

NO, a release is not needed when disclosure is limited to circumscribed information that is reasonably necessary for a juvenile dependency court to make decisions regarding custody, visitation, services, and other aspects of the case plan, including information which, in the provider's judgment, explains and gives context to the provider's report. *CA Civil Code § 56.103(e)(1)*. [Psychotherapy notes are specifically not included in this limited disclosure. *CA Civil Code § 56.103(e)(2)*.]

YES, a release is needed for disclosure of any confidential information beyond the scope of the "circumscribed information" allowed under *CA Civil Code § 56.103(e)(1)*.

Court's Need for Information

36

What information needs to be provided to the Court via the Child Welfare Worker?

What happens with shared information about a Dependent of the Court?

Is all information shared with the CWW released to the Court?



Circumscribed Information

37

- “Information sufficiently circumscribed to protect the child’s confidential communications, and provide sufficient information to enable the court to evaluate its orders regarding the child.”
- Information that is NOT part of a “confidential communication”

WHEN IS A RELEASE NEEDED FOR DEPENDENT MINORS IN OUT-OF-HOME PLACEMENT?

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Flow of Information

Does A Mental Health Professional Need An Authorization To Release Confidential Information,

MH Provider to Others
(including FFA social workers)

YES, a release is needed.

SUMMARY CHART: Who Has Authority To Sign A Release Of Confidential Mental Health Information?

Authorized Person	Medical Information Concerning Mental Health of the Minor
Parents or Legal Guardian	Yes, unless minor consented to the treatment. If parent or LG is unwilling or unavailable, authorization must come from the Juvenile Court Judge.
Child Welfare Worker	No
Child	Yes, if the child consented to their treatment per the rules, as stated below*.
Child's Attorney	No
Juvenile Court Judge	Yes, by court order, if the court has previously ordered the performance of treatment and/or there is no parent or guardian willing or available to authorize the release.
Foster Parent	No
Relatives	No
Group Home Staff	No
Guardian ad Litem if the minor is conserved	Yes

What happens when a mental health provider needs a release and there is no parent or guardian available ?



Procedure for Requesting Court Orders for Release of Information

41

In any case where the minor's mental health service provider determines it is necessary to speak with a person not currently authorized to receive confidential mental health information, the following procedure must be used to secure a court order authorizing the release of information.

FORM

Request For Authorization To Release Information

42

PROVIDER AGENCY NAME:

REQUEST MADE BY:

To be completed by Minor's Mental Health Service Provider:

Instructions:

- Complete all items on this form. You must contact the Child Welfare Worker ("CWW") and make attempts to contact the parent(s)/guardian. If there are two parents you must make reasonable attempts to contact both of them.
- Complete your agency's standard Release of Confidential Information form that is used to obtain authority or consent for disclosure of confidential health information and attach it to this request.
- Send this request and your agency's Release of Confidential Information form to the child's attorney in the juvenile court proceedings.

FORM

Request For Authorization To Release Information

43

1. Child's Name: _____

DOB: _____

2. The Authorization for Disclosure of health information is in the interest and welfare of the child because:

3. CWW: _____ CWW Phone#: _____

Date CWW Notified: _____

CWW Response: (circle one) AGREE DISAGREE

FORM

Request For Authorization To Release Information

44

4. The child was informed about this request.

The child was told about this request and the child's response was:

AGREEABLE NOT AGREEABLE

The child was not told about this request

If the child did not agree with the request to release information, or was not told about the release please explain why the information should be released and why the youth was not informed.

FORM
Request For Authorization To Release Information

45

**FAX COMPLETED REQUEST FOR
AUTHORIZATION TO RELEASE INFORMATION
FORM TO THE CHILD'S ATTORNEY**

EAST BAY CHILDREN'S LAW OFFICES*

(510) 899-6657

*Most children are represented by EBCLO. If the child is not represented by EBCLO, the request will need to be faxed to the attorney of record for the child.

FORM

Request for Authorization to Release Information

46

To be completed by Child's Attorney:

____ I am not opposed to this Request for Authorization to Release Information, and release of confidential information concerning the child is authorized pursuant to the court order dated _____. (copy of Court Order is attached)

____ I am not opposed to this Request for Authorization to Release Information if it is limited as follows:

_____ and am attaching the Court Order dated, _____, to authorize only the release of information as specified above.

____ I am opposed to this Request for Authorization to Release Information and release of confidential information to _____ is NOT authorized.

Date: _____ Name of Child's Attorney: _____

Child's Attorney's Signature: _____

Court Order

47

IN THE MATTER OF

(DOB:))

_____ a minor.

Dept. No.:

Court No.:

/

ORDER GRANTING REQUEST FOR RELEASE OF INFORMATION

This Order is made pursuant to Welfare and Institutions Code Section 369(e). The Court finds good cause to order a release of confidential information requested by the child's mental health service provider if the parent or guardian of the child is unavailable or incapable of authorizing the release of confidential information. This order granting the request for release of information is conditioned upon the following:

1. The mental health service provider has provided a specific written Request for Authorization to Release Information, Authorization for Release of Information, and the reason for the request to counsel for the minor;
2. The mental health service provider has made and documented reasonable attempts to contact the parent or guardian of the child to seek authorization for the release of information;
3. The mental health service provider has conferred with the Child Welfare Worker and included that information in the written request provided to counsel for the minor; and
4. The counsel for the minor has signed that they are not opposed to the Request for Authorization to Release Information.

Minor's counsel shall attach this order to the specific request from the child's mental health service provider for release of confidential mental health information if all four conditions are satisfied.

IT IS ORDERED.

Dated: _____

Judge of the Superior Court

October 2011

Hypothetical

48

- Does the mental health provider need a release to talk to the child welfare worker?
- What information from the mental health provider is not privileged and can be shared with the Court?
- What information from the mental health provider is privileged?
- What information can the mental health provider share with the child welfare worker without a release?
- What else can be done in the best interest of the child?

Questions

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