



Children's Law Center of Los Angeles

January 3, 2011

To: Providers of Mental Health Services to Foster Children

Re: Consent and Confidentiality Issues

Dear Sir/Madam:

Children's Law Center of Los Angeles is a non-profit organization that provides legal representation for all children and youth who are dependents of the court in Los Angeles County. Our mission is to ensure that foster children have an independent voice in court, on issues including child safety, health and mental health; placement; visitation with parents, siblings, and other family members; education; and permanency planning.

Every child in the Los Angeles County dependency system has a CLC attorney. Communicating with the child's attorney can be an effective way for mental health providers to resolve any barriers to treatment, and ensure that the child receives the most effective treatment in light of the child's history, current circumstances, and future goals.

Complex questions may arise regarding consent to treatment and confidentiality of mental health information for foster children. Different people may have the authority to consent to treatment, depending on the child's circumstances and the type of treatment involved. And, the person who consents to treatment may not be the same person authorized to make decisions about disclosure of confidential information.

To assist mental health providers in working with foster children's attorneys and resolving any issues regarding consent and confidentiality, here is a summary of the applicable legal rules:

1. Consent to mental health care for dependent children may be given by:

- A parent or legal guardian, if available and capable of authorizing treatment; or
- The court, if the parent is unavailable or incapable of authorizing treatment; or
- The child, if 12 or older, for outpatient mental health treatment; or
- A relative who is caring for the child under a permanent plan established by the court.

2. Consent for special types of treatment may only be given by:

- The court, for psychotropic medications (or, the court can make an order allowing a parent or legal guardian to consent for medications);
- The court, with the child's consent after consulting his or her attorney, for voluntary hospitalization and other inpatient mental health treatment (including Level 14 placement);

3. Confidential information about a dependent child’s mental health treatment may be disclosed by the provider only if:
- There is a written authorization by the child’s parent or guardian,¹ conservator, attorney, or by a child 12 or older; or
 - The information is disclosed only to the child’s parent or guardian, does not concern minor consent services, and the provider does not believe the disclosure would harm the child; or
 - The disclosure is between two mental health professionals in the course of providing services to the child, or
 - The provider determines that disclosure to the DCFS caseworker is necessary to coordinate the child’s care and treatment, and the disclosed information does not include psychotherapy notes.
4. Even if disclosure by the provider is permissible under the above rules, all “confidential communications” (i.e. information shared between the child and a doctor or therapist in a private setting) are protected by therapist-patient privilege. Mental health professionals cannot testify about these communications in court or provide them to a party, attorney, social worker or probation officer for use in court, unless:
- The child’s attorney waives the privilege.

I hope this letter is helpful in clarifying the legal rules and ethical responsibilities involved in providing consent to mental health treatment and making decisions about disclosure of mental health information for foster children. Martha Matthews is the contact person at Children’s Law Center on consent and confidentiality issues. Please feel free to contact her at (323) 980-9851 or matthewsm@clcla.org if you have general questions not relating to a particular case or need additional information. For consent and confidentiality questions involving a specific case please contact the case-carrying attorney directly. If you do not know who the case carrying attorney is please call 323-980-1700.

Sincerely,



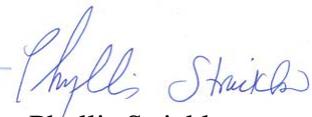
Leslie Starr Heimov
Executive Director



David Estep
Director, CLC1



Ivy Carey
Director, CLC3



Phyllis Stricklan
Director, CLC2

¹ If a parent or guardian authorizes a disclosure that the provider believes would be harmful to the child, the provider may refuse to disclose the information.