



Monterey County Behavioral Health Policy and Procedure

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Policy Number	324
Policy Title	Consent for Minors by Parent/Legal Guardian When Parents are Divorced
References	See policy 320 Minor Consent.
Form	
Effective	7/23/2015

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Policy

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Either parent may consent to medical care for their minor child. The law does not require consent from both, but if only one parent consents to care and the other disagrees and “non-consents,” the parent who is saying “no” to the treatment dictates the care, and the treatment may not be provided until that parent either changes their position and agrees to the proposed treatment, or a Court removes their parental authority to say “no” to the treatment because the Court believes that the refusal to consent to medical care is tantamount to medical neglect (a form of child abuse and neglect).

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If the parents are separated, either parent can consent or non-consent. Only one parent’s signature is needed, as is the case with parents who are together. If the parents are divorced, the parent(s) with “legal” custody has the authority to consent to medical care. If there is joint (or “shared”) legal custody, then either parent may consent (or non-consent). The law only requires one signature on a consent form, but the agreement between the parents (the divorce agreement) may require either parent to notify the other when they make certain decisions about the care of the child, including medical care.

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Lack of custody alone is not enough reason to deny a parent access to medical information about their child. However, other reasons may exist that would allow a health care provider to deny access to either parent, custodial or not (damage to the therapeutic relationship, or emotional or physical harm to the child’s well-being).

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Procedure: Prior to providing care to a minor child, talk to the parent/legal guardian about the proposed treatment, and explain risks, benefits and alternatives (informed consent). Ask the parent to sign the consent form. It is not necessary to have both parents consent to the care. However, if you know that the other parent might object to the care, or there is some other “red flag” it is best to try to involve the second parent and ask them to also sign the consent form. If they choose not to participate, can’t be reached, or are simply not interested or involved in their child’s life, care may be provided based on the first parent’s

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33 consent. However, if they tell you that they do not want you to proceed with the care, their
34 non-consent needs to be documented and care cannot be provided.

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36 If the refusal of care will harm the minor, attempts can be made to try to change the non-
37 consenting parent's mind. If the attempt to educate the non-consenting parent's mind is not
38 successful, and serious harm will result, the chain of command should be triggered so that
39 a decision can be made whether to report the non-consent as "medical neglect of the child."
40 Next steps might include a court order terminating the non-consenting parent's right to non-
41 consent to the care.