

# Decision Makers for MEDICAL TREATMENT OF ADULTS

(Special rules apply to mental health commitment, convulsive therapy, psychosurgery, sterilization, abortion and experimental treatment)

Person who can consent to treatment	Definition
<i>The following hierarchy must be followed:</i>	
1. Adult patient with capacity	Able to understand the nature and consequences of the decision; adult is a person age 18 or older
2. Surrogate decision maker	Oral or written appointment by the patient, for duration of stay or illness; maximum 60 days
3. Agent	Appointed in an Advance Health Care Directive or Power of Attorney for Health Care
4. Conservator	Appointed by a court
5. Court-appointed surrogate decision maker	Court appoints a surrogate to make health care decisions
6. Closest available relative	See “Closest Available Relative” table, below
7. Interdisciplinary team	See “Adults Lacking Capacity and Not Under a Conservatorship” in CHA’s Consent Manual for important information

**Emergency Exception** When a patient lacks capacity to make a health care decision and treatment is immediately necessary to prevent death or permanent disability, or to alleviate severe pain, and a surrogate decision maker cannot be contacted, treatment may proceed because it is an emergency. The treatment is limited to that which is necessary to treat the emergency and cannot include treatment that has previously been validly refused.

## Closest Available Relative

Health Care Decisions	Autopsy	Anatomical Gifts	Disposition of Remains
<p><i>No statutory hierarchy<sup>1</sup></i></p> <ul style="list-style-type: none"> <li>Spouse/domestic partner</li> <li>Adult child</li> <li>Either parent</li> <li>Adult sibling</li> <li>Grandparent</li> <li>Adult aunt/uncle</li> <li>Adult niece/nephew</li> </ul>	<p><i>No statutory hierarchy</i></p> <ul style="list-style-type: none"> <li>Spouse/domestic partner</li> <li>Adult child or parent</li> <li>Adult sibling</li> <li>Any other kin or person who has the right to control disposition of remains</li> <li>Public administrator</li> <li>Coroner or other official, such as the California Curator of the Unclaimed Dead</li> </ul>	<p><i>In the order listed</i></p> <ol style="list-style-type: none"> <li>An agent who could have made an anatomical gift immediately before decedent’s death</li> <li>Spouse/domestic partner</li> <li>Adult child</li> <li>Either parent</li> <li>Adult sibling</li> <li>Adult grandchildren</li> <li>Grandparent</li> <li>An adult who exhibited special care and concern for the decedent during the decedent’s lifetime</li> <li>Guardian or conservator of the decedent at the time of death</li> <li>Any other person authorized to dispose of the remains of the unclaimed dead provided that reasonable effort has been made to locate and inform persons listed above</li> </ol>	<p><i>In the order listed</i></p> <ol style="list-style-type: none"> <li>An agent named in an advance directive</li> <li>Spouse/domestic partner</li> <li>Adult child or majority of children</li> <li>Parent</li> <li>Adult sibling or majority of siblings</li> <li>Surviving adults in degree of kinship or a majority of the same degree</li> <li>Conservator of person</li> <li>Conservator of estate</li> <li>Public administrator, if the patient has assets</li> </ol>
	Reference: Health and Safety Code Section 7113	Reference: Health and Safety Code Section 7150.40	Reference: Health and Safety Code Section 7100

<sup>1</sup>For general medical decisions, case law (not a statute) authorizes decisions by the “closest available relative” and there is no specific hierarchy/order given. It is wise to select the person who seems most familiar with the patient’s values, demonstrates concern for the patient, had regular contact prior to the illness, is available to visit and make decisions, and is able to understand the information and engage in meaningful contact. Agreement with the doctor’s recommendations is not a proper criterion for selection.

See chapter 3, “Who May Consent for Adults Lacking Capacity,” of CHA’s Consent Manual for additional information.

See chapter 14, “Deaths, Autopsies and Anatomical Gifts” of CHA’s Consent Manual for additional information regarding autopsies, anatomical gifts, and disposition of remains.

1215 K Street, Suite 800 • Sacramento, CA 95814 • (916) 443-7401 • www.calhospital.org

## Consent Requirements for

# MEDICAL TREATMENT OF MINORS

<b>IF MINOR IS:</b>	<i>Is parental consent required?</i>	<i>Are parents responsible for costs? †</i>	<i>Is minor's consent sufficient?</i>	<i>May M.D. inform parents of treatment without minor's consent?</i>
Unmarried, no special circumstances	Yes	Yes	No	Yes
Unmarried, emergency care and parents not available [Business and Professions Code § 2397]	No	Yes	Yes, if capable	Yes
Married or previously married [Family Code § 7002]	No	No	Yes	No
Emancipated (declaration by court, identification card from DMV) [Family Code §§ 7002, 7050, 7140]	No	Probably Not <sup>1</sup>	Yes	No
Self-sufficient (15 or older, not living at home, manages own financial affairs) [Family Code § 6922]	No	No	Yes	<sup>1</sup>
Not married, care related to prevention or treatment of pregnancy, except sterilization [Family Code § 6925]	No	No	Yes	No
Not married, seeking abortion [Family Code § 6925]	No	No	Yes	No
Not married, pregnant, care not related to prevention or treatment of pregnancy and no other special circumstances	Yes	Yes	No	Yes
On active duty with Armed Forces [Family Code § 7002]	No	No	Yes	No
12 or older, care related to diagnosis or treatment of a communicable reportable disease or to prevention of an STD [Family Code § 6926]	No	No	Yes	No
12 or older, care for rape <sup>1</sup> [Family Code § 6927]	No	No	Yes	Yes, usually
Care for sexual assault or intimate partner violence <sup>1</sup> [Family Code §§ 6928 and 6930]	No	No	Yes	Yes, usually
12 or older, care for alcohol or drug abuse <sup>1</sup> [Family Code § 6929]	No <sup>2</sup>	Only if parents are participating in counseling	Yes	Yes, usually
12 or older, care for mental health treatment, outpatient only <sup>1</sup> [Family Code § 6924; Health and Safety Code § 124260]	No	Only if parents are participating in counseling	Yes	Yes, usually
17 or older, blood donation only [Health and Safety Code § 1607.5]	No	No	Yes	Probably not

<sup>1</sup> Special requirements or exceptions may apply. See *Chapter 4* of the *Consent Manual* or *Chapter 3* of *Minors & Health Care Law*.

<sup>2</sup> Parental consent *is* required for a minor's participation in replacement narcotic abuse treatment (such as methadone, LAAM or buprenorphine products) in a program licensed pursuant to Health and Safety Code § 11875 (now codified at § 11839 *et. seq.* [Family Code § 6929(e)])

Note: Notwithstanding the above information, a psychotherapist may not disclose mental health information to a parent who has lost physical custody of a child in a juvenile court dependency hearing unless the parent has obtained a court order granting access to the information.

† Reference: Welfare and Institutions Code § 14010

**Minors are defined as all persons under 18 years of age.**

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