

DRAFT OF MHAP POLICY RECOMMENDATIONS

POLICY: INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATIONS FOR MINORS VOLUNTARILY ADMITTED BY A PARENT(S), LEGAL GUARDIAN OR CONSERVATOR

This policy covers procedures for obtaining informed consent for the administration of antipsychotic medications for a minor admitted to SJBH by authorization of a legally responsible adult. The policy addresses the required involvement of adults authorized to consent to treatment of a minor such as parent(s), legal guardian and conservator and the need to first obtain signed authorization from a responsible adult prior to administering antipsychotic medications. [See separate SJBH policies which address the issues of informed consent involving minor dependents and wards who are under the jurisdiction of the juvenile court, minors involuntarily detained pursuant California civil commitment procedures and administration of emergency medications.]

DEFINITIONS:

- **Voluntary admission:** “means that the parent, guardian or other legal representative wants the minor to be admitted to the hospital. It does not necessarily mean that the minor agrees or acquiesces to the hospitalization” *California Hospital Association: Mental Health Law Manual (2015)* (hereinafter referred to as CHA MHLM)
- **Antipsychotic medication:** “means any medication customarily prescribed for the treatment of symptoms of psychosis and other severe mental and emotional disorders”. [Welfare & Institutions Code Sec. 5008(l)]

PERSONS LEGALLY RESPONSIBLE TO CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATIONS FOR A MINOR:

- **Parent or guardian:** “means either parent, if both have legal custody, or the parent or person having legal custody, or the guardian of a minor”. [Family Code Sec. 6903]. For the purposes of the SJBH acute inpatient unit this means minors age 14-18 admitted for voluntary treatment.
- If both parents agree upon the proposed use of antipsychotic medications, both parents should sign the applicable consent forms. (CHA MHLM).
- Where a minor has been legally adopted, by order of the court, the adoptive parent has the same legal right and responsibility to consent to use of antipsychotic medications as would the minor’s birth parent. [Family Code Sec. 8616].

- Where one parent consents to treatment but the other parent is opposed, treatment should not be provided until the conflict is resolved. (CHA MHLM).
- If a guardian has been appointed for a minor, the ability of the guardian to consent to medical treatment depends on the authority granted by the court and the type of treatment. A copy of the official certified letters of guardianship shall be retained in the minor's medical record. (CHA MHLM)
- **Divorced Parents:**
- If disagreement exists with regard to the treatment of a minor with divorced parents, a copy of the court order pertaining to the custody of the minor should be obtained to determine which parent has the authority to make health care decisions for the child. A copy of the court order shall be placed in the minor's medical record. (CHA MHLM).
- If one parent has sole legal custody, that parent has the right and responsibility to consent to treatment with antipsychotic medications. [Family Code Sections 3006 and 6903]
- In cases where parents have joint legal custody, either parent has the right and responsibility to consent to antipsychotic medications unless the court has specified, in the custody order, that the consent of both parents is required. [Family Code Sections 3003, 3083 and 6903]
- If divorced parents with joint legal custody disagree to the use of antipsychotic medications, they should be instructed to secure a court order resolving the dispute before medications are administered when the treatment can be delayed without jeopardizing the minor's health.
- **Stepparent:** Becoming the spouse of a parent is not the same as becoming a parent, even for legally married heterosexual or same-sex spouses. Unless the stepparent has legally adopted the minor of a spouse, the stepparent does not have the authority to consent to medical care on behalf of the minor without written authorization from the minor's father or mother, or a valid Caregiver's Authorization Affidavit (see CHA Form 2-2)
- **SAME SEX MARRIED PARENT(S) AND REGISTERED DOMESTIC PARTNER PARENT(S):**
- Same sex marriage is now legal in the United States. Obergefell v. Hodges 576 U.S (2015). Married same sex parents have the same legal rights and responsibilities as birth parents and adoptive parents in making treatment decisions for their minor children including consenting to use of antipsychotic medications.
- California law also permits adults to register as domestic partners [Family Code Sec. 297]. Under state law, registered domestic partners (or former or

surviving registered domestic partners) have the same rights, duties, obligations and responsibilities granted spouses in a marriage. This includes consenting to treatment with antipsychotic medications for the child of their partner [Family Code Sec. 297.5] provided the domestic partner does one of the following:

- Has legally adopted the child of his/her domestic partner;
- Provides a third-party authorization form giving that registered domestic partner the ability to consent to medical care for the child. (See CHA Form 2-3: Authorization for Third Party to Consent to Treatment of Minor Lacking Capacity to Consent).
- Completes a valid Caregivers Authorization Affidavit (see CHA Form 2-2).
- **Conservator** “means a person appointed by the court to take care of the person...under Welfare & Institutions Code Sec. 5350, et seq.” [CCR Title 22 Sec. 71017] and provides the facility with:
- Certified letters of conservatorship issued by the court granting authority to admit the minor to a facility for mental health treatment and the “right to refuse or consent to treatment related specifically to the conservatee’s being gravely disabled”. [Welfare & Institutions Code Sections 5357(d) & 5358]

INFORMED CONSENT TO ADMINISTRATION OF ANTIPSYCHOTIC MEDICATIONS:

In the case of minors admitted voluntarily by parent(s), legal guardian or conservator, the informed consent process requires that the person authorizing treatment “has been informed of the right to accept or refuse such medications” (on behalf of the minor). “In order to make an informed decision (the person authorizing treatment) must be provided with sufficient information by the physician prescribing such medications.” The information shall be provided in a language that is understandable to the person from whom consent is sought. Information “shall include the following:” [9 CCR Sec. 851]

- The nature of the minor’s mental condition;
- The reasons for taking the medication, including the likelihood of improving or not improving without such medications, and that consent, once given, may be withdrawn at any time by notifying any member of the treatment staff;
- Reasonable alternative treatments available, if any;
- The type, range of frequency and amount (including use of PRN orders), method (oral or injection), and duration of taking the medications;

- The probable side effects of these drugs known to commonly occur, and any particular side effects likely to occur with the particular minor and;
- The possible additional side effects which may occur to the minor taking such medications beyond three months. Such side effects may include involuntary movement of the hands and feet and that these symptoms of tardive dyskinesia are potentially irreversible and may appear after medications have been discontinued.

The “written record shall be a written consent form signed” by the parent(s), legal guardian or conservator “indicating that” the information above “has been discussed” with the person consenting to the medications “by the prescribing physician”. [9 CCR Sec. 852]

MINOR INVOLVEMENT IN THE INFORMED CONSENT PROCESS:

Even though a minor admitted to SJBH lacks the legal authority to make health care decisions by virtue of his/her age, it is appropriate and consistent with California laws, granting minors the right to consent to other mental health and medical treatment procedures and interventions, to include the minor in the discussion regarding psychiatric medications in a manner appropriate to the minor’s age and obtain their assent.

The situation may arise when a minor at SJBH refuses medication. A minor’s refusal to participate in mental health treatment presents special challenges. The legal complications refusal presents increases the closer the minor comes to turning 18. There is no requirement that a psychiatrist order forced administration of medications of a minor admitted voluntarily if the minor declines to cooperate, even if the parent(s), guardian or other legal representative are insistent.

For example, Uplift Family Services operates a Crisis Stabilization Unit (CSU) in Campbell. The CSU is a licensed facility, designated by the county to receive minors involuntarily pursuant to W&I Code Sec. 5150 and provide acute psychiatric intervention and crisis stabilization for up to 24 hours as well as triage to an appropriate designated facility for additional acute psychiatric inpatient treatment when indicated. The CSU policy and practice is to obtain informed consent for medications from the parent, legal guardian or conservator and assent from the minor whenever possible. Absent an emergency situation a minor is not subject to forced medication. If a minor declines to take prescribed medication, nursing staff must document this in the medical record and notify the treating psychiatrist.

In general, providers should proceed cautiously in situations where a minor disagrees with the parent(s) or other legal representatives, particularly if the treatment or refusal involves a significant risk of serious adverse consequences. [CHA MHLM (2015) p. 2.23]

SANTA CLARA COUNTY MENTAL HEALTH DEPARTMENT MEDICATION PRACTICE GUIDELINES:

The Santa Clara County Mental Health Department (now Behavioral Health Services Department) Medication Practice Guidelines (2016) includes specific FDA approved psychotropic medications and dosage ranges for treatment of children and adolescents. The Guidelines identify important considerations when prescribing all classes of medications and cites the following as one important consideration:

“It is recognized that various medications are prescribed for psychiatric treatment that have not been approved by the FDA for these indications. This is especially true for children/adolescents...where FDA approvals are less common. The use of these non-FDA approved medications is acceptable, but **must be documented on the medication consent forms.**” (SCC MHD Medication Practice Guidelines, Section A, Revised 8/2014, p, 6 of 6).

The entire practice guidelines are available on the county BHSD website (link below). Because SJBH is seeking designation, it is MHAP’s considered opinion that these guidelines should be followed, especially when prescribing psychotropic medications for adolescents. Whenever non-FDA approved psychotropic medications are prescribed for minors, this shall be documented on the consent form and information shall be provided to minor’s parent(s), legal guardian or conservator by the prescribing physician before signing the consent form.

<https://www.sccgov.org/sites/mhd/Providers/PharmacyInformation/Pages/MHDGuidelines.aspx>