

## SHARING of MINORS' CONFIDENTIAL MENTAL HEALTH INFORMATION 2019 - East Bay Children's Law Offices

### Flow of Information

**Does a Mental Health Provider Need a Release Authorization to Disclose a Minor Foster Child's Confidential Information?** (This chart does not cover records protected by the LPS Act.)

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. *Welfare & Institutions Code § 827(a)(1)(K)*.

MH Provider to Parents/LGs

**YES.** A release is needed if **the minor consented or could have lawfully consented to treatment in the mental health services.** *Civil Code § 56.11(c); Health & Safety Code § 123115(a)(1)*. See *Fam Code § 6924(b)* (age 12+ "mature enough to participate intelligently"). Such a minor could sign the release. **Also, if the minor has been removed from their custody by dependency petition,** no disclosure *unless* the Juvenile Court finds that disclosure to the parent or guardian would not be detrimental to the child. Such court authorization is needed in an out of home case for a MH provider to disclose confidential information to a CFT or *Katie A* CFT if the parents or guardians attend. *H&S Code § 123116, see also Civil Code § 56.106* re who can sign authorizations.

**NO, if minor is placed at home,** or if the court finds no detriment to disclosure, **UNLESS the minor consented or could have lawfully consented to treatment in the mental health services.** (See above)

**But, the provider can choose not to disclose** if the disclosure would have a detrimental effect on the provider's professional relationship with the minor or on the minor's physical safety or psychological well-being. *CA Health & Safety Code § 123115(a)(2)*.

MH Provider to Foster Parents

**YES.** But not if the minor did not consent and could not have lawfully consented to treatment in the mental health services (under age 12), **AND the provider determines** that the disclosure of limited 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. The information shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law. (A foster parent is a person "legally authorized to have custody or care.") *Civil Code § 56.103(e)(1)&(h)*

MH Provider to MH Provider

**NO, a release is not needed.** 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. *Civil Code § 56.10(c)(1)*

MH Provider to CFT

**YES.** *W&I Code § 832(b)*. But the CFT can decide not to disclose information to the team if that would present a reasonable risk of a significant adverse or detrimental effect on the child's psychological or physical safety *W&I Code § 832(c)*. Disclosure of otherwise privileged information to a CFT does not waive privilege. *W&I Code § 832(i)*.

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MH Provider to CWW

**YES.** But not if the minor did not consent and could not have lawfully consented to treatment in the mental health services (under age 12), AND the provider determines that the disclosure of limited 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. The information shall not be further disclosed by the recipient unless the disclosure is for the purpose of coordinating mental health services and treatment of the minor and the disclosure is authorized by law. *Civil Code § 56.103(e)(1)&(h)*. There is dispute about the extent to which this information may be disclosed to the court absent a court's case by case determination. (Psychotherapy notes are not included in this limited disclosure. *Civil Code § 56.103(e)(2)*.)  
 If a release is signed for disclosure of any confidential information beyond the scope of the limited information allowed under *Civil Code § 56.103(e)(1)*, a **waiver of privilege** also is needed because it is assumed that the CWW will provide that information to the court.

MH Provider to Others

**YES** (includes FFA social workers and teachers)

### Who Has Authority to Sign a Release Authorization of Confidential Mental Health Information?

Parents or Legal Guardian	No if minor removed, unless the Juvenile Court granted authorization to the parent or guardian upon a finding that disclosure would not be detrimental to the child. <i>Civil Code § 56.106</i> .	Relatives	No
		Juvenile Court Judge	Yes, by court order, if there is no person willing and legally able to sign a release authorization. (This is separate from a court's review of evidence subject to privilege.)
Child Welfare Worker	No	Child's Attorney	No, unless considered the child's "legal representative" for this purpose. <i>Civil Code § 56.11(c)</i> .
Child	Yes, if the child consented or could have consented to their treatment. (See Need Release Authorization to parents above.)	Group Home Staff	No
Foster Parent	No	Guardian ad Litem if minor is conserved	Yes