
**ORANGE COUNTY SOCIAL SERVICES AGENCY
CFS OPERATIONS MANUAL**

Effective Date: August 31, 2011

Number:I-0201

Court Medical Consent for Non-Dependent Children

Purpose To provide guidelines in response to requests from hospitals, medical facilities, physicians, and dentists for medical consent for non-dependent children in a medical setting.

Note: Hospitals and medical facilities refer to physicians, nurses, and medical staff. This does not include hospital social work staff.

Approved This policy was approved by Gary Taylor, Director of CFS, on August 31, 2011. *Signature on file.*

Most Recent Revision This revision of the Policy and Procedure (P&P) includes:

- The filing of an *Application for Petition (F063-28-43)* or placing a *Hospital Hold (F063-25-125)* on a non-dependent child when the child's parent or legal guardian refuses to provide consent for medical treatment which meets the criteria for a medical emergency
- Requesting Juvenile Court consent for emergency medical treatment only **after** filing an *Application for Petition (F063-28-43)* or placing the child on a *Hospital Hold (F063-25-125)*.

Background Generally, the Juvenile Court must defer to the parent's or legal guardian's decisions regarding medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination. The Juvenile Court may not assume jurisdiction **unless necessary to protect the child from suffering serious physical harm or illness.**

The Juvenile Court may intervene to ensure that a child is given medical treatment necessary for the protection of life or against disability, including treatment for mental or emotional illness. This occurs where the parent or guardian of the child has unreasonably refused to allow such treatment. In appropriate circumstances, the Juvenile Court may intervene to protect the life and health of a child over the religious objections of the parent or legal guardian (i.e., blood transfusion for a Jehovah Witness, etc.).

In the U.S. Supreme Court case of *Prince v. Massachusetts*, 321 U.S. 158 (1944), holds that the right of a parent to practice religion does not include the liberty to expose the child to ill health or death.

Legal Mandates [Business and Professions Code Section \(§\) 2397](#) holds that a licensed medical provider may perform a medical procedure or provide medical assistance in an emergency situation, occurring in the medical provider's office or in a hospital, without the informed consent of the patient or a person authorized to give such consent for the patient.

[Welfare and Institutions Code \(WIC\) § 300\(b\)](#) describes situations for which a child may come within the jurisdiction of the Juvenile Court; if a child comes within the jurisdiction of the Court based on the parent or legal guardian's willful failure to provide adequate medical treatment, or the specific decision to provide spiritual treatment through prayer, the Court will give deference to the parent or guardian's medical treatment, non-treatment, or spiritual treatment through prayer alone in accordance with the tenets or practices of a recognized church or religious denomination by an accredited practitioner therefore and will not assume jurisdiction **unless necessary to protect the child from suffering serious physical harm or illness.**

[Welfare and Institutions Code § 300.5](#) holds that in any case involving a child coming under Section 300 as a result of a need for medical care, consideration will be given to medical treatment provided by spiritual means.

[Welfare and Institutions Code § 305](#) provides circumstances under which a non-dependent or dependent child may be taken into temporary custody.

[Welfare and Institutions Code § 369](#) provides the Juvenile Court with jurisdiction to order necessary medical or dental care when a child has been taken into temporary custody, a dependency

petition has been filed, or when a child has been declared a dependent of the Court.

[Welfare and Institutions Code § 369\(d\)](#) defines an “emergency situation” as that which necessitates a child receiving immediate medical, surgical, or other remedial care.

[Welfare and Institutions Code § 369\(f\)](#) grants a parent or legal guardian the right, in the absence of any court restriction, to consent on behalf of their child, to medical, surgical, dental, or other remedial treatment.

[Welfare and Institutions Code § 369\(g\)](#) allows one parent or legal guardian to consent to medical, surgical, dental, or other remedial care for a child without regard to the parent’s or legal guardian’s age or marital status.

[Welfare and Institutions Code § 16509.1](#) holds that treatment by spiritual means by a recognized church or religious denomination by a duly accredited practitioner does not mean, for that reason alone, that the child was neglected.

[Welfare and Institutions Code § 18950.5](#) holds that a child receiving treatment by spiritual means as provided in WIC § 16509 will not, for that reason alone, be considered an abused or neglected child.

San Joaquin County Human Services Agency vs. Marcus W. (2010) 185 Cal.App.4th 182 holds that the Juvenile Court lacks jurisdiction to order medical treatment for a child, under WIC §369, unless the child is in temporary custody under section 305, is a declared dependent, or is the subject of a pending dependency petition.

Definitions

Emergency Situation means a child requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or other contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.

Note: Referral response time will be determined after consideration of the urgency of the child’s treatment needs.

General Neglect means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing,

shelter, medical care, or supervision where no physical injury to the child has occurred. A child receiving treatment solely by spiritual means through prayer as provided in WIC § 16509.1 would not, for that reason alone, be considered a neglected child. An informed and appropriate medical decision made by a parent or guardian after consultation with a physician or physicians who have examined the child does not constitute neglect.

POLICY

Emergent Medical or Dental Situations

All calls received from hospitals, medical facilities, physicians, and dentists that request medical consent for non-dependent children will be routed through the Child Abuse Registry (CAR).

A. **Refusal of Parent/Guardian to Consent:**

When a hospital, medical facility, physician, or dentist reports that a medical emergency exists and the parent or legal guardian refuses to consent to recommended medical care and treatment, the CAR Senior Social Worker (SSW) or Orangewood Children and Family Center (OCFC) Intake staff (after consultation with the On-Call Senior Social Services Supervisor [SSSS]) will fax *Request for Court Ordered Medical Consent (F063-25-281)* to the hospital, medical facility, physician, or dentist.

Note: The physician or dentist **must** certify on the *Request for Court Ordered Medical Consent (F063-25-281)* that the situation meets the criteria of a medical emergency.

In response to information received back from the hospital, medical facility, physician, or dentist on *Request for Court Ordered Medical Consent (F063-25-281)*, the CAR SSW or OCFC Intake staff (in consultation with the On-Call SSSS) will determine if the information provided meets the criteria of a medical emergency based on:

- A “**Yes**” answer to the question, “Does the requested medical treatment meet the definition of a medical emergency as defined in WIC § 369(d)?”, **and**
- The supporting information provided in the following section, “Consequences if surgery/procedure not done”

If the criteria for a medical emergency are confirmed, the CAR SSW or OCFC Intake staff will generate a referral alleging General Neglect.

Note: If the information provided does not meet the criteria of a medical emergency, refer to “Non-Emergent Medical or Dental Situations” Policy section.

In accordance with established procedure, an Emergency Response (ER) worker will be assigned to investigate the allegation per CFS P&P [Abuse Investigations—Practice Guidelines \(A-0412\)](#).

The ER SSW, in consultation with an ER or On-Call SSSS, will file an *Application for Petition (F063-28-43)* or place a *Hospital Hold (F063-25-125)* on the child per CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#).

1. During Business Hours:
After the ER SSW has filed an *Application for Petition (F063-28-43)* or placed a *Hospital Hold (F063-25-125)*, the ER SSSS will fax the completed *Request for Court Ordered Medical Consent (F063-25-281)* along with any collateral documents (e.g., physician’s letter, Investigation Narrative, etc.) to the Juvenile Court.
2. After Business Hours, Weekends, and Holidays:
After the On-Call ER SSW has filed an *Application for Petition (F063-28-43)* or placed a *Hospital Hold (F063-25-125)*, the On-Call SSSS will communicate the information contained in the completed *Request for Court Ordered Medical Consent (F063-25-281)* as instructed by the On-Call Judge.

For more detailed information on forwarding the completed *Request for Court Ordered Medical Consent (F063-25-281)* to the Juvenile Court or On-Call Judge, refer to Procedure section “Required Actions—Refusal to Consent.”

The ER or On-Call SSSS will communicate to the hospital, medical facility, physician, or dentist the Court’s decision regarding consent.

- **If the Court provides consent:** Instruct the ER or On-Call ER SSW to continue with procedures for completing the filing of an *Application for Petition (F063-28-43)* or placing a *Hospital Hold (F063-25-125)* per CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#)
- **If the Court does not provide consent:** Consult with the

ER or On-Call Program Manager (PM) to determine the most appropriate plan for the child's safety and well-being

The Intake SSW will consult with medical or dental personnel and the SSSS prior to continuing with procedures to file an *Application for Petition (F063-28-43)* or keep a *Hospital Hold (F063-25-125)* in place.

- If an *Application for Petition (F063-28-43)* was filed, or a *Hospital Hold (F063-25-125)* was placed, and the emergency medical situation is resolved prior to the Detention hearing, the *Application for Petition (F063-28-43)* or *Hospital Hold (F063-25-125)* will be withdrawn/removed
- If the emergency medical situation is not resolved prior to the Detention hearing, or the investigation reveals evidence of medical neglect or another form of abuse or neglect, the *Application for Petition (F063-28-43)* or *Hospital Hold (F063-25-125)* will be filed/remain

B. Unable to Locate Parent/Guardian:

When a medical emergency exists and the hospital, medical facility, physician, or dentist indicates that the parent or legal guardian cannot be located, statutory law allows for the hospital, medical facility, physician, or dentist to provide emergency medical treatment without the need for obtaining consent from CFS or the Juvenile Court.

CFS staff **will not** generate a referral on calls from a hospital, medical facility, physician, or dentist that solely reflects an emergency where consent is lacking due to temporary parental absence.

Assessment for Child Abuse Per standard procedure, the ER SSW will assess for all forms of abuse and neglect during the course of the child abuse investigation.

Parental Disagreement Regarding Consent Consent on the part of one parent or legal guardian is sufficient to allow medical or dental treatment.

**Non-Emergent
Medical or
Dental
Situations**

For all non-emergency situations (e.g., elective surgeries, cosmetic procedures, etc.) where the parent or legal guardian is absent or refuses to grant consent, the CAR SSW or OCFC Intake Staff (after consultation with the On-Call SSSS) will inform the caller that the procedure does not meet the criteria for CFS to intervene on the child's behalf.

Note: If refusal to consent is based on the parent or legal guardian's religious beliefs, suggest the use of an intermediary organization such as the Jehovah Witness Hospital Liaison Committee.

**Team Decision
Making (TDM)
Meeting**

When appropriate, a TDM will be conducted after consultation with the ER PM.

Documentation

The ER SSW will utilize the guidelines as set forth in CFS P&P [Abuse Investigations—Findings, Documentation, and Cross Reporting \(A-0305\)](#) when completing the Investigation Narrative. In addition, the ER SSW will document in the Investigation Narrative:

- Whether the parent or guardian's refusal to consent was based solely on religious beliefs
- Whether any additional concerns involving child abuse or neglect were identified

REFERENCES

**Attachments
and CWS/CMS
Data Entry
Standards**

Hyperlinks are provided below to access attachments to this P&P and any CWS/CMS Data Entry Standards that are referenced.

None.

Hyperlinks

Users accessing this document by computer may create a direct connection to the following references by clicking on them.

- CFS P&P [Abuse Investigations—Findings, Documentation, and Cross Reporting \(A-0305\)](#)
- CFS P&P [Abuse Investigations—Practice Guidelines \(A-0412\)](#)
- CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#)
- CFS P&P [Dependency Intake \(A-0502\)](#)

- CFS P&P [Emergency Response \(ER\) On-Call System \(A-0406\)](#)
- CFS P&P [Jurisdictional/Dispositional Hearing Report \(G-0310\)](#)

Other Sources Other printed references include the following:

None.

REQUIRED FORMS

Online Forms Required forms listed below may be printed out and completed, or completed online, and may be accessed by clicking on the link provided.

Form Name	Form Number
Request for Court Ordered Medical Consent	F063-25-281
Hospital Hold Release	F063-25-125A

Hard Copy Forms

Forms listed below must be completed in hard copy (including multi-copy NCR forms). ***For reference purposes only***, links are provided to view these hard copy forms, where available.

Form Name	Form Number
Hospital Hold	F063-25-125
Application for Petition	F063-28-43
Application for Petition Attachment	F063-28-43B

CWS/CMS Forms

The following required forms may **only** be obtained in CWS/CMS. ***For reference purposes only***, links are provided to view these CWS/CMS forms, where available.

Form Name	Form Number
None.	

Brochures

Brochures to distribute in conjunction with this procedure include:

Brochure Name	Brochure Number
None.	

PROCEDURE

Required Actions— Refusal to Consent	The following actions will be taken when receiving a telephone call from a hospital, medical facility, physician, or dentist seeking consent for emergency medical treatment for a non-dependent child when the parent or legal guardian refuses consent.	
Staff Responsible	Step	Required Action
CAR SSW/ OCFC Intake Staff	1.	Confirm via telephone contact with the hospital, medical facility, physician, or dentist that the situation is a medical emergency and that the parent or legal guardian is refusing consent for treatment. Note: If the situation is not a medical emergency, refer to “Non-Emergent Medical or Dental Situations” Policy section above.
	2.	Send the caller via facsimile a <i>Request For Court-Ordered Medical Consent (F063-25-281)</i> and direct caller to complete immediately and return to facsimile number indicated on form (CAR or OCFC).
	3.	Upon receipt of the completed <i>Request For Court-Ordered Medical Consent (F063-25-281)</i> , consult with a SSSS (CAR/ER/On-Call) and create referral alleging General Neglect with a response time of “Immediate”, “See By,” or “10- day”, depending on level of urgency. Document in the Screener Narrative that the situation was determined to be a medical emergency and by whom. Refer to CFS P&P Abuse Investigations—Practice Guidelines (A-0412) for further direction on response times. Note: For OCFC Intake Staff, determination of response time will be the responsibility of the On-Call SSSS.
	4.	During Business Hours:

- CAR SSSS** a. Designate region and forward to ER assignment desk.
- ER SSS/SSSS** b. Assign referral to next available ER SSW, per standard procedure.
- On-Call SSSS** 5. **After Hours, Weekends, and Holidays:** Assign referral, per standard procedure.
- Refer to CFS P&P [Emergency Response \(ER\) On-Call System \(A-0406\)](#) for additional instructions pertaining to On-Call procedures.
- ER SSW** 6. Review referral information, respond to hospital or other medical facility, and confirm emergency nature of the situation with the hospital, medical facility, physician, or dentist. Confirm with the parent or legal guardian his or her refusal to consent to the medical or dental procedure.
7. Complete investigation per guidelines outlined in CFS P&Ps [Abuse Investigations—Practice Guidelines \(A-0412\)](#) and [Abuse Investigations—Findings, Documentation, and Cross Reporting \(A-0305\)](#).
8. After consultation with the ER or On-Call SSSS, initiate one or more of the following:
- File an *Application for Petition (F063-28-43)*
 - Initiate a *Hospital Hold (F063-25-125)*
- Note:** Refer to CFS P&P [Abuse Investigations—Protective Interventions \(A-0414\)](#) for additional information on filing petitions and placing hospital holds.
- ER SSSS** 9. **During Business Hours:** After the filing of an *Application for Petition (F063-28-43)* or the placing of a *Hospital Hold (F063-25-125)*:
- a. Check the appropriate box under the “**WIC 369**” section of the *Request for Court-Ordered Medical Consent (F063-25-281)*.

- b. Fax the completed *Request for Court-Ordered Medical Consent (F063-25-281)*, and any other collateral documents (e.g., physician's letter, Investigation Narrative, etc.), to Juvenile Court Administration at **(657) 622-8384**.
- c. Confirm receipt of the fax by calling **(657) 622-5528**.
- d. Receive back the signed *Request For Court-Ordered Medical Consent (F063-25-281)*.
- e. Notify the hospital, medical facility, physician, or dentist of the judicial consent or denial by faxing a copy of the signed *Request For Court-Ordered Medical Consent (F063-25-281)*.
- f. Follow-up with a telephone call to confirm receipt of fax.

**CAR SSW/
OCFC Intake
Staff**

- 10. After Hours, Weekends, and Holidays:** Contact the On-Call SSSS via telephone and convey information from the completed *Request For Court-Ordered Medical Consent (F063-25-281)* and any collateral documents (i.e., physician's letter, Investigative Narrative, etc.). Request that the On-Call SSSS contact the On-Call Judge.

On-Call SSSS

- 11.** Refer to the On-Call Judge list to determine the name of the On-Call Judge. Contact the On-Call Judge by telephone and per the Judge's instructions (email, facsimile, or verbally) convey information from *Request For Court-Ordered Medical Consent (F063-25-281)* and collateral documents. Obtain consent or denial from the On-Call Judge.
- 12.** Contact the hospital, medical facility, physician, or dentist and convey consent or denial.
- 13.** Apprise the CAR SSW or OCFC Intake staff of the On-Call Judge's decision and instruct staff to complete *Request For Court-Ordered Medical Consent (F063-25-281)* by:

- a. Checking the appropriate box under the “**WIC 369**” section.
- b. Checking the appropriate box (“Grants” or “Denies”) under the “**Court Approval**” section.
- c. Completing “Name of Judicial Officer issuing order” under “**Court Approval**” section by filling in the name of the On-Call Judge who provided the consent or denial.

**CAR SSW/
OCFC Intake
Staff**

14. Include judicial consent or denial information, and make a copy of the completed *Request for Court Ordered Medical Consent (F063-25-281)*.
15. On the next business day, pony the original copy of *Request For Court-Ordered Medical Consent (F063-25-281)* and other collateral documents to:

Juvenile Court Administration
341 The City Drive South
Bldg. 44A
Orange, CA 92868

16. Attach a copy of the completed *Request for Court Ordered Medical Consent (F063-25-281)* to the CAR referral paperwork. Forward to CAR/ER clerical for processing, per standard procedure.

ER SSW

17. Upon conclusion of investigation:
 - Do Safety and Risk Assessment tools in Structured Decision Making (SDM)
 - Complete Investigation Narrative
 - Complete Contacts

Give completed referral packet to ER clerical for processing and routing to ER SSSS.

ER SSSS

18. Review and approve, per standard procedure.

**Intake/
Investigations
SSW**

19. Upon assignment, contact hospital, medical facility, physician, or dentist to determine if emergency situation still exists.

- If yes, consult with SSSS regarding filing of the *Application for Petition (F063-28-43)* and completion of the Detention Hearing Report
- If no, detail the reason for not filing the *Application for Petition (F063-28-43)* on the *Application for Petition Attachment (F063-28-43B)*

Note: At any point during the Intake or Investigations phase, consider withdrawing the recommendation for dependency proceedings in the event of any of the following:

- Parent or guardian provides written consent for the emergency medical treatment or procedure, **or**
- Emergency medical treatment or procedure has been completed and no further treatment or procedure is required, **and**
- There are no current child abuse or neglect issues that require Court intervention

For additional information on dependency investigations and assessment refer to CFS P&Ps [Dependency Intake \(A-0502\)](#) and [Jurisdictional/Dispositional Hearing Report \(G-0310\)](#).