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THE NEED FOR CONSENT FROM BOTH PARENTS FOR THERAPY AND ASSESSMENT OF CHILDREN

The issue of obtaining consent, from both parents, is often a difficult one for private practitioners and organizations who's focus is service delivery in the best interest of children. Therapist, social workers and psychologist stance is often one of wanting to help and they find it difficult when issues like consent stand in their way of fulfilling this role. However, if we want to offer services (even if this excludes any statutory or forensic services) that meets both the legal and ethical requirements, we must in all matters concerning a child follow a transparent process.

When considering the issue of consent by both parents the follow aspects must be taken into consideration:

-  Equal responsibilities and rights of biological parents;
-  Ethically sound process that is neutral and objective.

A) EQUAL RESPONSIBILITIES AND RIGHTS OF BIOLOGICAL PARENTS

Both the biological father and mother of a child has equal parental responsibilities and rights in respect of the child, regardless of whether they are married or was married at the time of the child's conception, birth or anytime between conception and birth.

In the case of a divorced father (and mother) the court order will indicate which rules apply, however in **most cases both parents retain equal responsibilities and rights as well as legal guardianship** over the child. It is only under **extreme circumstances** that a **parent's responsibilities and rights and or their legal guardianship towards**



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a child is terminated. In such a case, the other parent should have a **court order** clearly stating this.

According to the Children's Act both parents, whether married or divorced, are considered to:

- a) Have full Guardianship over the child;
- b) Be the legal Guardians of the child;
- c) Have financial and maintenance responsibilities over a child;
- d) Have equal rights to care and contact. (Children's Act Explained, 2009)

If more than one person has guardianship over a child, (as in the case with parents legally married or divorced) **both** of the guardians' **consent** and/or assistance are **required** (Legal Aid: June, 2016).

For unmarried father's the situation is slightly different. Under the old law, an unmarried father had no parental rights and responsibilities and he had to approach the High Court to be assigned parental rights and responsibilities. The Children's Act has now changed the law so that an unmarried father who is committed to caring for his children can have equal parental rights and responsibilities without having to approach the High Court (A guide to the Children's Act for health professionals:2010.) However, unmarried fathers still need to approach the court for full guardianship over a child (Children's Act Explained, 2009).

In agreement with the need for consent from both parents, Health Professional counsel South Africa (HPCSA) in their guidelines on the question who needs to give consent states: "**Both parents/legal guardians, unless one parent is deceased, unknown, incompetent, not reasonably available, or does not have legal responsibility for the custody of the child.**"



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The incompetence of a parent or their lack of legal responsibility over a child is an aspect that needs to be **determined by a court of law** and a court order in this regard needs to be offered as proof thereof.

The SACSSP (South African Council for Social Service Professions) are also very clear on the issue of consent by both parents. The Ethical Guidelines of the Council states that social workers should **only** provide services to clients in the context of a professional relationship based on **valid informed consent**. It further recommends that social workers enter into a contract with a client as soon as possible and that this contract is in a **written format**. As part of **valid informed consent**, clients (and thus in the case of minor children, both parents) should be informed of

-  the purpose of the services,
-  risk related to the services,
-  relevant costs,
-  reasonable alternative, and
-  the clients right to refuse or withdraw consent, as well as
-  the time frame covered by the consent. (SACSSP, Ethical Guidelines).

In case of a dispute or where a parent lacks the capacity to provide consent

Should a dispute arise or should one parent refuse to give consent the principle to bear in mind in such circumstances is that the child's best interests are paramount. Determining whether continuing with an assessment and or therapy, is in that child's best interest, is **not** for the private practitioner to decide. As part of a **neutral and objective process** the practitioner, **based on one parent's information cannot** make a **neutral and informed decision** whether continuing would be in the child's best interest or not.



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Guidelines from HPCSA in this regard states that: *“Where a child is not legally competent to give or withhold informed consent, the parent or guardian may authorize investigations or treatment which are in the child's best interests. Such parent or guardian may also refuse any intervention, where they consider that refusal to be in the child's best interests, but health care practitioners are not bound by such a refusal and may **seek a ruling from the court.**”*. Should a parent thus refuse to give the necessary consent, the private practitioner or other parent needs to approach the Children’s Court to obtain a ruling in this regard.

Where a parent for whatever reason allegedly lacks the ability to give consent, practitioners should protect their interest by seeking **permission from legally authorized third parties**. Such authorization and or confirmation of the parent’s inability to provide consent should be provided in writing.

B) ETHICALLY SOUND PROCESS THAT IS NEUTRAL AND OBJECTIVE

Private Practitioners, whether providing therapeutic services, socio-emotional assessments and/or any form of forensic investigation should always strive to follow an intervention process that is ethically sound in so far that the practitioner remains neutral and objective.

Neutrality and objectivity stems from a **transparent process** in which all relevant parties are treated equally. As mentioned in the previous section, informed consent is a vital component of all intervention with clients and underlines a transparent process. If a practitioner, in obtaining consent does not include both parents (legal guardians) in the process, the question about transparency and thus neutrality and objectivity is



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immediately raised. In not following an ethically sound process not only does the practitioner open themselves up to being reported at their respective counsels, but the information obtained from the child is immediately seen as invalid as the credibility of the professional is being questioned. When practitioners do not follow an ethically sound process they not only lose their credibility but they run the risk of **jeopardizing a child's case** (safety, protection and best interest) at the same time.

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