



NAVIGATING PARENTAL CONSENT IN PSYCHOLOGICAL PRACTICE: AN EVOLVING AND OFTEN COMPLEX LANDSCAPE

In recent months, we've heard a growing number of questions from our clients — particularly those in the fields of psychology and mental healthcare — about a topic that seems simple on the surface, but is in fact anything but: *parental consent for the treatment of minors*.

What does the law require? When is consent from one parent sufficient? What happens in cases of divorce, custody battles, or where there is no clear legal guardian? How does “the best interest of the child” standard apply in practice? And why does it sometimes feel like there are different expectations depending on whether you are a psychologist, GP, or other healthcare professional?

We have gone to great lengths to seek out clear answers to these questions on your behalf — engaging with expert legal advice, consulting key sources such as the **HPCSA's Guidelines on Informed Consent** and the **Children's Act**, and reviewing current interpretations of these complex rules. One thing is certain: *this is not a space where assumptions should be made*.

In preparing this article, we want to provide a helpful overview — a guide to help you as a practitioner understand the risks, nuances, and best practice approach. We are especially grateful to **Lisa Swaine** from **Webber Wentzel**, whose legal insights will form the backbone of the detailed legal perspective we will share in the next part of this article.

Ultimately, this is about protecting both your patients and your professional standing. We want you to feel equipped to navigate consent with care and confidence, knowing where the law stands — and where it is advisable to go above the bare minimum to safeguard your practice.

— What You Need to Know (Legally Speaking from Lisa Swaine)

As Lisa reminds us, informed consent is not simply a box-ticking exercise — it is both a legal requirement and an essential safeguard for patients and healthcare professionals alike. This is particularly important when working with children, where the complexities of parental rights and responsibilities can add layers of uncertainty to an already sensitive process.



In South Africa, every individual has a constitutional right to bodily and psychological integrity, which includes the right to make informed decisions about their own healthcare. This means that healthcare professionals must ensure that patients — or those legally entitled to act on their behalf — understand the nature of the proposed treatment, its risks and benefits, potential consequences, and associated costs before providing consent. No treatment may lawfully begin without this informed consent.

When it comes to minors, this principle remains vital but is shaped by additional legal protections under the **Children's Act**. Children are recognised as vulnerable, and the law seeks to ensure that decisions made on their behalf are always guided by the overarching principle of the child's **best interests**.

This requires careful consideration of many factors, including who holds parental responsibilities and rights in relation to the child — typically the parents or legal guardians.

Section 9 of the Children's Act 38 of 2005 states:

"In all matters concerning the care, protection and well-being of a child, the standard that the child's best interest is of paramount importance, must be applied."

A child aged **12 years or older** may consent to their own medical treatment if they are sufficiently mature and have the mental capacity to understand the implications of that treatment. If not — or if the child is under 12 — a parent or guardian must provide or refuse consent on their behalf.

It is important to note that **psychotherapy**, including **play therapy**, is recognised as a form of medical treatment and is therefore subject to the same informed consent requirements. Even though play therapy may appear less clinical or more informal, it is still a structured therapeutic intervention that necessitates proper consent.

● — But from whom must this consent be obtained?

The Children's Act stipulates that where the law requires consent for medical treatment, it must be given or refused by a **parent or guardian**.

You may ask: "If there are two parents or more than one guardian, can consent be obtained from either one, or must it be given by both?"

If there is more than one parent or guardian with shared parental responsibilities, the law permits either to give consent — but that parent or guardian is required to take the other's views and wishes into consideration.

This becomes particularly relevant in complex family dynamics, such as cases of **divorce** or when **guardianship** arrangements are unclear. In divorce cases, parental responsibilities are usually detailed in a **court order**, and it is incumbent upon the practitioner to clarify this legal position at the outset. If there is uncertainty regarding which parent holds decision-making authority, it is best practice — and in line with the child's best interests — to obtain consent from **both parents** wherever possible.

In cases where parental consent cannot be secured (for example, where there is a dispute or no legally authorised party is available), consent may be sought from the **Minister of Health** or ultimately from the **court**, which serves as the upper guardian of all children.

Above all, informed consent in the treatment of minors must not be treated as a once-off event. It should be regarded as an **ongoing dialogue** between the practitioner and the parent(s) or guardian(s), reflecting the evolving nature of the child's treatment and wellbeing. Clear communication and diligent documentation throughout this process are essential — both to safeguard your practice and to ensure that the child's rights and best interests remain paramount.

Conclusion

As this legal perspective highlights, navigating parental consent is rarely straightforward in psychological practice. It demands careful attention to legal requirements, sensitivity to family dynamics, and a proactive approach to communication.

By taking the time to establish **who holds the relevant parental rights**, ensuring that **consent is informed and properly documented**, and maintaining an **open dialogue** with those involved in the child's care, you protect not only your own professional standing but, more importantly, the wellbeing of the children you treat.

When in doubt, do not hesitate to seek clarity — whether through legal advice, further documentation, or a court order where necessary. Informed consent is not a formality; it is a cornerstone of ethical and legally sound practice, and not only that, it is also a condition of cover under our medical malpractice Insurance policy.

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Lisa is a dispute resolution and litigation specialist with deep expertise in the insurance industry. She advises underwriters, brokers, and insureds on coverage, claims, and enterprise risk management. Lisa has significant experience in medical malpractice and healthcare liability, alongside a broad range of insurance matters. She also supports legal due diligence for corporate transactions and provides expert advice on policy wording and coverage issues. Her litigation work covers complex disputes in insurance sectors including casualty, cybercrime, and professional negligence.