



## Psychiatry & Behavioral Sciences Section – 2009

### I20 Decision Making in Child and Adolescent Dependency Cases

*Michael S. Tramell, MD\*, USC Institute of Psychiatry and the Law, PO Box 847, Corona Del Mar, CA 92694*

After attending this presentation, attendees will understand the process by which decisions, especially those regarding mental health treatment, are made in the juvenile dependency system.

This presentation will impact the forensic community by demonstrating how decisions are made for children and adolescents in the dependency system.

There are conflicting opinions over who has the ability to make decisions regarding the mental health care of children and adolescents who are within the juvenile dependency system. This paper will clarify who has the legal right to make decisions and demonstrate the processes by which these decisions are made.

Children in the juvenile dependency and juvenile justice systems are frequently treated similarly, although important differences exist between the legal situations of these groups. These differences shape the process by which decisions are to be made for each group. Children in the dependency system are usually there for reasons involving actual or substantial risk of custodial abuse or neglect. This can take the form of risk or actual physical, emotional, or sexual harm, abuse, or damage to the child. Additionally, being the victim of neglect, subjected to cruelty, or being freed by the parents for adoption, also result in the child entering the dependency system. In California, allegations of the above are investigated by a social worker, who may then petition the court for the removal of the child. If at the time it is felt to be in the child's best interest, the court has the option of appointing a guardian to make decisions for the child, or an individual who only makes educational decisions for the child. The court may also choose to limit the parental rights, via court order, in any number of ways. If the child is removed from the parents, they are placed under the supervision of the social worker, who then must place the child appropriately. An assessment by the agency supervising the minor is then prepared for the court, which then must decide whether to terminate the parental rights. If parental rights are terminated, a decision must be made to determine whether to appoint a guardian for the child or place the child in long term foster care. If a guardian is appointed, the court may decide to terminate its oversight, but frequently chooses to retain its jurisdiction. From this point on, reports are required by the court every six months to monitor the child until they are adopted. The court gives the guardian specific rights and decision making privileges. If the guardian is not explicitly authorized to make a treatment decision, the court can make it. Family Code Law states that minors age 12 and greater can request or consent to mental health treatment, however, administration of psychotropic medication to a minor is explicitly forbidden without the consent of the minor's parent or guardian. The standard that the court is required to use in making treatment determinations, or in decision making on the child's behalf, is the "best interest of the child." In dependency court hearings, an agency can be joined to the hearing if the court finds that that agency failed to meet its legal obligations to provide services for the child. However, prior to this the child must be found eligible for services, usually through an assessment as part of an Individualized Educational Plan (IEP). Assessments are made through the IEP process in a variety of specialized fields, including mental health, for the purpose of improving school functioning. When these assessments are made by appropriate individuals, after discussion with the parent or guardian and the IEP team, the recommendations of the assessor become the recommendations of the entire IEP team, including those regarding psychotropic medication. These recommendations serve as a guide for the judge or guardian in making decisions for the child. Mental health treatment teams are frequently involved in the care of dependent children, especially those placed in institutions. These treatment teams may have members who are also on the minors IEP team. However, treatment teams themselves do not have standing to make treatment decisions for minors who are dependents without getting the approval of a judge. An example of this is the direct petition the treating psychiatrist submits for consent for psychotropic medication. This must be approved by the court prior to the administration of any psychotropic medications. Specific suggestions for incorporating the child and adolescent into the process of decision-making will then be discussed. Awareness of the process by which decisions are made for youth who are in the dependency system varies by county and state. Any forensic consultant or clinician involved in their care should be aware of their particular jurisdiction's process.

#### **Decision Making, Dependent Minors, Mental Health Services**