

## **INFORMED CONSENT FOR THE USE OF CLINICAL HYPNOSIS: LEGAL CONSEQUENCES<sup>1</sup>**

*The Nature of Hypnosis.* Memory is imperfect, whether or not hypnosis is used. Memory is not like a tape recorder, and rarely will all the details of any recollection be fully accurate. People have been shown to be capable of filling in gaps in memory, of distorting information, and of being influenced in what is “remembered” by leading questions or suggestions. For example, our memories may sometimes be influenced through reading, movies, TV, or conversations. Thus, research has shown that there is no guarantee that information remembered through hypnosis (or through ordinary recall) is factually accurate. On the other hand, information that is so remembered through hypnosis may in fact be accurate. But, the only way one may know definitely whether something recalled under hypnosis is accurate is to obtain independent corroboration. Thus, if you should remember something under hypnosis, regard this information as simply one more source of data that cannot be relied on as more accurate or necessarily superior to material already in conscious awareness. Such further data would simply be information to be weighed and evaluated in therapy along with what you already consciously know.

*Potential Legal Issue.* In many jurisdictions, courts have held that a person who has been hypnotized cannot testify in court about anything remembered during or after the hypnosis. (Refer to next page for copy of CA evidence code.) Consequently, if I consent to hypnosis, there is a possibility that anything I remember once the hypnosis begins will not be admissible in a court of law. The only way to fully protect my potential right to testify is to forego the use of hypnosis.

*Release from Liability.* I understand that, because of the rulings of some legal authorities, there may be limitations placed on my ability to rely on my recollections after hypnosis for purposes of litigation. For example, there is a possibility that anything I remember once hypnosis begins may not be admissible in a court of law. I acknowledge that Myron Walters has advised me that if I have any concerns about the legal consequences of hypnosis, that I should consult with my own attorney prior to the use of hypnosis. I hereby agree, freely and voluntarily to undergo hypnosis. I further agree to release and hold harmless Myron Walters from any claims or liabilities arising from the use of or inability to use my recollections, the therapist’s notes, audiotapes or videotapes of therapy sessions, or any other limitations on my or the therapist’s testimony in a courtroom or forensic setting. In consenting to hypnosis, I hereby agree that I do not have a cause of action against Myron Walters based on his professional and competent use of hypnosis with me.

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Patient’s Signature

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Date

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<sup>1</sup> Adapted from: American Society of Clinical Hypnosis: Clinical Hypnosis and Memory Guidelines for Clinicians and for Forensic Hypnosis (1995).

## California Evidence Code - EVID

### CHAPTER 7. Hypnosis of Witnesses [795- 795.]

(Chapter 7 added by Stats. 1984, Ch. 479, Sec. 1.)<sup>2</sup>

**795.** (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events that are the subject of the witness's testimony, if all of the following conditions are met:

- (1) The testimony is limited to those matters that the witness recalled and related prior to the hypnosis.
  - (2) The substance of the prehypnotic memory was preserved in a writing, audio recording, or video recording prior to the hypnosis.
  - (3) The hypnosis was conducted in accordance with all of the following procedures:
    - (A) A written record was made prior to hypnosis documenting the subject's description of the event, and information that was provided to the hypnotist concerning the subject matter of the hypnosis.
    - (B) The subject gave informed consent to the hypnosis.
    - (C) The hypnosis session, including the pre- and post-hypnosis interviews, was video recorded for subsequent review.
    - (D) The hypnosis was performed by a licensed physician and surgeon, psychologist, licensed clinical social worker, licensed marriage and family therapist, or licensed professional clinical counselor experienced in the use of hypnosis and independent of and not in the presence of law enforcement, the prosecution, or the defense.
  - (4) Prior to admission of the testimony, the court holds a hearing pursuant to Section 402 at which the proponent of the evidence proves by clear and convincing evidence that the hypnosis did not so affect the witness as to render the witness's prehypnosis recollection unreliable or to substantially impair the ability to cross-examine the witness concerning the witness's prehypnosis recollection. At the hearing, each side shall have the right to present expert testimony and to cross-examine witnesses.
- (b) Nothing in this section shall be construed to limit the ability of a party to attack the credibility of a witness who has undergone hypnosis, or to limit other legal grounds to admit or exclude the testimony of that witness.

*(Amended by Stats. 2011, Ch. 381, Sec. 20. (SB 146) Effective January 1, 2012.)*

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<sup>2</sup> CHAPTER 7. Hypnosis of Witnesses [795- 795.]. Retrieved December 7, 2020 from [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=EVID&division=6.&title=&part=&chapter=7.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EVID&division=6.&title=&part=&chapter=7.&article=).