

COOPERATIVE OF AMERICAN PHYSICIANS, INC. (CAP) RISK MANAGEMENT

TREATING MINORS OF DIVORCED PARENTS

Mrs. Smith, a divorced mother, recently brought her 8 year old daughter, Sally, to your office for treatment. Later, Sally's father, whom you have never met, calls your office. He is angry about not being consulted. How should you handle this situation, in order to quickly and constructively ensure that your patient's best interests are met?

When mom and dad decide to divorce, the negative impacts on minor children are many. For example, which parent (if not both) can legally consent to medical treatment? Sick kids rarely arrive at the physician's office accompanied by a copy of the divorce decree. Can the treating physician simply treat the child, without resolving the consent issue?

This is a frequently-asked question on the CAP Hotline.

In tackling this question, an important first step is to understand the nature of custody after divorce; specifically, *which parent* has the legal authority to consent to medical care on behalf of this minor?

When parents are divorced, their respective rights and parental obligations are defined by the particular custody arrangement approved by the court. There are two primary types of custody: **Physical Custody**, and **Legal Custody**.

- **Physical custody** means that the child resides with that parent and is under his or her primary supervision. However, physical custody is not always reflective of who has the legal authority to consent. For example, often the child lives solely with one parent as a matter of convenience, while both parents share authority (i.e., legal custody) and may jointly consent to their child's medical treatment.
- **Legal custody** means that a parent has the authority to make important decisions on behalf of the child, e.g., decisions relating to education, religious practice and healthcare. In general, only parents with legal custody may consent to the child's medical care and treatment, or authorize the release of the child's medical record to third parties. Legal custody may be awarded to one ("sole custody"), or to both parents ("joint custody").
- **A crucial first step to resolving custody conflicts is to clarify the Legal custody arrangement.** Since frustrated parents may misinterpret or even misrepresent the custody arrangement, it is prudent to request a copy of the court order relating to custody. This document details the rights and obligations of either parent and should be retained in the medical record. Mr. and Mrs. Smith should be asked to provide a copy of the custody order, ideally before any further discussion of treatment.

- **If Mr. and Mrs. Smith have joint legal custody, either one, acting alone, may provide consent for the medical care and treatment of Sally.** Although either parent may give consent independently, physicians are well advised to try to obtain the consent of both parents, particularly if treatment presents a serious risk to the child or is objectionable for any reason. Although joint legal custody generally means parents have equal authority to consent, *the court may require both parents to agree upon certain or all medical decisions made on behalf of the child.*
- **If either Mr. or Mrs. Smith has “sole legal custody,” he or she is the sole decision-maker in matters relating to Sally’s health care.** If Mrs. Smith is the sole legal custodian, Mr. Smith may not give (nor withhold) consent for his child’s treatment. However, under most circumstances, he *is* entitled to receive information about his child’s medical treatment as well as a copy of the medical record, upon reasonable advance request. The treating physician, however, may choose to notify Mrs. Smith of Mr. Smith’s request prior to releasing the record.
- **What if Mr. and Mrs. Smith have joint legal custody but can’t agree?** In non-urgent situations, a physician would be well advised to step back and let the parents settle the disagreement. Although you are the child’s advocate, you need not act as the mediator of an acrimonious custody dispute. Your responsibility lies in furnishing clear and comprehensive information regarding your treatment plan, while providing an opportunity for questions and concerns. If a delay in treatment will cause risk for the child, document your explanation to the parents of risks that are inherent in the delay.
- **If all else fails, recommend that parents seek the intervention of the court.** However, if any delay in treatment would present harm to the child, contact the CAP hotline for further assistance 800-252-0555.
- **From the start, determine with whom you’re dealing.** Try to identify custody arrangements early by having parents of new patients indicate their specific arrangement on your “New Patient Information Sheet.” Specifically ask “Are you married or divorced?” “Who has legal custody of the child?” and “Who has physical custody?” Periodically, ask parents if there have been any changes to the custody arrangement.
- **Once you read the court order relating to custody, make sure that your office contact information accurately reflects the court order.** Identify for your staff whether one, or both, parents (1) may give consent, or (2) serve as the contact.

The above information is not intended to be inclusive. If you have a specific patient situation, please contact CAP Risk Management at 800-252-7706 for further information.