

CUSTODY & CONSENT WHEN TREATING CHILDREN

Update: In respect to parental responsibilities, Child Protective Services recommends that instead of requesting a copy of the separation or custody agreement, the parent/guardian produce a notarized document from a lawyer showing a recent search in the court registry to determine the most current (i.e., valid) custody agreement.

Most naturopathic doctors treating children have a pediatric intake form separate from their general intake form. However, very few doctors have created a section addressing guardianship. Missing on many consent forms is a space identifying not just the parent accompanying the child at the initial visit, but the names of both guardians or the status of guardianship (i.e., in cases where parents are separated or divorced whether both parents have equal parenting responsibilities and rights to health decision-making and information further to section 41 of the Family Law Act).

Note that the new Family Law Act replaces the old Family Relations Act and no longer references the concept of “custody.” We now talk about rights and responsibilities to children under two umbrellas: “Parental Responsibilities” and “Parenting Time.” After parents separate they are presumed to both be guardians of the child if they are both biological parents and if they have lived together prior to separation. It is possible, that by application, one parent could apply for and obtain all rights to parenting responsibilities and parenting time, but absent a court order or agreement, it would be assumed that both parents are guardians with equal access to parenting rights and responsibilities even without equal parenting time.

The custody of a child following divorce has several variants, which differ from province to province; in BC the federal Divorce Act and the provincial Family Law Act both regulate guardianship. In general, joint guardianship involves two adults who share the responsibility for making decisions regarding the health care a child receives. It’s important for a doctor to know, when seeing a child for the first time, whether the accompanying parent shares decision making or is the sole decision maker. This should be charted.

Sole guardianship or sole entitlement to parenting time and paren-

tal responsibilities is where one parent has physical custody of a child and sole ability to make decisions relating to the child and another person may have some rights in respect of parenting time but does not have the right to make decisions regarding the child’s care.

However, each case is different regarding the other parent’s ability to access health care information about the child. It is important to ask the custodial parent if he or she is obliged to share health care information with the other parent.

Here is a practical example illustrating this distinction. Let’s assume you see a parent and child and confirm that the parent has all rights to exercise parenting responsibilities; you then proceed to develop a protocol for the child. There is no issue with care. There might be several return visits. However, several weeks after the first visit, the

Even an amicable separation can result in issues in respect to caring for a minor. A mother may attend the in-person consult, but then the father may want to discuss the protocol directly with the doctor, by phone or email, at no fee.

Doctors should set boundaries in such cases from the first visit. Be clear that all medical care involves a doctor’s time—the cost of operating a clinic, maintaining a licence to practice, and managing patients, involves a significant cost. As an example, you can show that seeing an MD involves a fee code for each item of care a patient receives, whether in person or a follow-up report. The same consideration must be given to an ND in private practice. Separated guardians should not expect each consultation to lead to a string of “no fee” emails and phone calls with the second parent.

other parent, who only has visitation rights, asks to see the child’s medical records. This request is legal, but you need to first obtain a copy of the separation agreement, parenting agreement or court order. Asking for a copy of the child’s birth certificate, to confirm the name of the child and the parent, is important (n.b., most birth certificates name both parents, but not all). Also, if you’ve had a discussion with the guardian during the first visit, and clarified their role and your responsibilities, they are aware that a request for the file from the other parent is legal. If the other parent does not have a right to health care information then request the documents that stipulates the limitation of that right.

Custody issues can be complex, sometimes leading to conflict. Occasionally, a doctor will find she’s inadvertently in the middle of a conflict between separated parents. In some instances referring to a mediator is required. Regardless, conflict can often be mitigated by ensuring you have a

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discussion with the care giver from the very first visit.

Refer When Appropriate: Should a doctor unintentionally become involved in a custody issue, they can refer the parents to the BC Parenting Coordination site, which is a resource linking clients to specially trained individuals (e.g., in law and/or mental health) who can mediate disputes that concern parental responsibilities: bcparentingcoordinators.com

Some other useful resources for doctors in this situation include:

- ♦Parenting After Separation, a free three hour information session for BC parents

- ♦Family justice counsellors work to mediate families experiencing separation/divorce; they can be contacted through Service BC

- ♦Mediate BC provides fee for service mediation under the Family Law Act

Doctors should note that separation does not necessarily diminish parental responsibilities. If parents separate, the law assumes they are both still guardians (unless the other parent has never resided with the child and is parent only by virtue of biology), and both capable of making decisions in the best interest of the child, unless guardianship or parenting responsibilities are removed by agreement or court order. The law is less focused on parental rights and more focused on parents' responsibilities to their children. Do not assume, just because parents are separated, that the parent living with the child is the sole decision maker.

Tips:

Engage the parent in a discussion on parenting responsibilities from the first visit if the parents are separated;

Chart your discussion and, in cases where parents are divorced or separated, confirm whether the parent with the child has sole or joint ability to make parenting decisions;

INTAKE FORM CONSIDERATIONS

Last Name
First Name & Middle Initial
Address/City/Province/PC
Telephone
Email
Care Card#
DoB/Sex/Height/Weight

↑ Your pediatric intake form should have all the mandatory data at top ↓

Consider adding some important information you may not currently have on your form

Checkboxes: Sole Custody / Joint Custody
Parent/Legal Guardian: Name and phone/email
Parent/Legal Guardian: Name and phone/email
Contact info if different than patient
Emergency Contact: name/phone
Other Health Care Providers
Notes

Let the parent know that in respect to your legal obligations, having a copy of the separation agreement or parenting agreement would be useful for the file (but is not mandatory);

If a parent appears to have sole guardianship and/or the sole ability to make parenting decisions discuss whether the other parent is legally permitted to review patient records for the child, even if they cannot make major decisions regarding the care of the child. Clarify your clinic fee for release of records;

If a parent has joint guardianship and equal ability to make parenting decisions then medical decisions are also made jointly. Ensure that the decisions being made for the child are consented to by both parents. If one parent is attending all the consults, and states that both parents are in agreement to the care you've out-

lined, chart that;

If an issue arises out of the care you're providing, keep in mind the many government and NGO resources for mediation.

Every case can be unique when parents share guardianship of a child (i.e., the patient). Concerning child custody issues it would be best to contact your lawyer for legal advice. In the alternative, if you have purchased malpractice insurance through Partners Indemnity Insurance Brokers as part of the association's plan, you may obtain free unlimited general legal advice via telephone with the legal team assigned under your insurance policy. For further details check your policy documents or contact Partners by email, cand@partnersindemnity.com or call 1 877 427 8683.

This document is intended to provide members with a place to start with respect to guardian issues in practice. The BCNA accepts no responsibility for any errors or omissions, and expressly disclaims any such responsibility should a member forego obtaining legal advice.

Key features to add to your Consent Form when treating children:

First Name: _____

Middle Name: _____

Last Name: _____

Address: (City, Province, Postal Code): _____

Telephone: _____

Email: _____ Care Card #: _____

Date of Birth: _____ Sex: Male or Female

Height: _____ Weight: _____

Sole Custody - yes or no Joint Custody - yes or no

Parent/Legal Guardian:

Name: _____ -Relationship: _____

Phone #: _____ Email: _____

Contact info if different than patient: (address; city; postal code)

I _____ consent to my child, _____, to be treated by _____

(Print name) (Child's full name) (Doctor)

Signature:

Name: _____ -Relationship: _____

Phone #: _____ Email: _____

Contact info if different than patient: (address; city; postal code)

I _____ consent to my child, _____, to be treated by _____

(Print name) (Child's full name) (Doctor)

Signature

Emergency Contact: Please indicate if both or one parent is to be contacted.

Name: _____ Phone: _____

Name: _____ Phone: _____

Other Healthcare Providers contact information:

Name: _____ Phone: _____

Type of Practitioner: _____

Name: _____ Phone: _____

Type of Practitioner: _____