

# Divorce, custody, and parental consent for psychiatric treatment

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Dear Dr. Mossman:

I treat children and adolescents in an acute inpatient setting. Sometimes a child of divorced parents—call him “Johnny”—is admitted to the hospital by one parent—for example the mother—but she doesn’t inform the father. Although the parents have joint custody, Mom doesn’t want me to contact Dad.

I tell Mom that I’d like to get clinical information and consent from Dad, but she refuses, saying, “This will make me look bad, and my ex-husband will try to take emergency custody of Johnny.” My hospital’s legal department says consent from both parents isn’t needed.

These scenarios always leave me feeling upset and confused. I’d appreciate clarification on how to handle these matters.

Submitted by “Dr. K”

**K**nowing the correct legal answer to a question often doesn’t supply the best clinical solution for your patient. Dr. K received a legally sound response from hospital administrators: a parent who has legal custody may authorize medical treatment for a minor child without first asking or informing the other parent. But Dr. K feels unsatisfied because the hospital didn’t provide what Dr. K sought: a clinically sound answer.

This article reviews custody arrangements and the legal rights they give divorced parents. Also, we will discuss the mother’s concerns and explain why—de-

spite her fears—notifying and involving Johnny’s father can be important, even when it’s not legally required.

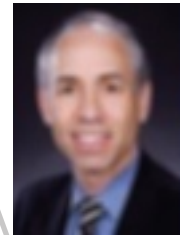
## Custody and urgent treatment

A minor—defined in most states as a person younger than age 18—legally cannot give consent for medical care except in limited circumstances, such as contraceptive care.<sup>1,2</sup> When a minor undergoes psychiatric hospitalization, physicians usually must obtain consent from the minor’s legal custodian.

Married parents both have legal custody of their children. They also have equal rights to spend time with their children and make major decisions about their welfare, such as authorizing medical care. When parents divorce, these rights must be re-assigned in a court-approved divorce decree. *Table 1 (page 64)* explains some key terms used to describe custody arrangements after divorce.<sup>2,3</sup>

Several decades ago, children—especially those younger age 10—usually remained with their mothers, who received sole legal custody; fathers typically had visitation privileges.<sup>4</sup> Now, however, most states’ statutes presume that divorced mothers and fathers will have joint legal custody.<sup>3</sup>

Joint legal custody lets both parents retain their individual legal authority to



Douglas Mossman, MD

## DO YOU HAVE A QUESTION ABOUT POSSIBLE LIABILITY?

- Submit your malpractice-related questions to Dr. Mossman at [douglas.mossman@dowdenhealth.com](mailto:douglas.mossman@dowdenhealth.com).
- Include your name, address, and practice location. If your question is chosen for publication, your name can be withheld by request.
- All readers who submit questions will be included in quarterly drawings for a \$50 gift certificate for Professional Risk Management Services, Inc’s online market-place of risk management publications and resources ([www.prms.com](http://www.prms.com)).

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### Clinical Point

In many states, noncustodial parents may authorize treatment if they have physical control of the child when care is needed

Table 1

### Child custody: Key legal terms

Term	Refers to
Custody arrangement	The specified times each parent will spend with a minor child and which parent(s) can make major decisions about a child's welfare
Legal custody	A parent's right to make major decisions about a child's welfare, including medical care
Visitation	The child's means of maintaining contact with a noncustodial parent
Physical custody	Who has physical possession of the child at a particular time, such as during visitation
Sole legal custody	A custody arrangement in which only one parent retains the right to make major decisions for the child
Joint legal custody	A custody arrangement in which both parents retain the right to make major decisions affecting the child
Modification of custody	A legal process in which a court changes a previous custody order

Source: Adapted from references 2,3

make decisions on behalf of minor children, although the children may spend most of their time in the physical custody of 1 parent. This means that when urgent medical care is needed—such as a psychiatric hospitalization—1 parent's consent is sufficient legal authorization for treatment.<sup>1,2</sup>

What if a child's parent claims to have legal custody, but the doctor isn't sure? A doctor who in good faith relies on a parent's statement can properly provide urgent treatment without delving into custody arrangements.<sup>2</sup> In many states, noncustodial parents may authorize treatment in urgent situations—and even some nonurgent ones—if they happen to have physical control of the child when care is needed, such as during a visit.<sup>1</sup>

### Nonurgent treatment

After receiving urgent treatment, psychiatric patients typically need continuing, nonurgent care. Dr. K's inquiry may be anticipating this scenario. In general, parents with joint custody have an equal right to authorize nonurgent care for their children, and Johnny's treatment could pro-

ceed with only Mom's consent.<sup>1</sup> However, if Dr. K knows or has reason to think that Johnny's father would refuse to give consent for ongoing, nonurgent psychiatric care, providing treatment over the father's objection may be legally questionable. Under some joint legal custody agreements, both parents need to give consent for medical care and receive clinical information about their children.<sup>2</sup>

Moreover, trying to treat Johnny in the face of Dad's explicit objection may be clinically unwise. Unfortunately, many couples' conflicts are not resolved by divorce, and children can become pawns in ongoing postmarital battles. Such situations can exacerbate children's emotional problems, which is the opposite of what Dr. K hopes to do for Johnny.

What can Dr. K do?

**Address a parent's fears.** Few parents are at their levelheaded best when their children need psychiatric hospitalization. To help Mom and Johnny, Dr. K can point out these things:

- Many states, such as Ohio,<sup>5</sup> give Dad the right to learn about Johnny's treatment and access to treatment records.

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**Table 2****Why both parents' input is valuable**

More information from different perspectives concerning behavior in a variety of contexts and settings
Less biased information
Better treatment planning
Better medication management
More effective therapy

**Clinical Point**

Parents may feel guilty about the stress the divorce has caused and may blame themselves for their child's psychiatric illness

- Sooner or later, Dad will find out about the hospitalization. The next time Johnny visits his father, he'll probably tell Dad what happened. In a few weeks, Dad may receive insurance paperwork or a bill from the hospital.

- Dad may be far more upset and prone to retaliate if he finds out later and is excluded from Johnny's treatment than if he is notified immediately and gets to participate in his son's care.

- Realistically, Dad cannot take Johnny away because Mom has arranged for appropriate medical care. If hospitalization is indicated, Mom's failure to get treatment for Johnny could be grounds for Dad to claim she's an unfit parent.

**Why both parents are needed**

Johnny's hospital care probably will benefit from Dad's involvement for several reasons (*Table 2*).

**More information.** Child and adolescent psychiatrists agree that in most clinical situations it helps to obtain information from as many sources as possible.<sup>6-9</sup> Johnny's father might have crucial information relevant to diagnosis or treatment, such as family history details that Mom doesn't know.

**Debiasing.** If Johnny spends time living with both parents, Dr. K should know how

often symptoms appear in both environments. Dad's perspective may be vital, but when postdivorce relationships are strained, what parents convey about each other can be biased. Getting information directly from both parents will give Dr. K a more realistic picture of the child's environment and psychosocial stressors.<sup>7</sup>

**Treatment planning.** After a psychiatric hospitalization, both parents should be aware of Johnny's diagnosis and treatment. Johnny may need careful supervision for recurrence of symptoms, such as suicidal or homicidal ideation, that can have life-threatening implications.

**Medication management.** If Johnny is taking medication, he'll need to receive it regularly. Missing medication when Johnny is with Dad would reduce effectiveness and in some cases could be dangerous. Both parents also should know about possible side effects so they can provide good monitoring.

**Psychotherapy.** Often, family therapy is an important element of a child's recovery and will achieve optimum results only if all family members participate. Also, children need consistency. If a behavioral plan is part of Johnny's treatment, Mom and Dad will need to agree on the rules and implement them consistently at both homes.

**Work with parents**

When one divorced parent is reluctant to inform the other about their child's hospitalization, you can respond empathically to fears and concerns. Despite mental health professionals' best efforts, psychiatric illness still generates feelings of stigma and shame. Divorced parents often feel guilty about the stress the divorce has brought to their children, and they may consciously or unconsciously blame themselves for their child's illness. In the midst of an ongoing

custody dispute, the parent initiating a psychiatric hospitalization may feel especially vulnerable and reluctant to inform the other parent about what's happening.

Being attuned to these issues will help you address and normalize a parent's fears. Parents should know that a court could support their seeking treatment for their children's illness, and they could be contributing to medical neglect if they do not seek this treatment.

In rare instances, not informing the other parent may be the best clinical decision. In situations involving child abuse or extreme domestic violence, a parent's learning about the hospitalization could create safety issues. In most instances, however, both Mom and Dad will see their child soon after hospitalization, so one parent cannot hope to conceal a hospitalization for very long. Involving both parents from the outset usually will give the child and his family the best shot at a positive outcome.

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## Malpractice minute

### June POLL RESULTS



#### Could a patient's violent act have been prevented?

A man under outpatient care of the state's regional behavioral health authority was diagnosed with schizophrenia, paranoid type. He killed his developmentally disabled niece, age 26. The niece's family claimed the death could have been prevented if the man was civilly committed or heavily medicated. Was the behavioral health authority liable?

<b>LIABLE:</b> 11%	<b>NOT LIABLE:</b> 89%
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DATA OBTAINED VIA CURRENTPSYCHIATRY.COM, JUNE 2008

#### ✓ What did the court decide?

The mother was found to be 39% at fault, the patient 11% at fault, and the behavioral health authority 50% at fault for the woman's death and paid half of the verdict amount to the parents. A \$101,740 verdict was returned for the niece's mother and a \$100,625 verdict was returned for the father.

Cases are selected by CURRENT PSYCHIATRY from *Medical Malpractice Verdicts, Settlements & Experts*, with permission of its editor, Lewis Laska of Nashville, TN ([www.verdictslaska.com](http://www.verdictslaska.com)). Information may be incomplete in some instances, but these cases represent clinical situations that typically result in litigation.

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### Clinical Point

Usually, Mom and Dad will see their child soon after hospitalization, so one parent cannot hope to conceal it for very long

## Bottom Line

A divorced parent with legal custody of a child can authorize urgent psychiatric treatment without first informing the other parent. However, addressing parents' fears and obtaining information from both parents aids treatment planning, medication management, and family therapy and can lead to a better clinical outcome.