Authority to Consent to the Treatment and Care of a Minor

On a near daily basis, a staff person contacts Nationwide Children's Department of Legal Services with a question about who is permitted to consent to the treatment and care of a minor. The intent of consent is to ensure that the patient and or/the legal guardian of the patient has the right to participate in the decision-making process for the patient's plan of care and treatment and that the risks and benefits of any proposed treatment plan are known and understood. Questions about consent come from all care delivery settings where services are provided. The answer to who has the authority to consent can be complicated and, many times, reflective of the societal issues in the community around us. To help our staff answer their questions quickly about consent authority, the matrix below was developed and attached to Nationwide Children's Consent Policy. It details the most common relationships that we get questions about and includes references to the applicable sections of the Ohio Revised Code (ORC).

Another resource for answering physicians' questions about consent is the American Academy of Pediatrics (AAP). AAP's "Clinical Report-Consent by Proxy for Nonurgent Pediatric Care" that was published in Pediatrics, Volume 126, Number 5, November 2010 is particularly helpful as it offers guidance to cover a variety of relationship scenarios that are commonly encountered, explains the potential for liability exposure under various circumstances and suggests practical steps to minimize a physician's risk of liability exposure against the patient's access to care. Of note, it addresses the barriers to informed consent with persons who have limited English proficiency both oral and written and with those who are hearing-impaired.

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Authority of Other Persons to Consent to the Care of a Minor

Definition of a Minor: Patient less than 18 years old or a patient less than 21 years old who is physically or mentally handicapped so as to remain dependent on his/her parent or guardian

Relationship to Minor	Authority to Consent	Exceptions/Limitations/Notes	Citations
Biological Mother	Yes, regardless of Mother's age or marital status	If relationship is questioned, may need to call Legal Services	ORC §2317.54(C)(1) ORC §3111.01 ORC §3111.02 ORC §3109.042 ORC §2111.08
Biological Father, Currently Married to Biological Mother	**Yes**	**A man is presumed to be the father of a child born to his wife during marriage or within 300 days of the termination of marriage.** **If relationship is questioned, the person questioning paternity must provide court documentation.**	**ORC §2317.54(C)(1) ORC §3111.01 - .03 ORC §2111.08**
Biological Father, Never Married to Biological Mother	**Father may consent if he has established paternity through the courts or by signing an affidavit of paternity.**	**If father can provide proof of paternity, he can consent. The statute says that parents may consent to surgical or medical procedures. Parent and child relationships exist regardless of the marital status of the parents.**	**ORC: 2317.54** **ORC: 3111.01**
Adoptive Mother or Father	**Yes**	**If relationship is questioned, the adoptive parent must provide (1) court order of temporary guardianship that authorizes the person to consent to medical care pending finalization of adoption, (2) court order finalizing adoption, or (3) birth certificate with adoptive parents' names, which sometimes takes a while to obtain.**	**ORC §2317.54(C)(1) ORC §3111.01 - .02 ORC §2111.08**

		Before relationship is established, can accept a Power of Attorney for Healthcare from the biological mother authorizing the adoptive parents to make medical decisions for patient. We can also accept a written document allowing adoptive parents to consent for medical care signed by the biological mother.	
Divorced Biological or Adoptive Parent	Yes	Either parent may consent unless there is a court order authorizing only one parent to consent. Some court orders may specify that only one parent may consent to medical treatment.	
Grandparents	Only pursuant to a Residential Grandparent Power of Attorney or a Caretaker Authorization Affidavit	Grandparents may be authorized to consent pursuant to a Residential Grandparent Power of Attorney that has been signed by the parent. Or Grandparents may be authorized to consent if they have signed a Caretaker Authorization Affidavit and filed it with the court. The document must indicate that it has been filed with the court. Grandparents may also serve as guardians or custodians. See below.	ORC 3109.52 ORC 3109.65
Individuals Acting Pursuant to Formal Written Authorization	Yes	A parent or guardian may give a written authorization to another adult to allow him/her to consent to a surgical or medical procedure or course of procedures.	ORC 2317.54
Step-parent, Significant Others, Other Relatives	No		

Foster Parents	No	Children's Services' agencies typically have decision-making authority for children in Foster Care. Foster Parents may have a letter from the Children's Services agency allowing them to consent. If Foster Parents are guardians or custodians, the rules below apply	
Guardian	Only if authorized by court	Guardians are appointed by the Probate Court and may exercise parental rights only to the extent authorized in the court's orders. Probate Court may authorize a guardian to consent to healthcare for child. Guardian should have the Probate Court's paperwork in order to demonstrate that he/she can consent.	ORC §2111.01-.02 ORC §2111.06-.07 ORC §2111.13(C) ORC §2151.01
Guardian Ad Litem	No	A Guardian ad Litem is appointed by the Juvenile Court to help determine the best interests of the child in a court proceeding; the proceeding is often a divorce case. He/she is entitled to receive information about the child from healthcare providers but is not entitled to consent for medical care.	ORC §2151.281
Correctional Institution with an incarcerated patient under 18	No	Need parent's or legal guardian's consent in order to treat.	