

Stepparents and Consenting to Treatment for Minors

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Stepparents present an interesting issue for healthcare providers treating their minor stepchildren. Because minors, those under the age of eighteen, are deemed under New York law as incapable of consenting to their own medical treatment, providers must obtain informed consent from the minor's parent or legal guardian before commencing treatment. See Pub. Health Law § 2504(1) and Gen. Obligations Law § 1-202. The question we have been called on to answer numerous times is whether *stepparents* are authorized under the law to give such consent?

The short answer is no. A stepparent may not consent to the medical treatment of their stepchild because a stepparent does not, merely by reason of such relationship (marrying a parent), acquire a parental status. Rutkowski v. Wasko, 286 A.D. 327, 331 (3d Dep't 1955). Relatives, such as grandparents, aunts, and uncles, are also not considered parents, and as such, may not consent to the medical treatment of their minor relatives. We should note that where a stepparent or relative lawfully adopts a child, this answer changes because the stepparent or relative has become the lawful parent of the child.

The scenario of an un-adopted stepchild presents a common problem for parents and healthcare providers because stepparents regularly assist with parenting responsibilities, including transportation to healthcare appointments. In dealing with this scenario, healthcare providers may choose to develop a written authorization form for parents to use that authorizes (i.e. consents to) the treatment of their minor child and authorizes the stepparent to present their child for such treatment. In this case, the authorization should provide a phone number for the healthcare provider to contact the parent and verify the authorization's authenticity and the parent's continued consent.

There are, of course, exceptions where minors may consent to their own, or another's, medical treatment, including the following: (a) emergencies, as determined by the physician; (b) a pregnant minor may consent to medical services relating to prenatal care; (c) a minor who is also a parent may consent to treatment of his or her own child; (d) no parental consent is necessary for the diagnosis or treatment of minors with a sexually transmitted disease or where the minor was exposed to infection with an STD; and (e) individuals at least seventeen years old may consent to donating blood without the consent of a parent. See Pub. Health Law §§ 2504, 2305, and 3123. There are additional exceptions throughout New York law, which should be reviewed on a case-to-case basis.

With limited exceptions, health care providers may only treat patients after obtaining their informed consent. Because minors are deemed incapable of granting consent, health care providers must obtain the minor's parent or legal guardian's consent, unless an exception exists. In New York, stepparents do not, merely by becoming a stepparent, acquire parental status. Therefore, stepparents cannot give informed consent for medical treatment of their minor stepchildren.