

On October 1, 2005, the *Family Law Act* became law. This created new rules for determining who is a legal guardian of a minor child (less than 18 years of age). Determining guardianship is important in medical practice as it relates to obtaining consent for examinations and treatment of a minor.

In most cases, it is reasonable for the physician to assume that a parent of a minor child is the lawful guardian and can consent to treatment. However, in circumstances where it is not clear that the adult accompanying the child is a legal guardian, the physician will need to make further inquiries to determine guardianship.

To help physicians better understand this challenging area of practice, an interpretation of the current legislation surrounding Consent for Minors including the *Family Law Act* is available on the CPSA website at [www.cpsa.ab.ca/publicationsresources/attachments\\_other/Consent\\_for\\_Minor\\_Patients.pdf](http://www.cpsa.ab.ca/publicationsresources/attachments_other/Consent_for_Minor_Patients.pdf). The document will help physicians determine:

- a. Who can give consent for treatment
- b. Who must be consulted regarding treatment
- c. Who can access health information about a minor
- d. In what circumstances can the minor consent to or refuse treatment

The following summary chart has also been developed. If questions arise following a review of the summary chart, physicians should refer to the main document or contact the College for more information.

STATUS OF ADULT	GUARDIANSHIP	FURTHER INQUIRY
Natural father and natural mother	Possible guardianship	<ul style="list-style-type: none"> <li>• Does the individual fit into one of the categories in section 20 of the <i>Family Law Act</i>? (See Schedule A – <a href="http://www.qp.gov.ab.ca/documents/Acts/F04P5.cfm?frm_isbn=0779740718">http://www.qp.gov.ab.ca/documents/Acts/F04P5.cfm?frm_isbn=0779740718</a>)</li> <li>• Is there an agreement regarding guardianship?</li> </ul>
Adoptive mother	Guardian by Court Order	<ul style="list-style-type: none"> <li>• Review copy of Court Order.</li> </ul>
Adoptive father	Guardian by Court Order	<ul style="list-style-type: none"> <li>• Review copy of Court Order.</li> </ul>
Divorced mother	Guardian, unless removed by Court Order	<ul style="list-style-type: none"> <li>• Joint custody or sole custody?</li> <li>• If sole custody, does non-custodial parent have right of access?</li> <li>• Review copy of Court Order.</li> </ul>
Divorced father	Guardian, unless removed by Court Order	<ul style="list-style-type: none"> <li>• Joint custody or sole custody?</li> <li>• If sole custody, does non-custodial parent have right of access?</li> <li>• Review copy of Court Order.</li> </ul>
Non-parent, including stepparent, foster parent or Child Welfare authority	No rights of guardianship unless by Court Order, appointment under will, agreement or temporary appointment.	<ul style="list-style-type: none"> <li>• Review copy of Court Order, Will/Grant of Probate, or agreement/appointment before treatment, if time and circumstances permit.</li> </ul>

Regardless of the situation, the following overarching principles apply:

1. In all cases, the best interests of the minor child must be considered.
2. A duty of confidentiality is still owed to the mature minor.
3. In emergency situations, the law implies consent for treatment.

**See also:**

*Complaint Article: Informed Choice* - [http://www.cpsa.ab.ca/complaints/attachments/informed\\_choice.doc](http://www.cpsa.ab.ca/complaints/attachments/informed_choice.doc)

*Complaint Article: Who Can Give Consent* - [http://www.cpsa.ab.ca/complaints/attachments/who\\_can\\_give\\_consent.doc](http://www.cpsa.ab.ca/complaints/attachments/who_can_give_consent.doc)

CPSA Guideline: *Competency Assessment and Surrogate Decision Making* -

[http://www.cpsa.ab.ca/publicationsresources/attachments\\_policies/Competency\\_Assessment\\_and\\_Surrogate\\_Decision\\_Making.pdf](http://www.cpsa.ab.ca/publicationsresources/attachments_policies/Competency_Assessment_and_Surrogate_Decision_Making.pdf)

CPSA Guideline: *Release of Medical Information* -

[http://www.cpsa.ab.ca/publicationsresources/attachments\\_policies/Release\\_of\\_Medical\\_Information.pdf](http://www.cpsa.ab.ca/publicationsresources/attachments_policies/Release_of_Medical_Information.pdf)