

CONSENT FOR TREATMENT GUIDELINES Who May Sign for Consent

Consent for Minors

A minor is a person under 18 years of age, not married and has not been married, or has not had the disabilities of minority removed by the court. ([Tex. Family Code § 101.003](#))

Who may consent to medical treatment on behalf of a minor?

1. Natural mother
2. Natural father
3. An unemancipated minor parent who has actual custody of his/her biological child for medical, dental, psychological, or surgical treatment for the biological child only
4. Adoptive mother or father
5. Parent who is appointed managing conservator (even for invasive procedures)
6. Parent who is appointed possessory conservator (as long as not for invasive procedures)

No order of priority ([Tex. Family Code § 151.001\(a\)\(6\)](#))

If none of the above can be contacted and there is no actual notice to the contrary, the following persons may consent to medical, dental, psychological, or surgical treatment of a minor:

1. Grandparent
2. Adult brother or sister
3. Adult aunt or uncle
4. An educational institution or an adult who has care, control and possession of the minor, with written authorization

No order of priority ([Tex. Family Code § 32.001](#))

Consent by any of these must be in writing, signed by the person giving consent, and must reflect the name of the person giving consent and the person's relationship to the minor, see [6.21.C, Alternative Consent for Minor by Non-Parent](#). Document all attempts made to contact the parent or guardian prior to accepting the non-parental consent.

When consent for a minor is not necessary:

1. An emergency ([Tex. Health & Safety Code § 773.008](#))
2. Suspicion of child abuse; however, a physician, dentist or psychologist may not examine a child without consent if the child is 16 years of age or older and refuses consent. ([Tex. Family Code § 32.005](#))

When a minor may consent to his/her own treatment:

1. On active duty with the armed forces;
2. Is 16 years of age or older, resides separately and apart from their parents and manages their financial affairs regardless the source of support and with or without parental consent;
3. When consenting to the diagnosis and treatment of an infectious, contagious or communicable disease that is required to be reported;
4. If unmarried and pregnant, and consents to treatment related to her pregnancy other than abortion;
5. Consents to examination and treatment for drug and chemical addiction or dependency; or
6. Consents to counseling by a physician, psychologist, counselor, or social worker for sexual, physical or emotional abuse, suicide prevention, or chemical addiction or dependency.

A physician, dentist, psychologist, or hospital may rely on the written statement of a minor containing grounds on which the minor claims to have capacity to consent to his or her own treatment.

Note: A physician **may**, with or without the consent of the minor, advise the parents, the managing conservator or the guardian of any treatment given to or needed by the minor. This includes also disclosing medical records. This decision should be based on the best interest of the child. ([Tex. Family Code § 32.003](#))

Consent for Immunizations:

Any of the following may consent to immunization of a minor if a parent, managing conservator, or guardian of the minor child are not available and has not refused consent to immunizations:

1. A grandparent;
2. Adult (18 years of age or older) brother or sister;
3. Adult (18 years of age or older) aunt or uncle;
4. Step-parent;
5. Another adult who has care and control of the minor and has written authorization to consent from person having the power to consent;
6. Any adult responsible for the care and control of a minor under the jurisdiction of juvenile court or by commitment by a juvenile court to the care of a state or county agency, if the adult reasonably believes the minor needs immunizations; or
7. An adult having care and control of the minor as the primary care giver, if the adult is granted the right to consent to immunization of the minor by order of a district court. ([Tex. Family Code § 32.101](#))

Consent Requirements for Incapacitated or Incompetent Adults

Incapacitated means lacking the ability based on reasonable medical judgment to understand and appreciate the nature and consequences of the treatment decision, including the significant benefits and risks in any reasonable alternative. If the patient does not have a “Medical Power of Attorney for Healthcare,” appointing someone to make decisions during a period of incapacity, then a surrogate (substitute) decision maker should be appointed according to the following guidelines.

Who may make decisions as a surrogate decision maker?

The following persons, **listed in order of priority**, that are available after a reasonably diligent inquiry may make decisions as a surrogate decision maker on behalf of a patient who is comatose, incapacitated or otherwise mentally or physically incapable of communication.

1. The patient’s spouse
2. An adult child of the patient who has the waiver and consent of all other qualified adult children of the patient
3. A majority of the patient’s reasonably available adult children
4. The patient’s parents
5. Any individual clearly identified by the patient to act for the patient before the patient became incapacitated, or the patient’s nearest living relative or a member of the clergy.
6. Two physicians, one of which is not involved in the patient’s care. ([Tex. Health & Safety Code 166.039](#))

The attending physician must make a reasonably diligent effort to contact or cause to be contacted the persons eligible to serve as surrogate decision makers and efforts to contact those persons must be recorded in detail in the patient’s medical record. A physician should also document and describe in the patient’s medical record the patient’s comatose state, incapacity or other mental or physical inability to communicate and the proposed medical treatment.

Once the surrogate decision maker consents to medical treatment on behalf of the patient, the physician must record the date and time of the consent and sign the patient’s medical record. The surrogate decision maker must countersign the patient’s record or execute an informed consent form. If the surrogate decision maker’s consent is not made in person, the consent must be reduced to writing, placed in the patient’s medical record and signed by the hospital or nursing staff member who receives the consent. ([Tex. Health & Safety Code 313.001-313.007](#))

Please consult the Office of Professional Liability if you have any questions or need clarification.