

## Informed Consent and disagreement between Parents/Guardians who both have the authority to consent to their child's immunization:

### Questions and Answers

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**1. What is the legal advice on accepting Parent/Guardian #1's consent when there is known objection from Parent/Guardian #2, and the child is not capable to provide their own consent, in the following scenarios?**

**a. When Parent/Guardian #1 and Parent/Guardian #2 are both present**

This would be a relatively rare occurrence, however depending on the urgency/need for the immunization, it would be reasonable and prudent to await Parents/Guardians settling their disagreement outside the care setting.

**b. When Parent/Guardian #1 is present and mentions Parent/Guardian #2's disagreement with the child being immunized (Parent #2 absent)**

If one Parent/Guardian presents with the child and wishes to have the child immunized, the vaccine provider can proceed as the consent of one Parent/Guardian to immunize a child provides the authority to proceed. Case law to date suggests that courts put significant weight on public health recommendations and medical opinion which recognizes vaccine safety in determining the best interests of the child, the benefits of immunization far outweighing the risks, and the risk associated with *not* vaccinating (i.e., the child remaining vulnerable to the disease).

In order to support a transparent process, it should be recommended to the presenting Parent/Guardian that they inform the other Parent/Guardian of the immunization. As the child's immunization history could potentially be disclosed in the future through other routine processes (e.g., from the child, from a school immunization consent form, from other access to the child's immunization record), it would be prudent for the consenting Parent/Guardian to inform the vaccine hesitant Parent/Guardian about the care that their child has received in advance of these scenarios. In addition, a Parent/Guardian who shares the custody of a child should know the child's immunization history.

**c. When Parent/Guardian #1 is present but Parent/Guardian #2's dissent is documented in the child's chart**

A dissent for immunization (i.e., a refusal) only has effect if given in response to an offer of immunization and only has application with respect to that offer of immunization. A presenting Parent/Guardian #1's consent for immunization of a child in response to an offer to immunize would supersede a dissent from Parent/Guardian #2 to an earlier offer to immunize the child.

Therefore, if one Parent/Guardian presents with the child and wishes to have the child immunized, the vaccine provider can proceed as the consent of one Parent/Guardian to immunize a child provides the authority to proceed, regardless of a previously documented dissent. Refer to question #4 for more information related to documentation of a refusal.

**2. What evidence must be provided by the Parent/Guardian attending with the child as proof that they have authority to provide consent?**

Verbal attestation from the Parent/Guardian regarding the authority to provide consent is sufficient, and proof of authority is not required, unless there is evidence or doubt to the contrary. This includes foster parents, in accordance with [sections 47 and 94 of the Child, Family and Community Service Act](#). See the BC Immunization Manual, [Appendix A: Informed Consent](#) for more information regarding foster parents. Additionally, other custodial caregivers with day to day care of the child who make health care decisions for the child (e.g., grandmother/aunt who is raising the child), may consent to immunization, and it is not necessary to ask the custodial caregiver for proof of authority.

**3. What is the legal advice on dealing with disagreement with one or more Parents/Guardian(s) on the consent/dissent provided by a minor who is capable to provide their OWN consent/dissent?**

Should a disagreement arise between Parents/Guardians with equal authority to provide consent for the child, it is important to recognize that the child's own preferences carry weight and they may also be able to provide independent consent to receiving a vaccination. The Infants Act authorizes a health care provider to provide health care to a minor, an individual 18 years or age or younger, based on consent provided by the minor. This requires that the health care provider is of the opinion that the minor understands the nature and consequences and the reasonably foreseeable benefits and risks of the proposed health care and the health care is in the best interests of the minor.

There is no legal age of consent for health care in BC; instead, a minor's ability to consent depends upon the minor's level of maturity. Mature minor authority takes precedence over parental authority. Mature minors have the authority to give, refuse, or revoke consent for their own immunization as long as the health care provider has assessed the minor's understanding of the details of the immunization, including risk and benefits, and has made reasonable efforts to determine and has concluded that the immunization is in the minor's best interest.

Parents/Guardians can be referred to the [HealthLinkBC File: The Infants Act, Mature Minor Consent and Immunization](#) for more information.

**4. Is there an obligation to document ongoing refusal in the client's chart, rather than a one-time refusal? For example: Parent/Guardian #1 refuses vaccination today vs. Parent/Guardian #1 wants it recorded that they will never consent to vaccination.**

No. Parents/Guardians should be informed that a refusal is effective on the day it is given and will not impact the future offer of immunizations, as all refusals will be reviewed at certain milestones and the Parent/Guardian may be contacted in the future. Individual circumstances surrounding a prior refusal to vaccination may change; these may include changes in medical status or in philosophical stance, a change in vaccine recommendations, as well as maturation of an individual to an age where they may consent on their own behalf to vaccines previously refused by a Parent/Guardian. Refusals of vaccines should be documented as per local health authority guidelines in order to document *why* a client was not vaccinated at the visit. However, such refusals will not result in programming of immunization registries to suppress the forecasting of the refused vaccine nor prevent providers from offering immunizations at any future encounter.

As indicated above, a dissent for immunization (i.e., a refusal) has no ongoing effect, and therefore, if a Parent/Guardian presents with the child for immunization, or has consented for immunization via a consent form, that Parent/Guardian's consent supersedes a previous Parent/Guardian's refusal.

If the child is a Mature Minor, they can also provide their own consent/dissent.

**5. Is there an obligation to follow up to see if a client has a refusal on file that is still valid?**

No, there is no obligation to look for a previous refusal when there is a consenting Parent/Guardian presenting with the child for immunization. As indicated above, a dissent for immunization (i.e., a refusal) has no ongoing effect, and therefore if a Parent/Guardian presents with the child for immunization, or has consented for immunization via a consent form, that Parent/Guardian's consent supersedes a previous Parent/Guardian's refusal.

**6. Is there an obligation on the Nurse to review a child's immunization record for any prior refusal?**

**a. In a health authority setting (e.g., Public Health Unit)**

No, there is no obligation to review the child's immunization record for any prior refusal. Typically, when a Parent/Guardian presents with the child for immunization at an immunization clinic, and the child has already received a dose of the vaccine(s), it is standard practice for the Nurse to review the child's immunization record to determine whether there is a current consent for series in place or if they need to obtain informed consent. If the Nurse finds that a refusal has been previously documented, the Nurse would proceed with obtaining consent from

the presenting Parent/Guardian, as the consent of one parent to immunize a child provides the authority to proceed. A previous dissent for immunization (i.e., a refusal) has no ongoing effect, and therefore the presenting Parent/Guardian's consent for immunization would supersede the other Parent/Guardian's previous dissent.

**b. In a school-based immunization clinic**

No, there is no obligation to review the child's immunization record for any prior refusal. As above, it is standard practice for the Nurse to review the child's immunization record to determine whether there is a consent for series in place or if they need to obtain informed consent. If the Nurse finds that a refusal has been previously documented prior to the clinic, the Nurse will provide an immunization consent form and immunization information (e.g., HealthLinkBC Files for immunizations) to the student to be brought home. Parents/Guardians and their children are encouraged to review the information, discuss it, and make a decision about immunization together. However, if the Parent/Guardian has refused immunization, Mature Minors will have the opportunity on the day of the clinic to make their own decision to be immunized whether or not they have a consent form signed by a Parent/Guardian.

**7. Is there an obligation to review the records for - or otherwise seek - any court documents setting parameters on parental responsibilities (child is not capable to provide their own consent)?**

As indicated above, verbal attestation from the Parent/Guardian regarding the authority to provide consent is sufficient and proof of authority is not required, and therefore there is no obligation for the Nurse to seek or review court documents setting parameters on parental responsibilities.