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TITLE 13

Domestic Relations

CHAPTER 7. PARENTS AND CHILDREN

Subchapter I. General Provisions

§ 701 Rights and responsibilities of parents; guardian appointment.

(a) The father and mother are the joint natural guardians of their minor child and are equally charged with the child's support, care, nurture, welfare and education. Each has equal powers and duties with respect to such child, and neither has any right, or presumption of right or fitness, superior to the right of the other concerning such child's custody or any other matter affecting the child. If either parent should die, or abandon his or her family, or is incapable, for any reason, to act as guardian of such child, then, the custody of such child devolves upon the other parent. Where the parents live apart, the Court may award the custody of their minor child to either of them and neither shall benefit from any presumption of being better suited for such award.

(b) This section shall not affect the laws of this State relative to the appointment of a guardian of the property of a minor, or the appointment of a third person as a guardian of the person of the minor where the parents are unsuitable or where the child's interests would be adversely affected by remaining under the natural guardianship of his or her parents or parent.

(c) [Repealed.]

[35 Del. Laws, c. 191, § 1](#); Code 1935, § 3576; 13 Del. C. 1953, § 701; [59 Del. Laws, c. 569, § 2](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 451, §§ 2, 3](#); [77 Del. Laws, c. 43, § 12](#);

§ 702 Duty to support minor child.

repealed by 59 Del. Laws, c. 567, § 2;

§ 703 Services and earnings of minor child.

The father and mother of a minor child are equally entitled to its services and earnings, and if 1 of the parents is dead or has abandoned the child or has been deprived of its custody by court decree the other parent shall be entitled to such services and earnings.

35 Del. Laws, c. 191, § 2; Code 1935, § 3577; 13 Del. C. 1953, § 703.;

§ 704 Action for loss of wages or services of minor child.

The parents jointly may maintain an action for loss of wages or services of the minor child when such loss is occasioned by injury wrongfully or negligently inflicted upon the child. If either the father or mother is dead or has abandoned the child or has been deprived of its custody by court decree or refuses to sue, the other parent may sue alone. Nothing contained in this section shall be deemed to supersede, limit, modify or affect the workers' compensation laws of this State.

35 Del. Laws, c. 191, § 3; Code 1935, § 3578; 13 Del. C. 1953, § 704; 70 Del. Laws, c. 186, § 1;

§§ 705 , 706. Charge and custody of minor child if parents are separated but not divorced; proceedings for care of children of immoral or negligent parents.

repealed by 59 Del. Laws, c. 569, § 1;

§ 707 Consent to health care of minors.

(a) *Definitions.* — As used in this section:

- (1) "Blood testing" includes Early Periodic Screening, Diagnosis, and Treatment (EPSDT) testing and other blood testing deemed necessary by documented history or symptomatology but excludes HIV/AIDS testing and controlled substance testing or any other testing for which separate court order or informed consent as provided by law is required.

(2) "Medical treatment" means developmental screening, mental health screening and treatment, and ordinary and necessary medical and dental examination and treatment, including blood testing, preventive care including ordinary immunizations, tuberculin testing and well-child care. Medical treatment also means the examination and treatment of any laceration, fracture or other traumatic injury, or any symptom, disease or pathology which may, in the judgment of the treating health care professional, if left untreated, reasonably be expected to threaten health or life.

(3) "Relative caregiver" or "caregiver" means an adult person, who by blood, marriage or adoption, is the great grandparent, grandparent, step grandparent, great aunt, aunt, great uncle, uncle, stepparent, brother, sister, step brother, step sister, half brother, half sister, niece, nephew, first cousin or first cousin once removed of a minor and with whom the minor resides, but who is not the legal custodian or guardian of the minor.

(b) *Parties authorized to give consent.* — Consent to the performance upon or for any minor by any licensed medical, surgical, dental, psychological or osteopathic practitioner or any nurse practitioner/clinical nurse specialist or any hospital or public clinic or their agents or employees of any lawful medical treatment, and to the furnishing of hospitalization and other reasonably necessary care in connection therewith, may be given by:

(1) A parent or guardian of any minor for such minor;

(2) A married minor for himself or herself or, if such married minor be unable to give consent by reason of disability, then by his or her spouse;

(3) A minor of the age of 18 years or more for himself or herself;

(4) A minor parent for his or her child;

(5) A minor or by any person professing to be serving as temporary custodian of such minor at the request of a parent or guardian of such minor for the examination and treatment of (i) any laceration, fracture or other traumatic injury suffered by such minor, or (ii) any symptom, disease or pathology which may, in the judgment of the attending personnel preparing such treatment, if untreated, reasonably be expected to

threaten the health or life of such minor; provided, however, that the consent given shall be effective only after reasonable efforts shall have been made to obtain the consent of the parent or guardian of said minor; or

(6) A relative caregiver acting pursuant to an Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors.

(c) *Effect of consent.* — Any consent given by or for a minor pursuant to the authority of any provision of this chapter shall be valid and effective for all purposes, and, notwithstanding any misrepresentation as to age, status as parent, guardian or custodian or as to marital status, made to any practitioner, hospital or clinic for purposes of inducing the furnishing of health care to such minor, shall bind such minor, his or her parent, spouse, heirs, executors and administrators and shall not be subject to subsequent disaffirmance by reason of minority.

(d) *Liability of persons responsible for medical care.* — Nothing contained in this section shall be construed to relieve any practitioner, hospital, clinic or their agents or employees from liability for negligence in diagnosis, care and treatment or for the performance of any procedure not reasonably required for the preservation of life or health.

13 Del. C. 1953, § 707; [54 Del. Laws, c. 386](#); [58 Del. Laws, c. 272](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 187, §§ 1-5](#);

§ 708 Affidavit of Establishment of Power to Consent to Medical Treatment of Minors.

(a) There is created an Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors. The affidavit shall include, at a minimum, the name and date of birth of the minor; a statement signed by the caregiver that the caregiver is 18 years of age or older and that the minor resides with the caregiver; the names and signatures of the parents, legal custodian or guardian of the minor indicating their approval of the caregiver's power or, if a parent, custodian or guardian of the minor is unavailable, a statement of reasonable effort made by the caregiver to locate the parent, custodian or guardian based on criteria set forth in the regulations; the name of the caregiver; relationship of the caregiver to the minor documented by proof as defined by regulation; and the dated signature of the caregiver. The signature of the caregiver shall be notarized.

- (b) The affidavit is valid for 1 year unless the minor no longer resides in the caregiver's home or a parent, custodian or guardian revokes his or her approval. If a parent, custodian or guardian revokes approval, the caregiver shall notify any health care provider or health service plans with which the minor has been involved through the caregiver.
- (c) A caregiver must present a completed Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minor when seeking medical treatment for a minor.
- (d) The decision of a relative caregiver to consent to or to refuse medical treatment for a minor shall be superseded by a decision of a parent, legal custodian or guardian of the minor.
- (e) No person who relies in good faith upon a fully executed Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors in providing medical treatment shall be subject to criminal or civil liability or to professional disciplinary action because of the reliance. This immunity applies even if medical treatment is provided to a minor in contravention of a decision of a parent, legal custodian or guardian of the minor who signed the affidavit if the person providing care has no actual knowledge of the decision of the parent, or legal custodian or guardian.
- (f) The decision of a relative caregiver, based upon an Affidavit of Establishment Power to Relative Caregivers to Consent to Medical Treatment of Minors, shall be honored by a health care facility or practitioner unless the health care facility or practitioner has actual knowledge that a parent, legal custodian or guardian of a minor has made a contravening decision to consent to or to refuse medical treatment for the minor.
- (g) A person who knowingly makes a false statement in an affidavit under this section shall be subject to a civil penalty of \$1,000 per child. Justices of the peace shall have jurisdiction of these cases.
- (h) The Department of Health and Social Services is authorized to promulgate regulations to implement this section.

§ 709 Consent of a minor to donate blood voluntarily without the necessity of obtaining parental permission or authorization.

(a) Anything otherwise provided in the law to the contrary notwithstanding, any person over 17 years old shall be eligible to donate blood in any voluntary and noncompensatory blood program without parental permission or authorization.

(b) The consent given by a minor under this section shall, notwithstanding his or her minority, be valid and legally effective for all purposes and shall be binding upon such minor, his or her parents, legal guardians, spouse, heirs, executors and administrators as effectively as if such minor were 18 years of age or over at the time of giving such consent. A minor giving such consent shall be deemed to have the same legal capacity to act and the same legal obligations with regard to giving such consent as if such minor were 18 years of age or over. Consent so given shall not be subject to later disaffirmance by reason of such minority and the consent of no other person or court shall be necessary for performance of the lawful procedures required to be performed in order to receive such donation.

(c) Such consent so given by a minor as described above shall be interpreted as a contract permitting penetration of tissue which is necessary to accomplish such donation.

13 Del. C. 1953, § 710; [57 Del. Laws, c. 464](#); [63 Del. Laws, c. 208, §§ 1, 2](#); [70 Del. Laws, c. 186, § 1](#);

§ 710 Minors' consent to diagnostic and lawful therapeutic procedures relating to care and treatment for pregnancy or contagious diseases.

(a) A minor 12 years of age or over who professes to be either pregnant or afflicted with contagious, infectious or communicable diseases within the meaning of Chapters 5 and 7 of Title 16, or who professes to be exposed to the chance of becoming pregnant, may give written consent, except to abortion, to any licensed physician, hospital or public clinic for any diagnostic, preventive, lawful therapeutic procedures, medical or surgical care and treatment, including X rays, by any physician licensed for the practice of medicine or surgery or osteopathic medicine or surgery in this State and by any hospital or public clinic, their qualified employees or agents while acting within the scope of their employment.

(b) Consent so given by a minor 12 years of age or over shall, notwithstanding his or her minority, be valid and legally effective for all purposes, regardless of whether such minor's profession of pregnancy or contagious disease is subsequently medically confirmed, and shall be binding upon such minor, his or her parents, legal guardians, spouse, heirs, executors and administrators as effectively as if the minor were of full legal age at the time of giving of the consent. A minor giving the consent shall be deemed to have the same legal capacity to act and the same legal obligations with regard to giving consent as if the minor were of full legal age. Consent so given shall not be subject to later disaffirmance by reason of such minority; and the consent of no other person or court shall be necessary for the performance of the diagnostic and lawful therapeutic procedures, medical or surgical care and treatment rendered such minor.

(c) The physician licensed for the practice of medicine or surgery or hospital to whom such consent shall be given may, in the sole exercise of his, her or its discretion, either provide or withhold from the parents or legal guardian or spouse of such minor such information as to diagnosis, therapeutic procedures, care and treatment rendered or to be rendered the minor as such physician, surgeon or hospital deems to be advisable under the circumstances, having primary regard for the interests of the minor.

(d) The parents, legal guardian or spouse of a consenting minor shall not be liable for payment for diagnostic and lawful therapeutic procedures performed, medical or surgical care or treatment rendered or hospital confinement pursuant to this section.

(e) Notice of intention to perform any operation otherwise permitted under this section shall be given the parents or legal guardian of such minor at their last known address, if available, by telegram sent at time of diagnosis by the surgeon designated to perform such operation; provided, that such operation may proceed forthwith after diagnosis if there is reason to believe that delay would endanger the life of such minor or there is a reasonable probability of irreparable injury.

(f) Nothing contained in this section shall be construed to relieve any licensed physician, hospital or public clinic, their agents or employees, from liability for their negligence in the diagnosis, care and treatment rendered such minor.

13 Del. C. 1953, § 708; [57 Del. Laws, c. 369](#); [58 Del. Laws, c. 459](#); [59 Del. Laws, c. 441, §§ 1-3](#); [60 Del. Laws, c. 544, § 1](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 187, § 6](#);