



Child Guardianship and Surgical Consent

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Many children live with adult caregivers other than a biological parent. I understand that in many such cases, the child and the caregiver have very strong and real emotional bonds with each other, as strong and real as with any other parent-child relationship. However, New York state law and Mount Sinai Hospital policy are very clear on the requirements for surgical consent, and special procedures must be followed in these cases.

Consent can only be given by the legal guardian of the child. This is not necessarily the person with whom the child lives, but that person or organization determined by a court of law to be the guardian. The legal guardian of the child is always the biological parent if they are living and competent, unless guardianship has been taken away by a court of law. An adult who has formally adopted a child (through a court of law) is considered to be the parent with all parental rights, including the right to act as the legal guardian of the child.

Note that this is not necessarily the same thing as custody. Many children live in foster care, in the custody of a foster parent, but the biological parent is still the legal guardian. A foster parent is not necessarily the legal guardian, unless this person has adopted the child through the courts. Consent would be given by someone other than the biological parent only if the parent is deceased, has given up guardianship, or if a court has awarded guardianship to some other person or agency.

If you are the legal, court appointed guardian, you must be available for consent both for surgery and for anesthesia. You do not necessarily need to be the one who brings the child to the hospital, but if not, formal consent must have been obtained for surgery before the day of the operation. Furthermore, **you must be available for a separate consent for anesthesia.** This may be obtained on the day of surgery, but **you must be immediately available in person or by telephone for this purpose.**

If you are not the biological parent of the child, and you are giving consent in person on the day of surgery, **you must have the official court document stating that you are the child's guardian with you.**

If it is not possible to obtain consent as outlined here, or if you do not come to the hospital with the appropriate court document, **the surgery will be cancelled and rescheduled.** There can be no exceptions to this policy. No surgeon or anesthesiologist has the authority to change these rules in any way.

Thank you for understanding,

Michael Rothschild, MD