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# Amy Edwards

FAMILY LAW

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# Family Matters

e-Newsletter

September  
2014



## Amy Edwards

FAMILY LAW

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### **Board Certified Specialist in Family Law**

Welcome to another issue of *Family Matters* e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please reply with the subject "Remove" or use the unsubscribe feature at the end of this e-mail. Visit us online at [www.greenvillelaw.us](http://www.greenvillelaw.us) For past issues visit [our archives](#).

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### Web Site of the Month

### [Who Represents Me?](#)

The NC General Assembly web site has a link that will show you who your county and district number.

### Tip of the Month

# Credit Report Peekaboo:

## Can My Ex Look at My Credit Report?



By Amy A. Edwards

The short answer: No!

He or she can't legally access your credit report without your permission.

### The Problem: Hide the Ball

When I begin representing a client, I suggest he or she pull a recent credit report because that is the only way to identify whose name is on what account. I generally don't need to see it, but I do need my client to be certain what debts are reflected there so we can address them in court or by settlement. That may be the only way to see if your ex has opened a credit card in your name, or jointly in both names. People are sometimes surprised to discover accounts they were unaware of, opened when the ex signed his or her name on the account application.

It is not uncommon for the other spouse to open a post office box so mail does not come to the residence. You probably won't know about this credit problem unless you look.

### Now What?

If you find out your ex has been snooping around looking at your credit report, what can you do?

You have various [rights](#) pursuant to the Fair Credit Reporting Act, including the right to sue him or her. You may want to consult with a consumer law attorney about the remedies available to you pursuant to that statute, including any claim for attorney's fees.

You can also file a police report. Federal law [15 U.S. Code §1681g](#) "Obtaining information under false pretenses" says: Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both. The Federal Trade Commission has a link for consumers to file [complaints](#).

You might want to ask the credit reporting agency to place a fraud alert on your account, or have your credit frozen, which protects you from any future activity unless you specifically agree.

While there are many web sites that advertise credit reporting services, you should consider checking your credit on the federally recognized

## [Passport Alert for Kids](#)

If you believe the other parent of your child will try to circumvent the requirement that both parents sign the passport application if the child is under 16 years of age, register for the Children's Passport Issuance Alert Program managed by the US State Department.

## Legal Term of the Month

### Jurisdiction

Jurisdiction is the authority given to the courts to make a ruling on a certain issue, and to make that ruling against the specific individual or entity.

## Legal Trivia

### Did You Know?

NC Gen. Stat. §18B-308 makes it unlawful to sell or consume any alcoholic beverage in any room while a raffle or bingo game is being conducted in that room, or for the owner or person in charge to allow it.

## Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

Click Reply and send us an e-mail with your suggestion.

## Family Matters Archive



Past issues of Family Matters are now available from [our archive](#)

web site where consumers can access free credit report each year: [www.AnnualCreditReport.com](http://www.AnnualCreditReport.com). This site permits you to access free credit reports from the three credit reporting, TransUnion, Equifax, and Experian once each year for free. Ideally, you should access one credit report every four months. That way, you can cross reference the data available to you and find any variations on a regular basis all year long.

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## Who Has the Final Decision on a Child's Medical Treatment -- the Doctor, the Minor or the Parents?



By Amy A. Edwards

As a general rule, parents are entitled to make all of the decisions for their minor child's medical treatment.

But that right is not absolute. The age of majority in North Carolina is eighteen, although there are several exceptions when it comes to choosing medical treatment for himself or herself before that age. When the type of medical care a child receives is disputed, there are laws that allow the child and/or the doctor to consent to the treatment instead of (or along with) the parent in several limited circumstances. Although our statutes allow physicians limited independent authority to make choices of treatment for a child, when confronted with these choices, physicians may or may not be willing to exercise that option, risking a lawsuit by the parent(s).

### **When Can Physician Treat Without Consent?**

Generally, a doctor must have consent of parent or guardian to give medical treatment to a minor. But what happens when the parent isn't there? The law says that if the parent can't be located or contacted with reasonable diligence while the minor needs to receive the treatment, the physician may treat without the consent of the parent(s). A related scenario permits treatment without the consent of parents if the physician cannot identify the child, and therefore, cannot identify the parents. There are numerous examples of situations where a child may be by himself or herself when there is a bike or other accident that leaves a child unconscious, and the parents are unknown. After all, children under the age of 16 usually don't have a wallet and identification. A physician may treat a minor without consent if a child's life would be endangered by delaying immediate treatment in order to get parental consent, or when efforts to reach the parent(s) would result in a delay that would seriously worsen the minor's physical condition.

### Quick Links

[City of Greenville](#)

[Pitt County](#)

[Pitt County Schools](#)

[State of NC](#)

[Collaborative Divorce Assn of](#)

[Eastern Carolina](#)

[Social Security Admin.](#)

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## **When Can Physicians Treat Over the Objection of a Parent Who Refuses Consent?**

While the first category of treatment for children seems based on common sense, physicians also face complicated and difficult questions about treatment when parents are aware of the proposed treatment but they object to it and refuse to give consent. When that happens, the doctor must get a court order to override the parent's objection. These types of cases may be filed by the NC Department of Social Services on behalf of the child. But if the "necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child" the doctor may override the parent's objection. If that is the case, the law also requires a second opinion from another licensed physician that such procedure is in fact necessary to prevent immediate harm to the child. Doctors who refuse to give treatment in good faith because a parent will not give consent are protected from criminal charges, and civil lawsuits filed against them for complying with the wishes of the parent.

When parents refuse consent, emergency treatment may be provided against the parent's wishes when it appears failure to administer treatment places the minor in "immediate harm." In this situation, the court is allowed to give consent instead of the parents based on the necessary details in a written statement from the doctor, or even a phone call if the emergency is acute. If the court consents to the treatment in place of the parents, the court must then hold a hearing on whether the parent(s) should be ordered to pay for the treatment for which they refused to consent. The county must pay the cost of the treatment if the court rules the parents are unable to pay.

### **Consent of the Minor is Adequate**

If a minor is married or otherwise [emancipated](#), he or she can give independent consent to certain medical health services. However, when children have certain adult medical issues, they are given a limited right to consent to treatment without the need for any parental involvement. Minors who are not emancipated are allowed to independently give consent to a doctor for medical health services for the prevention, diagnosis and treatment of:

1. Certain diseases such as venereal disease or HIV status, or
2. Pregnancy (this statute does not include abortion or sterilization), or
3. Abuse of controlled substances or alcohol, or
4. "Emotional disturbance."

### **Consent of the Minor: Sterilization**

In conjunction with his or her parents, a minor may petition the court for permission to be sterilized. Outside of the mental illness setting, when

an unmarried minor requests to be sterilized in writing, a parent may petition the court for authorization. As long as the minor meets the criteria for the statute as applied to adults, a judge must decide whether the petition for sterilization would serve the child's best interests. If so, the court will enter an order authorizing the doctor to perform the surgery.

### **Consent of the Minor: Abortion**

A pregnant minor does not necessarily have to involve her parents in her decision to seek an abortion. If she wishes to petition a district court judge to waive the need for her parent to consent for an abortion to be performed, she may use what is sometimes called the judicial by-pass option. If she chooses to do so, the records of the proceeding are sealed. Time being of the essence, the judge must rule on the request within seven days. When approached by the pregnant minor, who has the right to file alone without an adult being joined as a plaintiff, the court shall waive the requirement of parental consent for an abortion on any one of three reasons:

1. It's in her best interest for parental consent to be waived, or
2. She's mature and well-informed enough to make the abortion decision on her own, or
3. She has been raped or is a victim of felonious incest.

Another exception to the need to get either a judge's or a parent's consent is when there is a medical emergency requires an abortion. But, a doctor who "intentionally performs an abortion" on a minor, with "knowledge" or "reckless disregard" of her age is guilty of a misdemeanor if the proper person has not consented, or there is no medical emergency requiring it.

See NC Gen. Stat. 90-21.1 - 21.10, 90-272 and 7B-3600.

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This article is current as of September of 2014.

### **Don't Roll the Dice: Try Family Financial Mediation**

By Amy A. Edwards

One of the positive changes I have seen come partly from the state of the economy is that people are more open to mediation and other types of alternative dispute resolution (*i.e.*, an alternative to court). There are two types of mediation in family law, but this article will address what is called Family Financial Mediation (FFM). Pitt County requires FFM before the judge will hold a trial on alimony or marital property division, called equitable distribution. In the FFM process, the parties must share the cost of a qualified mediator, who does not make a decision. Instead, the mediator joins the parties in an office of one of the attorneys and shuttles between the two offices. Because each party and his or her

attorney are in separate rooms, it is much more casual than court. The mediator is a neutral party who does not take sides.

*The best part about a successful mediation is that you don't have to roll the dice and stand by hoping for the best.*



A good mediator can make both sides a bit more realistic by pointing out what he or she sees as major concerns with a case. The mediator reminds both the clients and the attorneys, who are very deeply entrenched in a case by that point, that facts are not as clear cut as perhaps originally thought. The mere fact that the attorneys don't engage each other can avoid the posturing that happens in court, not to mention the stress and hurt feelings between the two spouses who don't have to look at their ex across a table. Somehow an ex always knows how to push buttons.

The parties who participate in FFM have the ability to make agreements they know they can tolerate. After litigating a case in court, parties may each feel like they lost because judges hardly ever pick one side. They do what they think should be done based on the law, period. The law is not very easily customized, and judges in family law cases have a great deal of discretion. At least when parties have compromised, they are assured of certain "bottom lines" that are absolute. When a mediation is successful, the parties sign the document right there, that day, so no one is tempted to change his or her mind. Trusting a judge, who is a complete stranger, to make decisions about your house, retirement, credit card debts, vehicles and other personal property is a roll of the dice.



### **A Quick Summary of the Differences**

#### **COURT PROCESS**

vs.

#### **MEDIATION**

Judges and the law control  
outcome

Attorneys and clients control  
outcome

Takes place in court - formal

Takes place at an office and is informal

Judge makes decisions for you

You and other party make your own decisions

Risk because the judge has very broad discretion

Certainty - avoid all the risk of court

Costly, whether you win or lose (attorney's fees, depositions, etc.)

Less costly in the long run

Time consuming with many details

Quick because it looks at the big picture

No idea how long final result will take, often even for months after judge rules

You are largely finished the day of mediation

Decision based only on the law (not very flexible)

Decision based on what you can live with (can be flexible and use common sense)

Win/lose structure

Compromise by both sides possibly a win/win

Even "winning" takes a huge emotional toll on the entire family, including the children

Relief of being finished with a long and unpleasant legal situation

Public forum, even with embarrassing marital fault or child custody testimony

Private forum. Fault is not the focus nor is it part of "the record" in a court room

Adversarial - different goals

Part adversarial and part cooperation if you have a common of finding solutions for the dispute

Full disclosure and penalty of perjury for testifying in court

More trust is involved. Can be more difficult to be sure of other side disclosed everything

This article is current as of September 2014.

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Thank you for reading our newsletter.

**Sincerely,**

**Amy A. Edwards**

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