

You Want Your Child Vaccinated, but Your Ex Says No

For some parents who share custody, the Covid vaccine has created a minefield of issues that initial divorce decrees could not have anticipated.

By Debra Kamin

In late 2021, Adele Grote, a divorced mother of two in Minneapolis, took her children to a vaccination clinic at the Mall of America. But when her 13-year-old daughter called her father to let him know they were getting the shot, Ms. Grote knew they would have to leave without it.

Just over a quarter of children between ages 5 and 11 in the United States are fully vaccinated, according to a New York Times database; among older kids, ages 12 to 17, the rate is 59 percent. For parents who

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have yet to vaccinate their children, the reasons for hesitation vary. In an October 2021 survey from the Kaiser Foundation, many cited concerns about long-term side effects, including how vaccines might later affect their child’s fertility (though there is no evidence indicating that the vaccines impact fertility). And after a widely shared study about the risk of myocarditis and the Covid-19 vaccine, the C.D.C. affirmed that the vaccine is safe and cases of heart inflammation after vaccination are rare.

In most cases, whether

they have decided to vaccinate now, later or never, doctors say the parents they counsel have agreed with each other. But when they do not, the battle is part of a new pandemic front in divorce custody battles, one that is poised to expand with the imminent approval of vaccines for children under 5. Last month, Moderna announced plans to seek emergency authorization of their coronavirus vaccine for babies and toddlers after seeing promising results in a clinical study.

Ms. Grote, who wants to vaccinate her children, while her ex-spouse does not, has been divorced since 2019. She and her ex share custody of their daughter and 11-year-old son. As a nurse in an intensive care unit, Ms. Grote has cared for many critically ill Covid-19 patients, but her children remain unvaccinated, a status, she said, that is a result of how her custody proceedings continue to unfold in family court.

“I’m a single mom. I don’t have a ton of money,” she said. “But the money I’ve spent battling this, I could have taken my kids to Disney World, twice.”

Her custodial agreement with her ex-husband, drawn up before the pandemic, stipulates that when it comes to medical decisions for the children, both parents follow the recommendations of their

pediatrician. If either disagrees with what the doctor says, they need to see a court-appointed mediator, who can write up contracts that are enforceable in court. The process is slow, Ms. Grote said, and often spirals into demands put forth by one parent and thrown out by the other. So when the vaccine became available for children under 12, she tried just taking them to the clinic, an approach that didn’t work out.

“So we still exist in this limbo. I’m fully vaccinated, and I pray to God that they don’t get sick,” Ms. Grote said. The court’s stance, which requires processes to stall when one parent contests the medical decisions of another, she said, has given her ex-husband de facto veto power on getting vaccinated. “He’s making all of the decisions, because anytime the doctors try to do anything for our kids, he says no,” she said.

Her ex-husband, Jamey Groethe, sees it differently. “I want what’s best for our children no matter what,” said Mr. Groethe, who stressed that while he is opposed to his children receiving the Covid-19 vaccine because he is worried about how safe it is, he is not anti-vaccine in general.

Joshua Rogers, a small-business owner in Los Angeles, is the father of two boys.

He and his ex-girlfriend had only recently begun custody proceedings for the boys last year when a vaccine was cleared for children ages 5 and up, making their older son eligible. But while he was anxious to get him inoculated, his ex was not.

As soon as the shot was made available, Mr. Rogers filed an application for a family court hearing and marked it *ex parte*, or urgent. The judge didn't agree on the urgency.

"It was rubber-stamp denied, quite literally, with a stamp on it that said 'no exigent circumstances,'" Mr. Rogers said. "And I was like, of course there are exigent circumstances. We have a global pandemic, we have to get these kids vaccinated ASAP."

When contacted, Mr. Rogers' ex-girlfriend declined to comment.

But at a court hearing in mid-February, the judge granted Mr. Rogers decision-making power over issues of vaccination, and the boy is now vaccinated. "It's really whatever the judge says. Whatever this one man thinks, that's what goes," Mr. Rogers said, pointing out that he still doesn't fully understand why he was able to move forward.

That sort of clarification is necessary,

said Tim Miranda, founding partner of Antonyan Miranda, a family law firm in San Diego. "If the court doesn't make a specific order about things like medical care, then both parents can individually take whatever action they would like in that realm." Parents who are currently navigating the custody process should be clear with their legal teams if they disagree with the vaccination stance of their ex, said Mr. Miranda, and be prepared to argue as to why they, and not the other parent, should be vested with medical decision-making powers for their child. They should also be sure that their pediatrician or therapist has views that align with their own.

"The courts give a lot of credence to the treating therapist or doctor, because they're the ones dealing within the realm of the patient," Mr. Miranda said. "The standard is to decide what is in the best interest of the child." If parents can't come to a mutual agreement over what "best interest" means, however, courts generally opt to grant one parent power to make the decision, as they did with Mr. Rogers.

Laws vary slightly from state to state, Mr. Miranda said, but in general, "it's a pretty high bar with something like a vaccination. If you're going to oppose it, you'd have to have a pretty good reason, like a religious conviction or a medical condition."

The American Academy of Pediatrics does not have an official stance on vaccinating children in situations of custodial disputes, said Dr. Tiffany Kimbrough, an A.A.P. member and medical director of the mother-infant unit of the medical center at Virginia Commonwealth University. (They do, however, state, “It is prudent for the physician to inquire about marital status and custody issues when relevant” in this 2017 report.)

“This has become such a hot-button issue,” she said. “We’re seeing a lot more difference of opinion than with traditional medical therapies and preventative care.”

In New York, the courts will almost always favor vaccination, said Naomi Schanfield, a New York City lawyer specializing in family and marriage law.

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In situations where custody agreements are not yet clear-cut, however, the process to wrest power over vaccine decisions can feel frustratingly slow for an anxious parent.

Those who opt to bypass court regulations and — as Ms. Grote tried to do — take their child to be vaccinated without the consent of their ex-partner run the risk of being held in contempt of court. But the likelihood of losing custody over such an action is slim, Mr. Miranda said.

“They’d have to determine that the parent was acting detrimentally to the health, safety or welfare of the child,” said Mr. Miranda, who added that it would be a tough sell in court. ■