Family Law – "Joint Custody"

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… How is the term "joint custody" defined in the statutes governing family law matters (e.g., child custody and/or visitation) in the state where you practice? Does the term refer to physical custody, legal custody, or both? Why does it matter? In answer to the latter question, it matters because proper parental consent to the treatment of a minor and a valid parental signature on an authorization form may depend upon the meaning of this term, if it is specifically defined in a particular state's statute. There may also be other related terms that bear on the answer to the latter question – such as legal custody, physical custody, joint or sole legal custody, and joint or sole physical custody.

In one state, the term "joint custody" means joint legal custody and joint physical custody. In that state, "joint legal custody" means that both parents shall share the right and responsibility to make the decisions relating to the health, education, and welfare of a child. This does not mean that both parents must sign an authorization form to release information pertaining to the minor's treatment, for example, but rather, it means that either parent can sign the authorization form. Likewise, either parent may consent to treatment. Of course, the court order may specify otherwise – such as, that the authorization or consent of both parents shall be required for certain actions.

In that state, the term "joint physical custody" means that each of the parents shall have significant periods of physical custody. The law specifies that joint physical custody shall be shared by the parents in such a way so as to assure a child of having frequent and continuing contact with both parents. Generally, physical custody does not entitle a parent to consent to treatment or to sign an authorization form on behalf of the minor. Those issues are resolved, in the state being discussed, by determining the "legal custody" arrangement.