

# PATERNITY ESTABLISHMENT

## Paternity Consent Order

CS 606.2

### SUPERSEDES

CS 606.2, Paternity Consent Order, January 11, 1998

### REFERENCES

MCA §§ 40-5-231-40-5-237, and 40-6-101-40-6-118; MCA; Rule 301, Montana Rules of Evidence

### Policy

#### Applicability

Procedures in this section apply whenever the CSED receives a signed Admission of Paternity from an alleged or presumed father in a paternity case.

#### Effect of Paternity Consent Order

When the conditions given in these PROCEDURES for accepting an Admission of Paternity are met, the CSED will issue a Paternity Consent Order. The order establishes paternity--the legal relationship of father and child--for all purposes in the same manner as if the matter had been decided by a district court trial. A properly filed consent order is conclusive and, unlike a presumption of paternity, cannot be rebutted. It is binding on the alleged or presumed father who has signed the Admission of Paternity even if he is a minor.

#### Basis in Informed Consent

Although the consent order is conclusive, it may be set aside or invalidated by a reviewing court if it is shown the order was not based on the informed consent of the alleged/presumed father. In a paternity case there are two areas where the requirements of informed consent apply:

- 1) Period of conception the alleged/presumed father must know or be informed of the child's probable period of conception or date of birth.
- 2) Other possible fathers if applicable, the alleged/presumed father must know or be informed of the existence of other possible fathers in the case.

If the alleged/presumed father is not informed of the facts of the case in these areas, he may conclude erroneously he is the natural father. If, however, he is informed of the facts, he may then conclude he must, may, may not, or must not be the natural father. If he signs the Admission having this knowledge, a consent order may be entered based on his informed consent. Of course, in multiple-allegation cases CSED policy requires positive genetic testing results, or exclusion of all other possible fathers, in addition to informed consent.

### Procedures

#### Procedures for Caseworker

1. **Verifying Jurisdiction/Proper Version of the Admission.** Form Upon receipt of a completed, signed, and notarized Admission of Paternity and Application for Paternity Consent Order from an alleged or presumed father in a paternity case, verifies the CSED has or can obtain jurisdiction in the case. If so, proceeds to step 2; if not, refers the case to the other state as in section CS 605.2 and takes no further action in this section. Note that in cases where a Notice of Parental Responsibility (NPR) has been served, the CSED should already have jurisdiction over the individual.

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#### NOTE:

**Older Versions of Admission Not Acceptable.** Admissions of Paternity sent to alleged or presumed fathers before July 1, 1997, do not contain the language required by current law, nor were they accompanied by the information on parents' rights and responsibilities that is now required. If a pre-July 1997 Admission is received, the caseworker should immediately send the alleged/presumed father the current form, accompanied by the required CSED information sheet, "Paternity Information for Parents" explaining the new form is now required, and requesting he complete and return the new form as soon as possible.

2. **Requirements for Single- and Multiple-Allegation Cases** Upon verification of jurisdiction, checks the paternity facts of the case and proceeds as follows:

- a. In a single-allegation case, except as noted below proceeds to step 3.

EXCEPTION: If the case is being treated as a single-allegation case because all other alleged/presumed fathers have now been excluded by genetic testing, the CSED requires the informed consent language contained in the multiple-allegation version of the admission as in 2b(i). Positive genetic testing results for the admitting man in this situation are not required; procedures other than the testing requirement in step 2b(i) apply.

- b. In a multiple-allegation case proceeds as follows:

Note that even though the CSED does not send an Admission form to an alleged or presumed father in a multiple-allegation case, the man may have received the Admission before the CSED was aware of other allegations.

- i. If the Admission is accompanied or preceded by positive genetic testing results, checks to make sure the Admission received is the multiple-allegation version. If the EXCEPTION in step 2a applies and the admitting man did not undergo genetic testing, also checks to make sure the Admission does not contain a reference to positive genetic testing results. If the form is acceptable, proceeds to step 3; if not, prepares the proper version of form CS-606.2A and sends it to the father, requesting he sign it in front of a notary and return it. In preparing the new Admission, includes the father's agreement to a judgment for testing costs, if appropriate--see the policy in CS 604.1, Genetic Testing. If the proper version is returned, proceeds to step 3; if not takes no further action in this section.

#### NOTE:

**Multiple-Allegation Version of Admission.** This version of the Admission of Paternity contains a required declaration of informed consent stating the father knows that one or more other men were named as possible fathers.

- ii. If the Admission is not accompanied or preceded by positive genetic testing results, explains to the admitting man that, when there are other possible fathers, the Admission is not acceptable unless it is supported by positive genetic testing results. Attempts to gain the admitting man's agreement to testing and proceeds as in CS 602.1 Case Initiation--Mother Oblige or 605.3 Notice of Parental Responsibility--Multiple-Allegation Cases with the next appropriate action in the case. Returns to step 2b(i), or 2a if the admitting man submits to testing and the results are positive, or if all the other allegations in the case are excluded by genetic testing.

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- 3. Initiating the Paternity Consent Order** Prepares form CS-606.2D Paternity Consent Order and forwards it to the Office of Fair Hearings (OFH) together with the original Admission of Paternity and Application for Paternity Consent Order and a certified copy of the abstract of the birth certificate if the child was born in Montana, and any SEARCHS stuffers required. In a multiple-allegation case where the EXCEPTION in step 2a applies and the admitting man did not undergo genetic testing, adjusts the form to remove the reference to positive genetic testing results.

#### Procedures for OFH

- 4. Issuing the Paternity Consent Order** Upon receipt of a consent package prepared in step 3, obtains the signature of the Administrative Law Judge (ALJ) on and issues the Paternity Consent Order. Mails copies to the alleged/presumed father, the obligee, the mother (if she is not the obligee), and the caseworker.
- 5. Updating the Birth Records** If the child's birth record is located in Montana, files a copy of the Paternity Consent Order with the Montana Office of Vital Statistics; also, if the father's name is not shown on the birth certificate, orders the Office of Vital Statistics to prepare an amended or substitute birth certificate consistent with the Paternity Consent Order. Requests a substitute birth certificate if a different man's name is currently shown; requests an amended birth certificate if no man's name is currently shown.

#### NOTE:

**No Change to Birth Records of Other State.** The CSED will not file the Paternity Consent Order in another state. If the child's birth record is located in another state, the child's mother or father may elect to file the order there independently. The CSED's failure to file the order in another state does not affect the validity or conclusiveness of the paternity determination.

#### Procedure for Caseworker

- 6. Processing the Paternity Consent Order** Upon receiving a copy of the Paternity Consent Order from the OFH, performs the necessary SEARCHS processing on the CHL and CAP screens to establish the alleged father as the father; also, if applicable, enters a SEARCHS case note for the consent order issued with fees, and sets up a fee account as in CS 604.1 Genetic Testing. If applicable, notifies the public assistance agency of the paternity establishment. Proceeds to CS 401.3 Notice and Order Concerning Support or 401.6 Subsequent Notice and Order Concerning Support, or resumes procedures begun in section CS 605.2 Notice of Parental Responsibility-- Single-Allegation Cases, to establish a support order.