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Alexandria Kozak

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# The Role of Vaccination Decision Making in Coparenting in the Post Covid-19 World



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## **The Coparenting Vaccine Debate**

The practice of coparenting has long been fraught with difficulties and disagreements. The Covid-19 pandemic has compounded these difficulties. With the increased politicization that surrounded the pandemic, vaccination became a particularly polarizing issue. So, what is a parent to do if they wish to vaccinate their child, but their coparent will not agree? This issue has found its way to many courts in the last few years.

## **The Rise of Vaccine Hesitancy**

Despite the safety and efficacy of vaccines, vaccine hesitancy and vaccine refusal are on the rise. [Vaccine refusal](#) is “the voluntary, conscious decision to decline immunization.” Vaccine refusers have been colloquially called “[anti-vaxers.](#)” These people chose not to accept vaccinations. One common reason for vaccine refusal is [misinformation](#) disseminated through various media sources that leads to a belief that a variety of harmful effects can come from vaccines. Vaccine refusers are different from the vaccine hesitant. [Vaccine hesitancy](#) is “the postponed decision to either receive or refuse an immunization, once immunization is readily available.” People who

are vaccine hesitant may accept some vaccines but have reservations about the safety of others. There are several reasons for vaccine hesitancy, but they can essentially be broken down to “[the five C’s](#): confidence, complacency, convenience, calculation of risk, and collective responsibility.” Some reasons for vaccine hesitancy are political in nature and some are more culturally motivated. Some people feel culturally justified in their hesitancy to get vaccinated against Covid-19 because of the US government’s [history of mistreating](#) minority communities through health care. Others have internalized false or misleading information about the safety and effectiveness of the Covid-19 vaccine through [politically motivated messaging](#). Since the success of vaccination campaigns depends on a large portion of the population receiving the vaccine, healthcare professionals have been tasked with refuting substantial misinformation surrounding the Covid-19 vaccine. This has come to include pediatricians who end up in the middle of a debate between two coparents as they attempt to agree whether to vaccinate their children.

### **The Legal Landscape of Coparenting Decisions (Best Interests Standard)**

In California it is common practice for courts to order parents to develop a parenting plan in the best interests of the child. These parenting plans govern how parents will share the “care, custody and management of their child.” The “[best interests of the child](#)” standard is used in determining any dispute that arises in relation to the care, custody, and management of the child. This standard requires an “individualized determination to adopt a parenting plan for the particular child or children at issue.” One common issue addressed in parenting plans is medical decision making. According to [Family Code Section 3083](#) parenting plans must “clearly allocate decision-making authority, describing what power each parent has when acting alone and what decisions must be made jointly.” Generally, parents will have the freedom to design a plan that works for their own unique circumstances, but when parents clash about specific issues the court may step in and make the ultimate determination.



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### **Case Study – What Does this Debate Look Like in Reality**

One Pennsylvania couple who embodies the coparenting vaccine debate shared their story with [NPR](#). Heather and Norm share custody of their two children who are nine and eleven years old. Heather wished to have their children vaccinated against Covid-19 and Norm did not. The two could not reach an agreement so they brought the issue before the court. Heather and Norm share legal custody of both children, and under Pennsylvania law this means that they must make all decisions relating to the children’s health together. Although the two had a bitter divorce they had settled into an amicable coparenting routine, that is until the issue of Covid vaccination arose.

When Covid vaccinations became available to children, Heather felt that vaccinating her children was the right thing to do. She told NPR that “it gave a sense of control about all of the things that have been uncontrollable for the past two years.” However, Norm felt differently. Norm worried about how new the vaccines were and felt that there was a possibility of serious side effects that would not be known for years. Additionally, Norm felt that the Covid virus was not as serious in children, so he felt that the risks outweighed the benefits. Heather tried to change Norm’s mind on the issue by using analogies like “it was like letting them ride in a car without a seatbelt” and “let’s wait and let them play in traffic and see if they get hit by a car, not everyone dies from that.” However, none of Heather’s arguments changed Norm’s mind, and their case was set for a hearing in family court. After hearing evidence from both parents and reviewing a letter from the

children’s pediatrician the judge awarded Heather full decision-making power over the issue of Covid vaccination. The judge gave no explanation for her decision.

Hillary Moonay, a Pennsylvania Family Law Attorney, told [NPR](#) that in her previous 25-years of practice she had only seen two cases that involved a dispute about vaccinating children. Moonay estimated that since the Covid-19 vaccines became available to children her office sees one of these cases each week. Moonay told NPR that these cases feel more “high stakes and more intense than other cases,” which says a lot considering the emotional intensity that is involved in all family law matters. In some extreme cases that Moonay witnessed, parents who the court believed were acting far outside of the child’s best interests lost decision making power over their children not just over the issue of Covid vaccination but on all other issues going forward. In Moonay’s experience she found that judges leaned heavily on the medical advice of the children’s pediatricians.

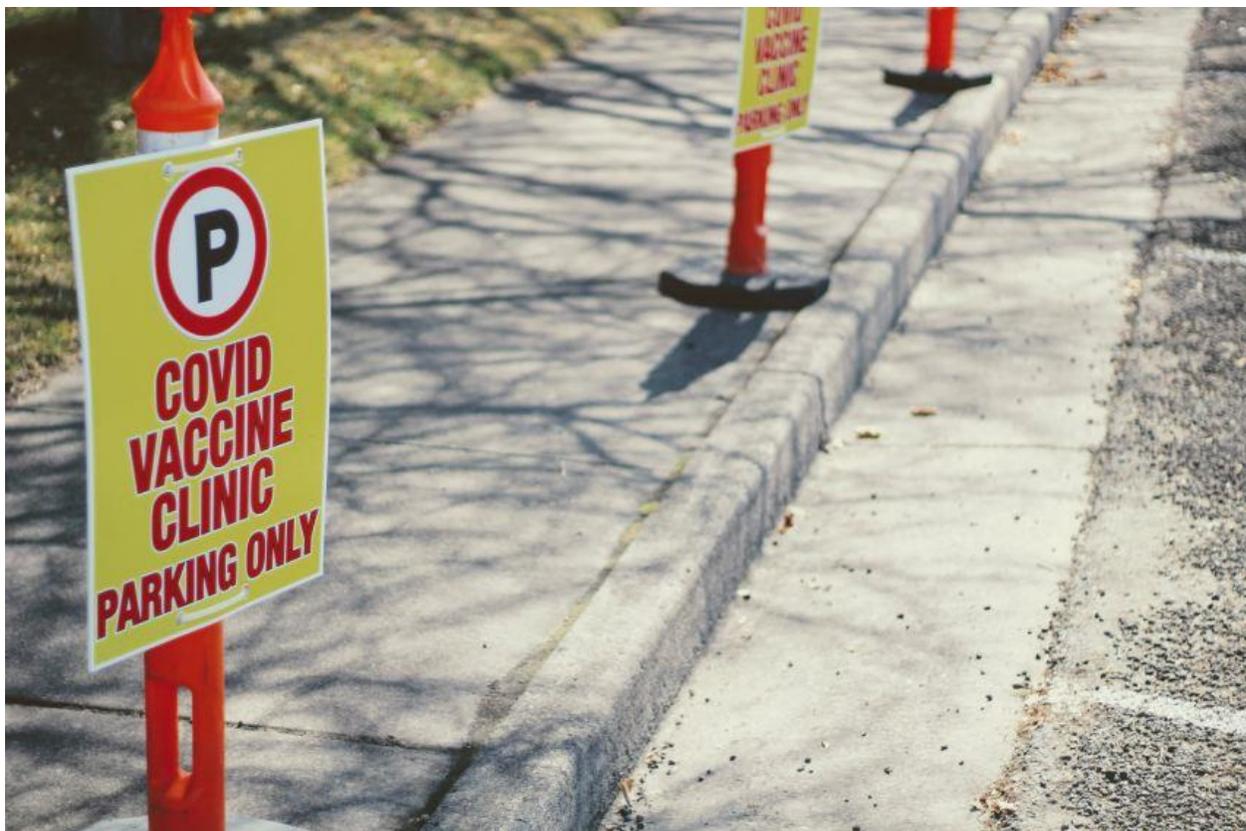


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### **Future Coparenting Issues are Now a Reality**

In 2022 a [Los Angeles County](#) Family Court Judge became one of several judges around the nation whose decision exceeded merely whether a child should be vaccinated but also required parents to be vaccinated in order to continue to have visitation with their child. In the Los Angeles case the mother was vaccinated, and the father was not. The judge required the father to either provide proof that he had been vaccinated or proof that he had a medical exemption to remain on his current visitation schedule. The father’s attorney said that “he was unaware of any legal

authority for them to change custody based on vaccination status.” The judge justified his ruling by stating that it was in the child’s best interest to protect them from possible infectious contact. This area of law is relatively untested and will likely become a polarizing issue going forward.

**By: Alexandria Kozak**