

Who May Consent to A Minor's Medical Treatment? Overview of North Carolina Law

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I. Who is a Minor?

For purposes of determining consent to medical treatment, we use the term minor to mean a person under the age of 18. Minors are “subject to the supervision and control” of their parents, unless they have been emancipated. G.S. 7B-3400.

II. Emancipated Minors and Consent to Medical Treatment

Under North Carolina law, there are only three ways for a minor to be emancipated: (1) by getting married, (2) by obtaining a court order of emancipation, or (3) by entering the armed forces with parental consent. G.S. 7B-3402. Being pregnant or having a child does *not* emancipate a minor in North Carolina.

Emancipated minors are treated the same as adults for purposes of health care services or medical treatment. Thus, they may consent to their own treatment. G.S. 90-21.5(b).

The large majority of minors in North Carolina are *not* emancipated. The remainder of this document addresses consent to treatment for unemancipated minors.

III. General Rule for Unemancipated Minors: Parental Consent

In most circumstances, an unemancipated minor may not receive medical treatment without the consent of the minor's parent, legal guardian, or a person acting *in loco parentis* (PILP).¹ The remainder of this document uses the shorthand term “parental consent” to mean the consent of a parent, legal guardian, or PILP.

The general rule that parental consent is required is not explicitly stated anywhere in North Carolina law. However, we can be confident this is the general rule, for several reasons:

- North Carolina has a number of laws that explicitly set forth when minors may be treated *without* their parents' consent (see section II of this document). We can reasonably infer from these laws that parental consent is ordinarily required.
- Parents have a right to the care, custody, and control of their children that is constitutionally protected.
- Furthermore, state law specifies that minor children are subject to the supervision and control of their parents. G.S. 7B-3400. Assuring necessary medical care is part of supervising a child.

¹ *In loco parentis* means “in the place of the parent.” A PILP is a person who has informally taken on the rights and duties of a parent with respect to a child, without going through formal legal processes such as adoption or guardianship.

IV. Exceptions to the Parental Consent Requirement for Unemancipated Minors

North Carolina law sets out several circumstances in which health care providers may treat unemancipated minors without obtaining parental consent.

- A. *Parent authorizes another adult to give consent.* A custodial parent or legal guardian may authorize another adult to consent to the minor's care during a period in which the parent or guardian is unavailable. This is a type of "health care power of attorney" that applies only to minors. G.S. 32A-28 through 32A-34.
- B. *Emergencies and other urgent circumstances.* Physicians may treat a minor without the consent of the parent, legal guardian, or PILP under any of the following emergency or urgent circumstances (G.S. 90-21.1):
 - 1. The parent or other authorized person cannot be located or contacted with reasonable diligence during the time within which the minor needs the treatment.
 - 2. The minor's identity is unknown.
 - 3. The need for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the minor's life.
 - 4. An effort to contact the parent or other authorized person would result in a delay that would seriously worsen the minor's physical condition.
 - 5. The parent refuses to consent, and the need for immediate treatment is so apparent that the delay required to obtain a court order would endanger the minor's life or seriously worsen the minor's physical condition, and two licensed physicians agree that the treatment is necessary to prevent immediate harm to the minor.

Special requirement for surgery: Before performing surgery under any of the above exceptions, two surgeons must agree that the surgery is necessary. (There is an exception for rural communities or other areas in which it is impossible to get the opinion of a second surgeon in a timely manner.) G.S. 90-21.3.

- C. *Immunizations.* A physician or local health department may immunize a minor who is presented for immunization by an adult who signs a statement that he or she has been authorized by the parent, guardian, or PILP to obtain the immunization for the minor. G.S. 130A-153(d). We sometimes say that an adult who presents a child for immunization on behalf of the parent, guardian, or PILP has "consented" to the immunization—but strictly speaking, that isn't correct. The parent, guardian, or PILP has consented to the immunization, but has authorized the other adult to obtain it for the child. The adult is simply acting on behalf of the parent, guardian, or PILP. Thus, this special rule for immunizations is not truly an exception to the general rule that parental consent is required; rather, it is an exception to usual *practice*, since health care providers ordinarily do not accept another adult's word that the parent has consented to the treatment.
- D. *Minors' consent law.* G.S. 90-21.5(a) allows physicians to accept unemancipated minors' consent for treatment under certain circumstances.
 - 1. An unemancipated minor may give effective consent for his or her own treatment for the prevention, diagnosis, or treatment of any of the following conditions:
 - a. venereal diseases and other reportable communicable diseases,
 - b. pregnancy,
 - c. abuse of controlled substances or alcohol, or
 - d. emotional disturbance.

2. Exceptions: A physician may not provide any of the following treatment services to an unemancipated minor solely upon the minor's consent:
 - a. sterilization,
 - b. abortion, or
 - c. admission to a 24-hour mental health or substance abuse facility (except the facility may admit the minor solely upon his or her own consent in an emergency).
3. A health care provider must not accept a person's consent to treatment unless the person has both *legal capacity* to consent to the treatment, and *decisional capacity*—that is, the ability to understand health care treatment options and make informed decisions. G.S. 90-21.5(a) gives unemancipated minors the *legal* capacity to consent to treatment for certain conditions. However, the health care provider may not accept the minor's consent unless the minor also has *decisional* capacity.²

V. Consent for an unemancipated minor's abortion (G.S. 90-21.6 through 90-21.10)

- A. General rule: An unemancipated minor may not obtain an abortion solely upon her own consent. Before performing an abortion upon an unemancipated minor, the health care provider must obtain the *written* consent of the minor herself *and* one of the following people:
 1. a parent with custody of the minor, or
 2. the minor's legal guardian or legal custodian, or
 3. a parent with whom the minor is living, or
 4. a grandparent with whom the minor has been living for at least 6 months immediately preceding the date of the minor's written consent for the abortion. G.S. 90-21.7.
- B. Exceptions:
 1. The minor may petition the district court for a waiver of the parental consent requirement. G.S. 90-21.8.
 2. The physician may perform the abortion without parental consent when, in the physician's best medical judgment, a medical emergency exists that requires an immediate abortion. G.S. 90-21.9.

² For more information about decisional capacity, see Anne Dellinger & Arlene Davis, Health Care for Pregnant Adolescents: A Legal Guide (Institute of Government, 2001), pages 6-9 (available on the Internet at <http://www.adolescentpregnancy.unc.edu/pdf/HCP91901.pdf>).