Who Can Consent to Care for Minor Patients?

NOVEMBER 10, 2025

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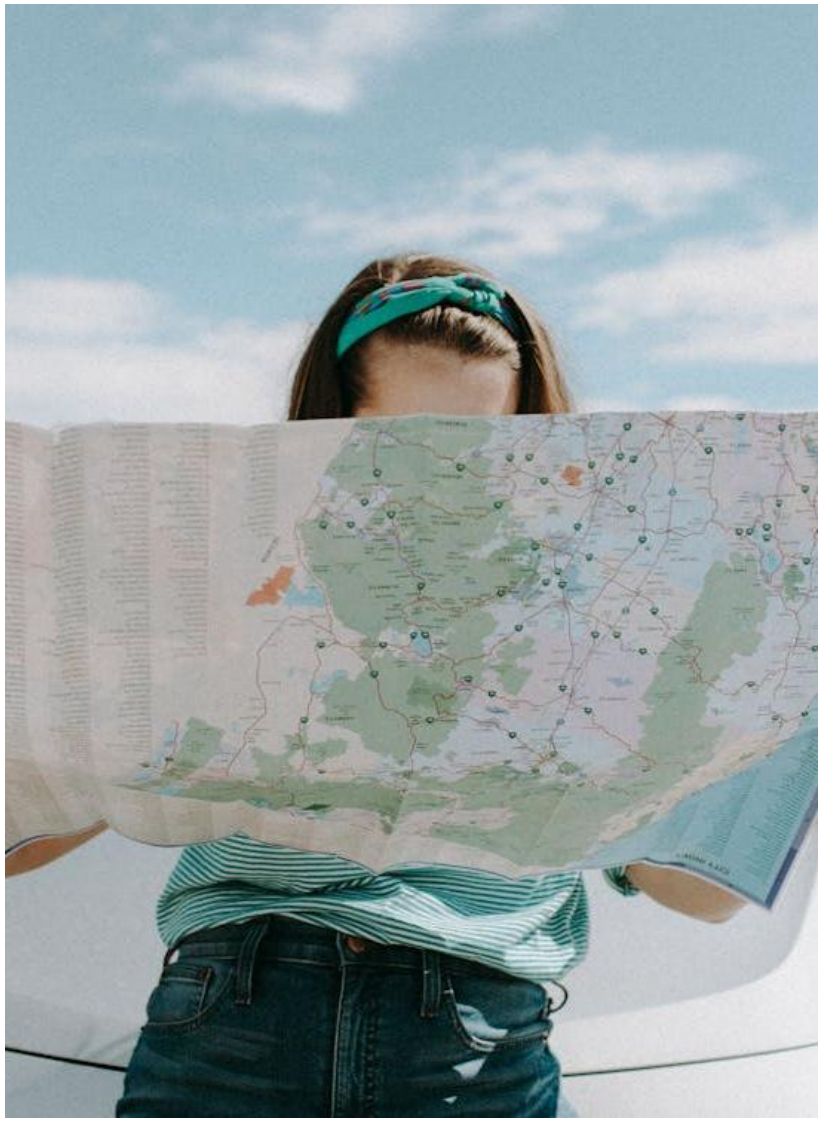
UNC SCHOOL OF GOVERNMENT



Presentation Roadmap

Deep Dive: NC Minor's Consent Law

- Overview of the law
- Confidentiality
- Minor's consent FAQs: vaccines, pregnancy, mental health

Other Pathways for Consent and Care for Minors

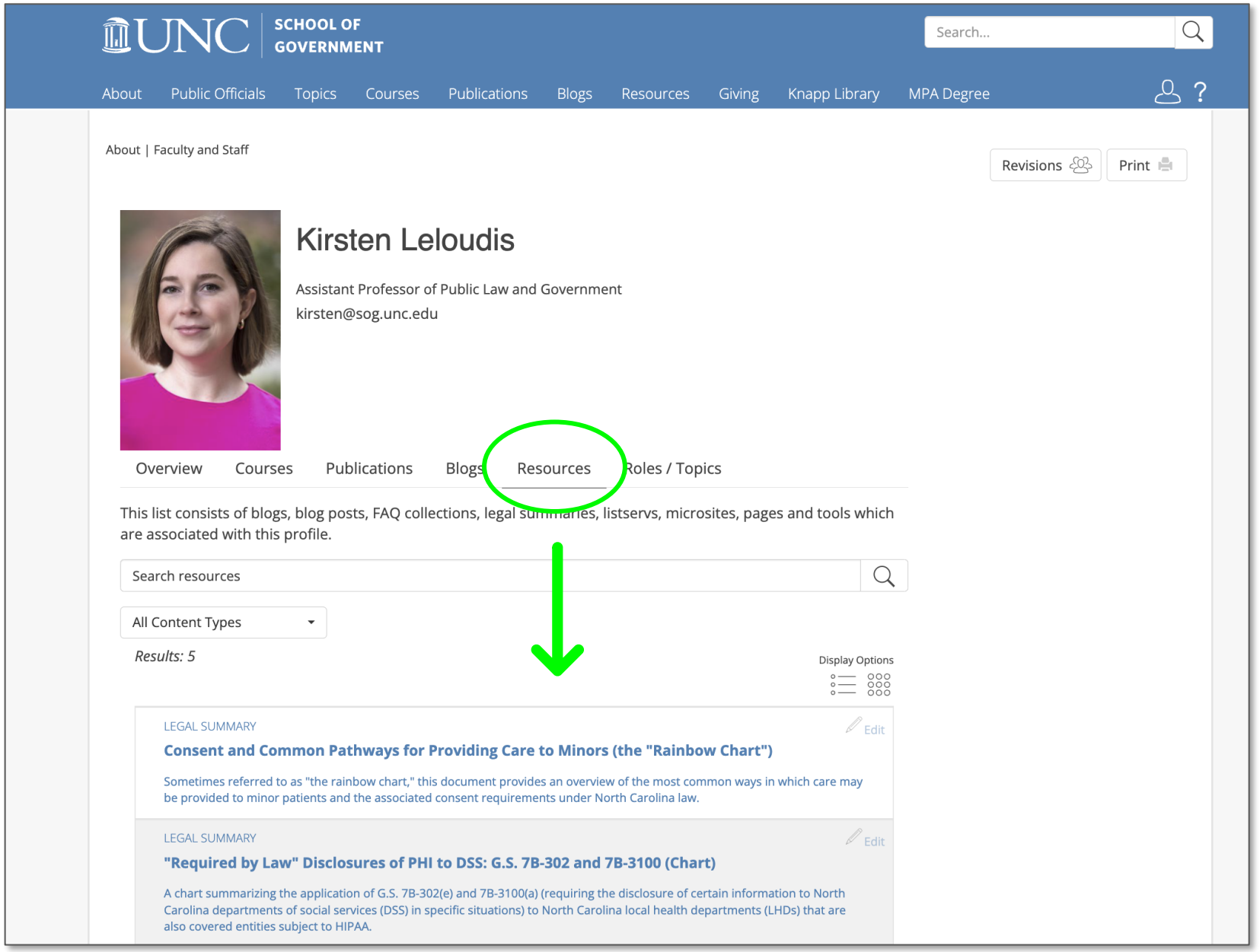
- Urgent/emergency situations
- Non-parent is given authority to consent
- Specific health services (abortion)
- Parental consent (S.L. 2023-106)

Q+A Session

Consent and Common Pathways for Providing Care to Minor Patients*

Category	Name	Description	Citation
Minor's Consent	Minor's consent	A minor with decisional capacity may give consent to a physician (or provider working under the direction of a physician) for the prevention, diagnosis, or treatment of conditions specified in the statute.	G.S. 90-21.5(a)
Urgent/Emergency Care	Urgent/emergency care provided by physicians	A physician (or provider working unde… physici… ction) m… provide care in certain time-sensitive situatior… t first obtaining parental consent.	G.S. 90-21.1
	Urgent/emergency care provided by school employees	Public school employees au… provide first aid, emergency … obtaining parental consent.	G.S. 115C-375.1
Non-Parent Authorized to Consent to Care	DSS director consents for minor's care	The DSS director (or her design… e, as well as testing and evalu… custody. DSS director (… court order.	G.S. 7B-505.1
	Parent authorizes non-parent to consent using a HCPOA	A "custodial parent" may deleg… er person using a health care po… narrow in scope and may be… d for a parent to delegate co…	G.S. 32A, Article 4
Specific Health Care Services	Abortion	In addition to a parent, a grandparent… ng for 6 months can consent to an abortion fo… may waive the requirement for parental co…nt to an … in limit… circumstances. Requirements of G.S. 90, Art. 1I mus… still be met.	G.S. 90-21.7, 90-21.8
Parental Consent	Parental consent to treatment	Parent (natural or adoptive parent whose rights have not been limited or terminated by a custody or court order; legal guardian; or person standing *in loco parentis*) consents to care that meets the definition of "treatment." Consent must be memorialized in writing or otherwise documented.	G.S. 90-21.10A, 21.10B, 21.10C

**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*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LEGAL SUMMARY
Edit
Consent and Common Pathways for Providing Care to Minors (the "Rainbow Chart")
Sometimes referred to as "the rainbow chart," this document provides an overview of the most common ways in which care may be provided to minor patients and the associated consent requirements under North Carolina law.
LEGAL SUMMARY
Edit
"Required by Law" Disclosures of PHI to DSS: G.S. 7B-302 and 7B-3100 (Chart)
A chart summarizing the application of G.S. 7B-302(e) and 7B-3100(a) (requiring the disclosure of certain information to North Carolina departments of social services (DSS) in specific situations) to North Carolina local health departments (LHDs) that are also covered entities subject to HIPAA.

A Few Quick Notes

- A copy of these slides will be available to conference attendees
- Lots of text on these slides- for your reference later; no expectation that you read it all right now
- I will be providing legal technical assistance (*what does the law say?*) but not legal advice (*what should I do to comply with the law?*)

  → Please consult an attorney or your licensing board, as appropriate, if you need situation-specific advice

NC Minor’s Consent Law

Consent and Common Pathways for Providing Care to Minor Patients*

Category	Name	Description	Citation
Minor's Consent	Minor's consent	A minor with decisional capacity may give consent to a physician (or provider working under the direction of a physician) for the prevention, diagnosis, or treatment of conditions specified in the statute.	G.S. 90-21.5(a)
Urgent/Emergency Care	Urgent/emergency care provided by physicians	A physician (or provider working under the physician's direction) may provide care in certain time-sensitive situations specified in the statute without first obtaining parental consent.	G.S. 90-21.1
	Urgent/emergency care provided by school employees	Public school employees authorized by their local board of education may provide first aid, emergency care, and life saving techniques without first obtaining parental consent.	G.S. 115C-375.1
Non-Parent Authorized to Consent to Care	DSS director consents for minor's care	The DSS director (or her designee) may consent to routine and emergency care, as well as testing and evaluation in exigent circumstances, for a minor in DSS custody. DSS director (or designee) may also consent to other care as set out in a court order.	G.S. 7B-505.1
	Parent authorizes non-parent to consent using a HCPOA	A "custodial parent" may delegate the parent's consenting authority to another person using a health care power of attorney (HCPOA). HCPOA can be broad or narrow in scope and may be time-limited. Note: This is not the exclusive method for a parent to delegate consenting authority to a non-parent.	G.S. 32A, Article 4
Specific Health Care Services	Abortion	In addition to a parent, a grandparent with whom a minor has been living for 6 months can consent to an abortion for the minor. Alternatively, a court may waive the requirement for parental consent to an abortion in limited circumstances. Requirements of G.S. 90, Art. 1I must also still be met.	G.S. 90-21.7, 90-21.8
Parental Consent	Parental consent to treatment	Parent (natural or adoptive parent whose rights have not been limited or terminated by a custody or court order; legal guardian; or person standing *in loco parentis*) consents to care that meets the definition of "treatment." Consent must be memorialized in writing or otherwise documented.	G.S. 90-21.10A, 21.10B, 21.10C

**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*

History of NC Minor's Consent Law

Passed in **1971**

- Allowed minors to consent to diagnosis and treatment for venereal and other reportable disease
- In 1971, NC also changed the age of majority- had been 21 under common law; codified change to make it 18

Amended in **1977**

- Minors can now also consent to certain preventive services
- Pregnancy, alcohol/substance use, and emotional disturbance

A few very minor tweaks between 1977 and 2021…

Amended in **2021**

- New provision added requiring written parental consent for vaccines available under an emergency use authorization (EUA)

Other Proposed Changes

In the last few years, we've seen additional bills introduced to further amend the NC minor's consent law

HB 519 (2025)

- Only minors 16+ could consent to care; could consent to fewer services than under existing law
- No movement since May 2025
- Legislature will convene at least one more time this year

Minor's Consent Law

According to the CDC, in 2022 all 50 states and D.C. allowed minors to consent to certain health services

- NC minor's consent law is found at G.S. 90-21.5(a)

Law allows minors with decisional capacity to consent, on their own, to medical health services for:

- Prevention, diagnosis, and/or treatment of
- Venereal/reportable diseases, pregnancy, emotional disturbance, and abuse of controlled substances/alcohol

Minor's Consent Law

But note: G.S. 90-21.5(a) specifically **does not allow** a minor to consent on their own to the following:

- Sterilization
- Admission to a 24-hour mental health care facility
- Abortion

Let's Take a Closer Look…

… at North Carolina's minor's consent law as it exists as of November 2025

Minor's Consent Law

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Who is a “Minor?”

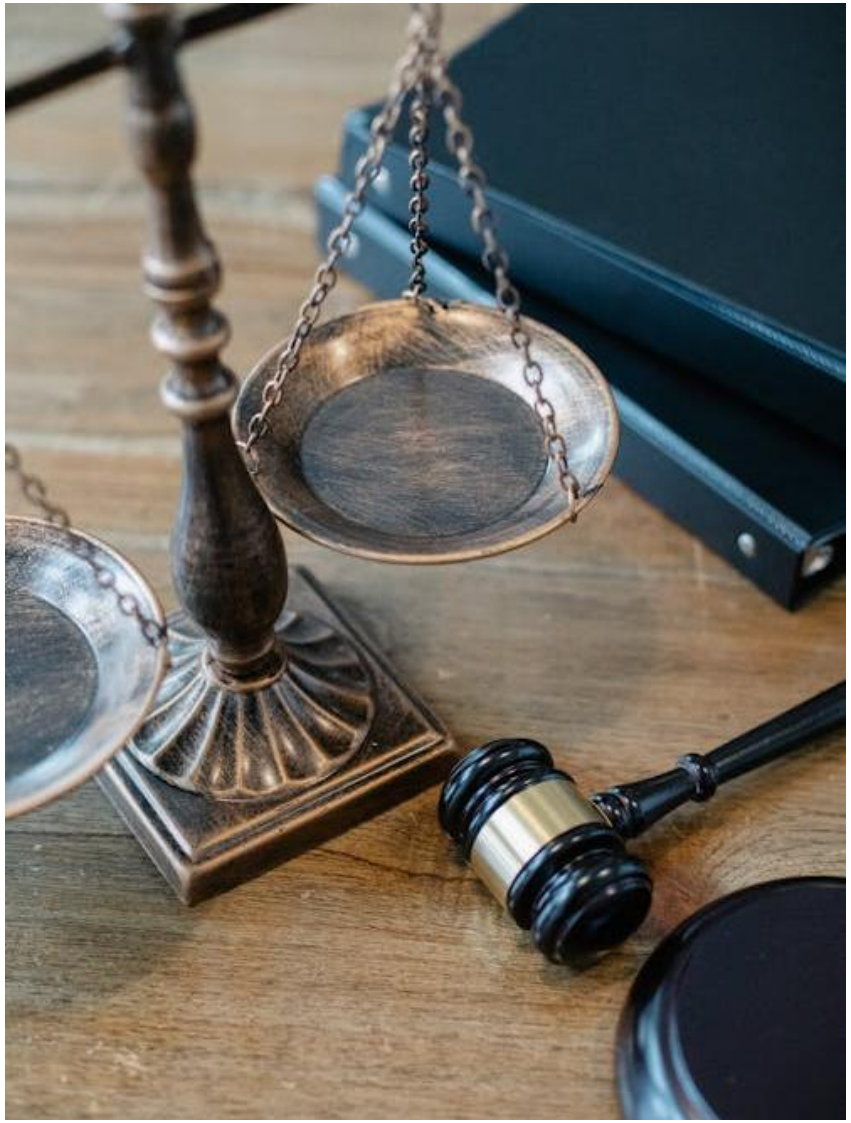
Anyone under 18, unless married or emancipated

Emancipation of a minor

- Emancipation is not common
- Minors who are 16 or 17 years old can become emancipated by a court

Marriage of a minor

- These days, only minors who are 16 and 17 can get married
- Note: this is a change as of August 2021; before then, minors as young as 14 and 15 could marry in NC



Emancipation of a Minor

If emancipated, a person under 18 is legally treated like an adult

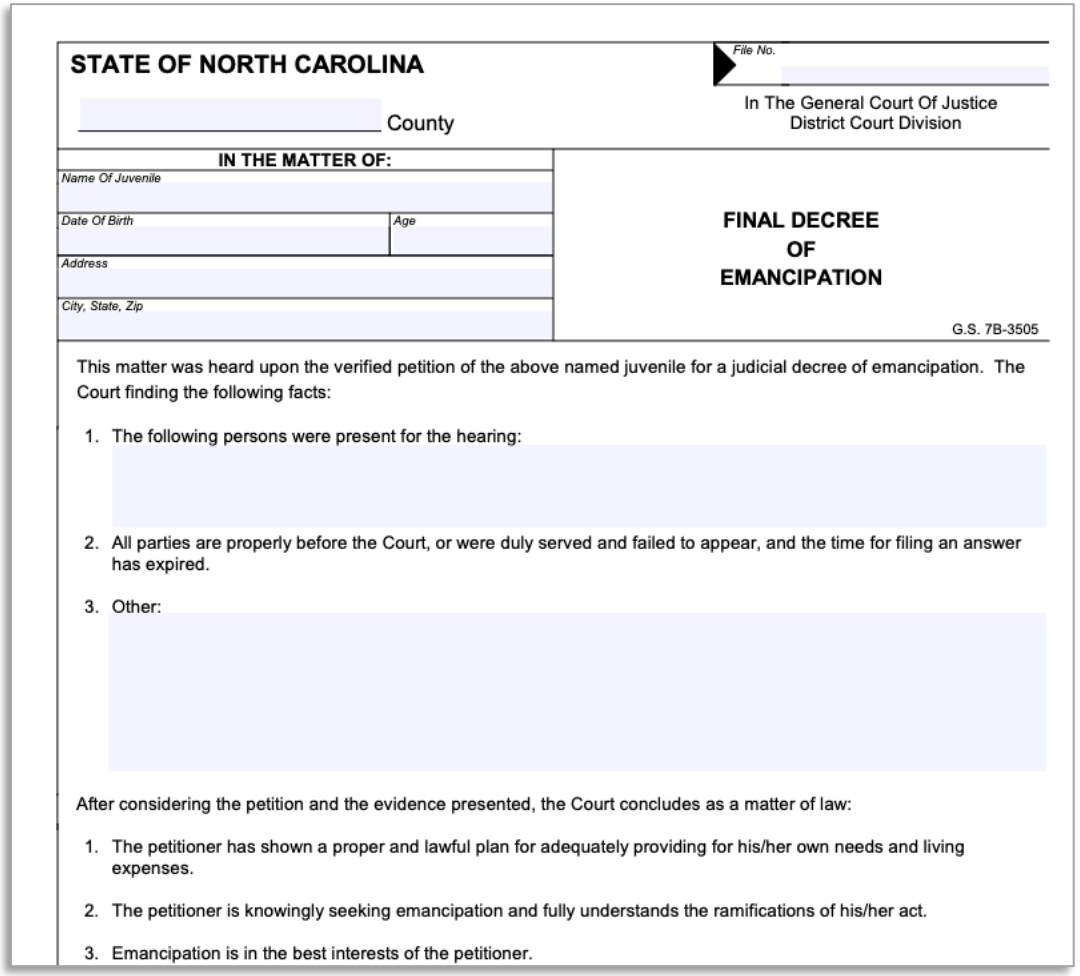
Emancipation is **not common**

- A young person who claims they are emancipated should have paperwork they can show you

Minor must petition (ask) a court for emancipation and the court must decide that emancipation is in the minor's best interest

Only 16 and 17 year olds can be emancipated

- You can do quick mental math: if a 14 year old says they are emancipated, ask more questions



STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name Of Juvenile

Date Of Birth | Age

Address

City, State, Zip

FINAL DECREE OF EMANCIPATION

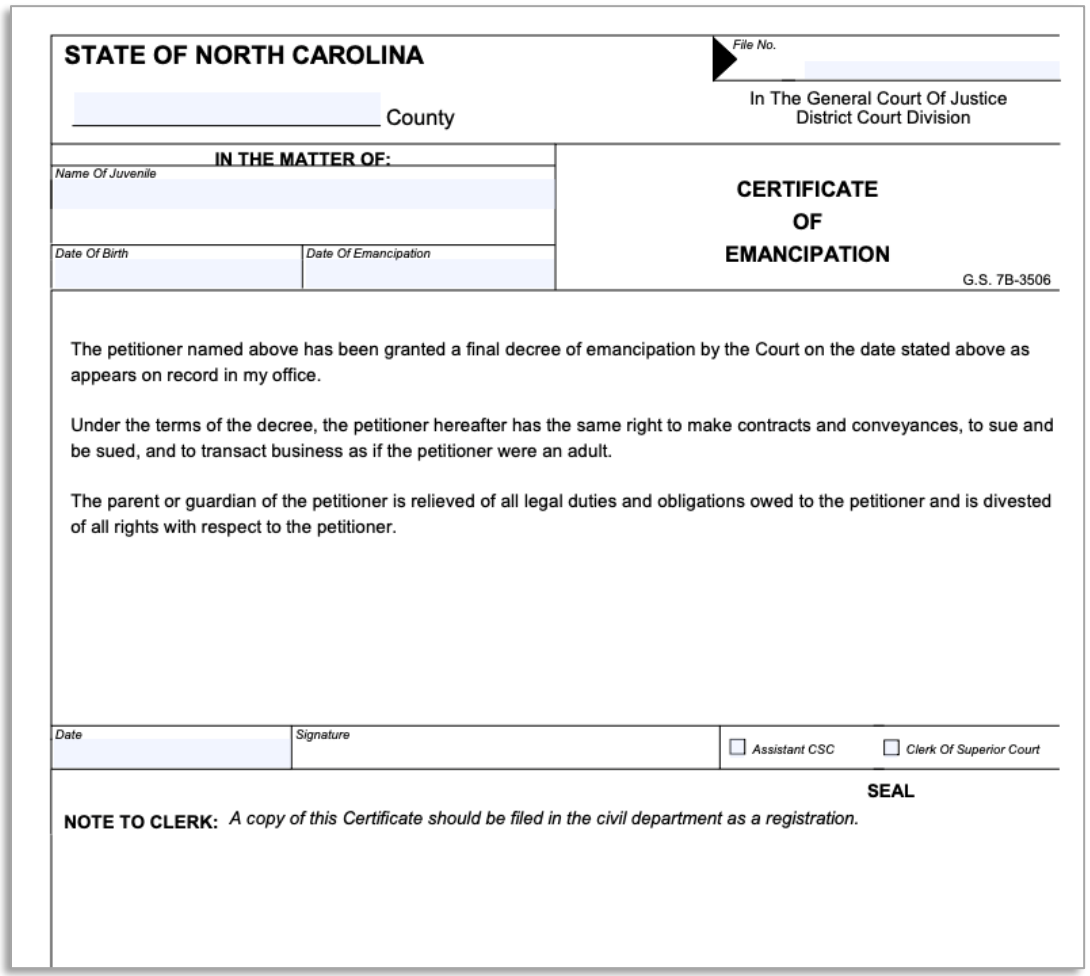
G.S. 7B-3505

This matter was heard upon the verified petition of the above named juvenile for a judicial decree of emancipation. The Court finding the following facts:

1. The following persons were present for the hearing:
2. All parties are properly before the Court, or were duly served and failed to appear, and the time for filing an answer has expired.
3. Other:

After considering the petition and the evidence presented, the Court concludes as a matter of law:

1. The petitioner has shown a proper and lawful plan for adequately providing for his/her own needs and living expenses.
2. The petitioner is knowingly seeking emancipation and fully understands the ramifications of his/her act.
3. Emancipation is in the best interests of the petitioner.



STATE OF NORTH CAROLINA

File No.

_____ County

In The General Court Of Justice
District Court Division

IN THE MATTER OF:

Name Of Juvenile

Date Of Birth | Date Of Emancipation

CERTIFICATE OF EMANCIPATION

G.S. 7B-3506

The petitioner named above has been granted a final decree of emancipation by the Court on the date stated above as appears on record in my office.

Under the terms of the decree, the petitioner hereafter has the same right to make contracts and conveyances, to sue and be sued, and to transact business as if the petitioner were an adult.

The parent or guardian of the petitioner is relieved of all legal duties and obligations owed to the petitioner and is divested of all rights with respect to the petitioner.

Date | Signature | ☐ Assistant CSC | ☐ Clerk Of Superior Court

SEAL

NOTE TO CLERK: *A copy of this Certificate should be filed in the civil department as a registration.*

Image source: https://www.nccourts.gov/documents/forms

Emancipation: Common Myths

Myth: a person under 18 who becomes pregnant is automatically emancipated and treated like an adult under the law

Truth: pregnancy does not trigger emancipation under NC law

Marriage of a Minor

Eligibility for marriage generally governed by state law

In NC, only minors who are 16 and 17 can get married

- The minor can marry someone no more than 4 years older
- Consent of minor's legal custodian is needed (unless the minor is emancipated)

This is a change in the law as of August 2021

- Before then, minors as young as 14 and 15 could marry in NC if one party was pregnant/gave birth and the other party was the putative father of the child

Minor's Consent Law

According to the CDC, in 2022 all 50 states and D.C. allowed minors to consent to certain health services

- NC minor's consent law is found at G.S. 90-21.5(a)

Law allows minors with decisional capacity to consent, on their own, to medical health services for:

- Prevention, diagnosis, and/or treatment of
- Venereal/reportable diseases, pregnancy, emotional disturbance, and abuse of controlled substances/alcohol

G.S. 90-21.5(a)

§ 90-21.5. Minor's consent sufficient for certain medical health services.

(a) Subject to subsection (a1) of this section, any minor may give effective consent to a physician licensed to practice medicine in North Carolina for medical health services for the prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under G.S. 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance. This section does not authorize the inducing of an abortion, performance of a sterilization operation, or admission to a 24-hour facility licensed under Article 2 of Chapter 122C of the General Statutes except as provided in G.S. 122C-223. This section does not prohibit the admission of a minor to a treatment facility upon his own written application in an emergency situation as authorized by G.S. 122C-223.

→ ***Where is "decisional capacity" mentioned?***

Minors + Decisional Capacity

Trick question: the law does not mention “decisional capacity,” ***but*** we know it’s a requirement for giving informed consent

- Decisional capacity = ability to give informed consent
- Capacity can be assessed similarly to how it is assessed in adults

Decisional Capacity

To be clear: NC minor's consent law doesn't create a minimum or "cut off" age

- This means that the age at which a minor patient can consent to a health service described at G.S. 90-21.5(a) will depend on whether that minor is found to have decisional capacity
- Every kid is different; must assess the patient in front of you
- May also matter what the health service is

Minor's Consent Law

According to the CDC, in 2022 all 50 states and D.C. allowed minors to consent to certain health services

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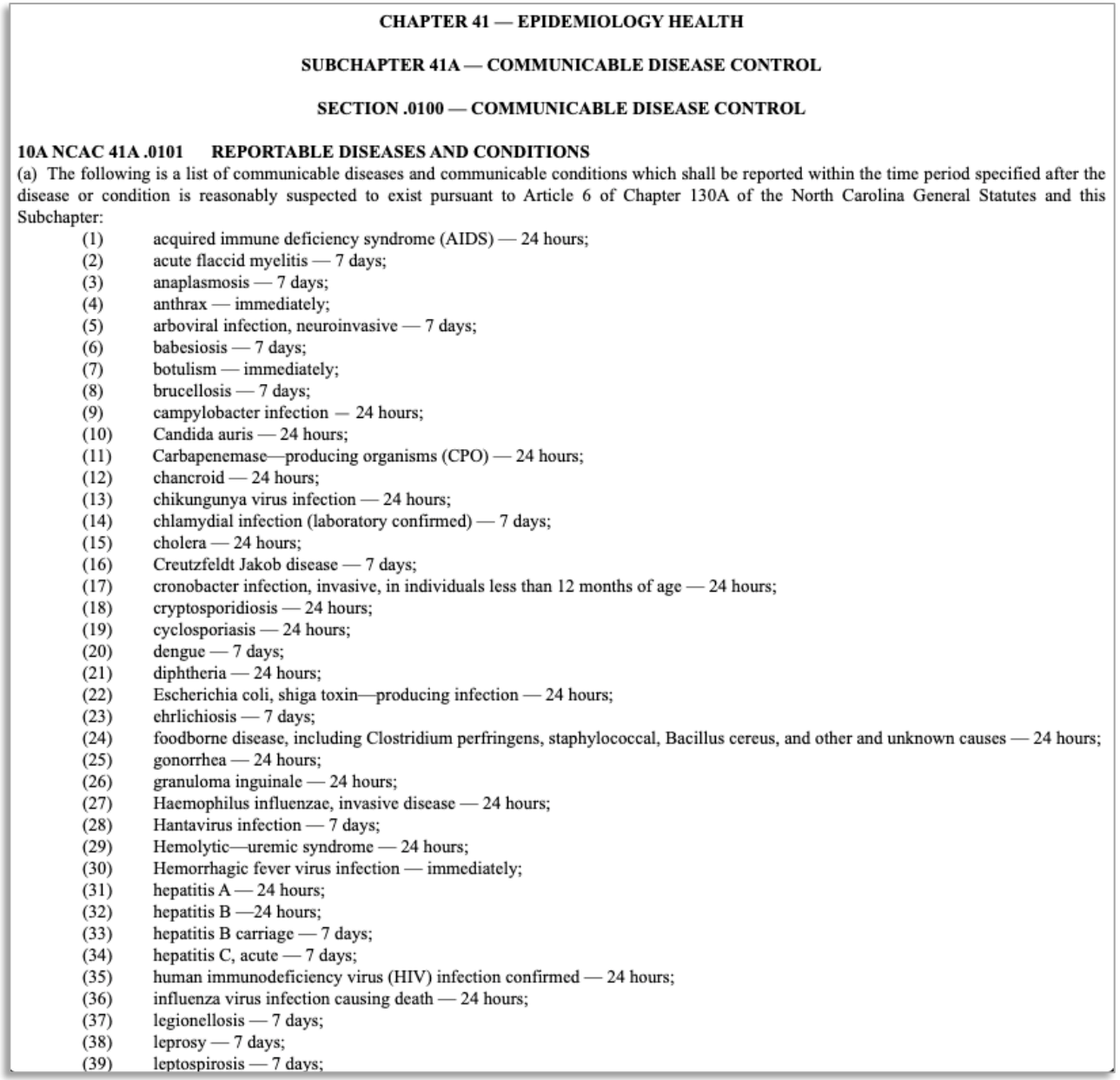


CHAPTER 41 — EPIDEMIOLOGY HEALTH

SUBCHAPTER 41A — COMMUNICABLE DISEASE CONTROL

SECTION .0100 — COMMUNICABLE DISEASE CONTROL

10A NCAC 41A .0101 REPORTABLE DISEASES AND CONDITIONS

(a) The following is a list of communicable diseases and communicable conditions which shall be reported within the time period specified after the disease or condition is reasonably suspected to exist pursuant to Article 6 of Chapter 130A of the North Carolina General Statutes and this Subchapter:

(1) acquired immune deficiency syndrome (AIDS) — 24 hours;
(2) acute flaccid myelitis — 7 days;
(3) anaplasmosis — 7 days;
(4) anthrax — immediately;
(5) arboviral infection, neuroinvasive — 7 days;
(6) babesiosis — 7 days;
(7) botulism — immediately;
(8) brucellosis — 7 days;
(9) campylobacter infection — 24 hours;
(10) Candida auris — 24 hours;
(11) Carbapenemase—producing organisms (CPO) — 24 hours;
(12) chancroid — 24 hours;
(13) chikungunya virus infection — 24 hours;
(14) chlamydial infection (laboratory confirmed) — 7 days;
(15) cholera — 24 hours;
(16) Creutzfeldt Jakob disease — 7 days;
(17) cronobacter infection, invasive, in individuals less than 12 months of age — 24 hours;
(18) cryptosporidiosis — 24 hours;
(19) cyclosporiasis — 24 hours;
(20) dengue — 7 days;
(21) diphtheria — 24 hours;
(22) Escherichia coli, shiga toxin—producing infection — 24 hours;
(23) ehrlichiosis — 7 days;
(24) foodborne disease, including Clostridium perfringens, staphylococcal, Bacillus cereus, and other and unknown causes — 24 hours;
(25) gonorrhea — 24 hours;
(26) granuloma inguinale — 24 hours;
(27) Haemophilus influenzae, invasive disease — 24 hours;
(28) Hantavirus infection — 7 days;
(29) Hemolytic—uremic syndrome — 24 hours;
(30) Hemorrhagic fever virus infection — immediately;
(31) hepatitis A — 24 hours;
(32) hepatitis B —24 hours;
(33) hepatitis B carriage — 7 days;
(34) hepatitis C, acute — 7 days;
(35) human immunodeficiency virus (HIV) infection confirmed — 24 hours;
(36) influenza virus infection causing death — 24 hours;
(37) legionellosis — 7 days;
(38) leprosy — 7 days;
(39) leptospirosis — 7 days;

Venereal + Reportable Diseases

"Venereal" disease: not defined in our laws, but generally means disease transmitted through sex

Reportable diseases: see the administrative rules adopted by the NC Commission for Public Health for a full list

- Look for **10A NCAC 41A .0101**
- http://reports.oah.state.nc.us/ncac.asp

Pregnancy

Includes prevention (birth control, emergency contraception), diagnosis (pregnancy testing), and treatment (prenatal/postnatal care)

AG opinion suggests that care necessary to ensure a healthy, safe pregnancy is also covered

Exception: cannot use minor's consent for abortion or sterilization (we have separate laws about these topics)

Emotional Disturbance

Not defined under NC laws

Based on historical meaning and use = mental and behavioral health conditions

Exception: minors cannot admit themselves to 24/7 mental health facilities on their own consent outside of an emergency

Alcohol and Controlled Substance Use

Includes accessing treatment for substance use disorder

What's missing? Tobacco products!

- Tobacco products are not "controlled substances" as that term is defined under NC law
- Means a minor cannot consent on their own to prevention, treatment, or diagnosis for services related to tobacco use (to the extent those are "medical health services" that require consent)

What Else Do You Need to Know?

Let's talk about:

- Who can accept consent
- Confidentiality
- Liability and immunity
- Withholding consent

Who Can Accept Consent?

Law says a minor may give effective consent to a "**physician**" who is licensed to practice in NC

- Has long been interpreted to include providers working under a physician's supervision or carrying out a physician's orders (e.g., some nurses, physician assistants, etc.)
- **Note:** be mindful of other providers in your organization who may not be working under the supervision/direction of a physician (e.g., some mental health providers)

Minor's Consent + Confidentiality

G.S. 90-21.4(b) is the law that governs the confidentiality of information about health services that a minor has received under G.S. 90-21.5(a)

General rule:

- Cannot disclose information about a minor's consent encounter to the minor's parent, guardian, custodian, or PILP* without the minor's permission

* PILP = a person standing *in loco parentis.* For more information about who can be a PILP, see this 2023 Coates' Canons blog post: https://canons.sog.unc.edu/2023/03/in-loco-parentis-consent-healthcare-minors/.

Minor's Consent + Confidentiality, cont.

Exceptions: provider <u>may</u>* disclose to a parent, guardian, custodian, or PILP if:

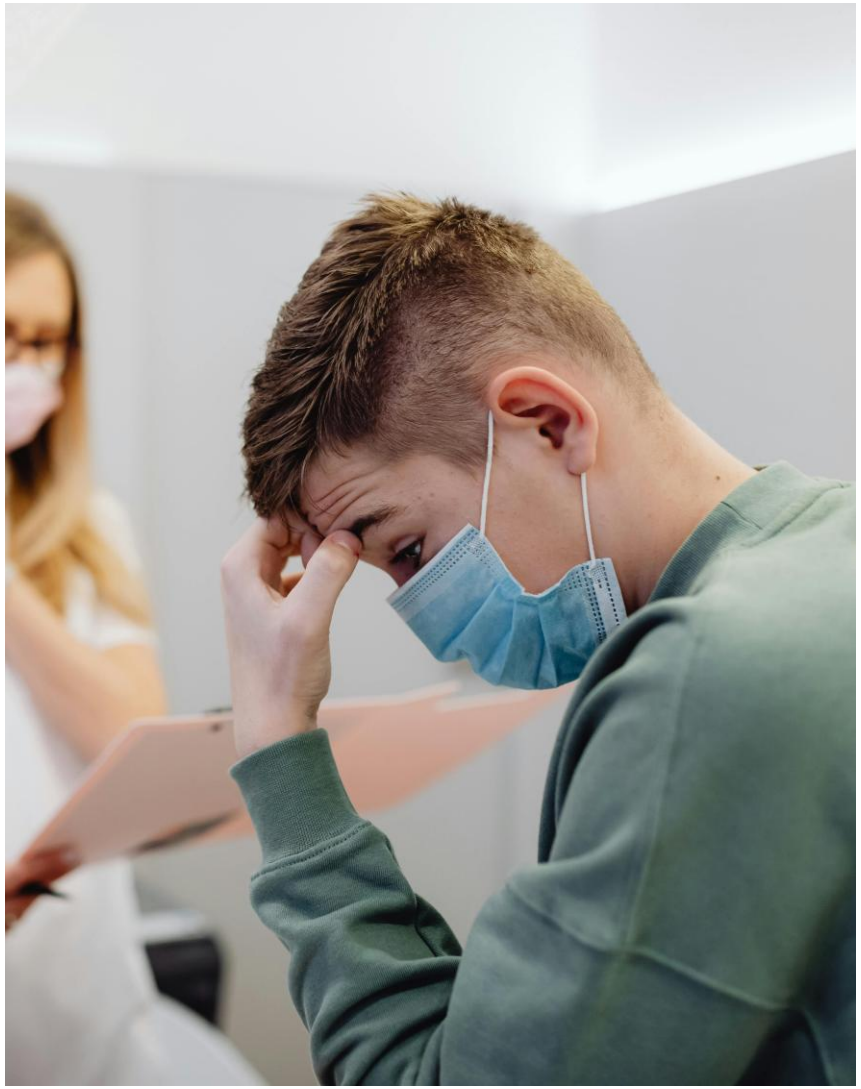
- Provider believes disclosure is essential to protecting the life or health of the minor
- Parent, guardian, custodian, or PILP "contacts the physician concerning the treatment or medical services being provided to the minor"

**Use of "may" in the statute means that disclosure is permitted, but not required*

Liability/Immunity

G.S. 90-21.4(a) establishes civil and criminal immunity for physicians who provide care to minors in accordance with G.S. 90-21.5

- Only covers providing care to a minor without parental consent when doing so is permitted by law
- Does not cover *negligent* provision of care
- Protections extend to those working under the supervision or direction of a physician



Withholding Consent

Ability to give consent = ability to **withhold** consent

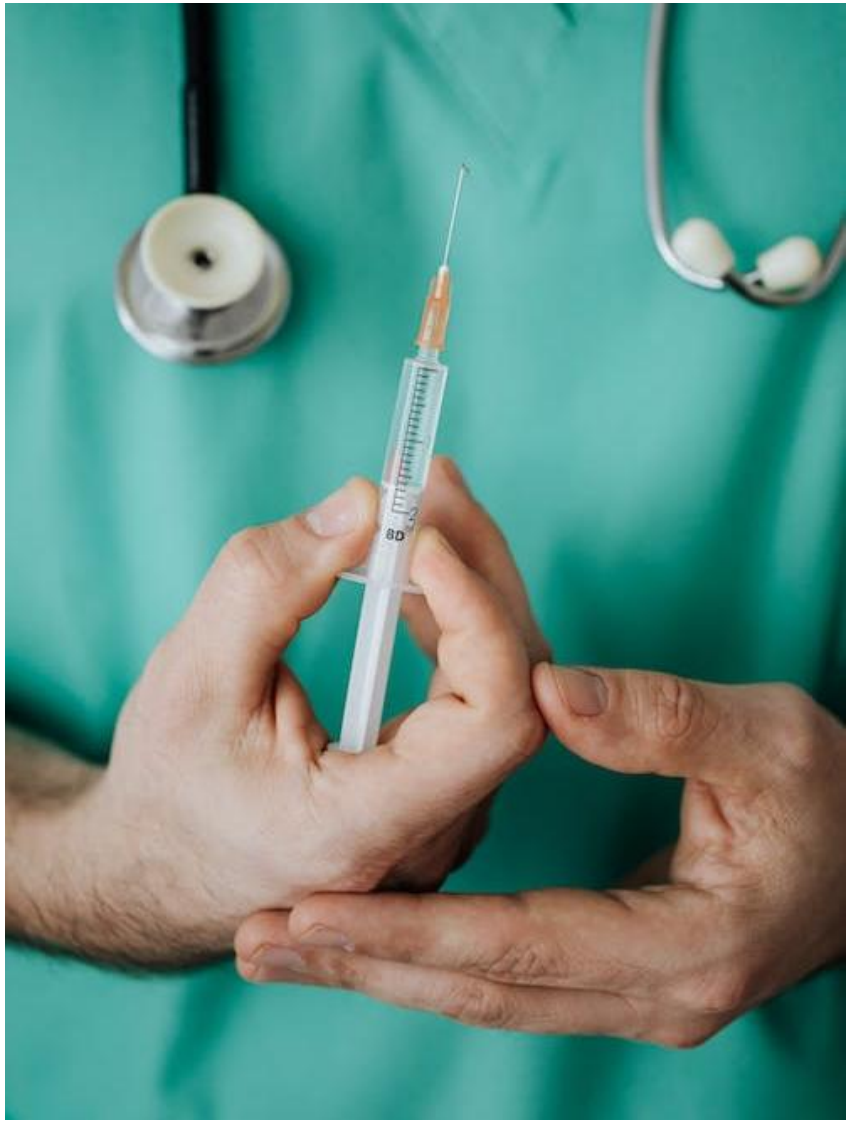
Example:

- 17 year old minor comes into clinic with parent
- Parent concerned about minor's sexual activity; wants minor to be given a pregnancy test
- Minor is very clear: doesn't want to be tested (withholding consent)
- If this particular minor had come in alone seeking a pregnancy test, the provider thinks they would've likely found that the minor had decisional capacity to consent to care like a pregnancy test
- Minor should not be forced to submit to pregnancy test

Frequently Asked Questions (FAQS)

Let’s do a deeper dive into FAQs about minor’s consent and:

- Vaccines
- Pregnancy care
- Mental health



Minor's Consent and Vaccines

Remember: G.S. 90-21.5(a) allows an unemancipated minor with decisional capacity to consent, on their own, to receive medical health services for **"prevention,** diagnosis and treatment" of:

- **Venereal diseases/other reportable diseases**
- Pregnancy
- Abuse of controlled substances/alcohol
- Emotional disturbance

FAQ: What About COVID Vaccines?

Early in the pandemic, a minor (with decisional capacity!) could consent on their own to COVID-19 vaccination

→ The vaccine was prevention of a reportable disease (novel coronavirus)

But then a few things changed…

Minor's Consent and Vaccines

The History

Early pandemic: COVID-19 ("novel coronavirus") is a reportable disease

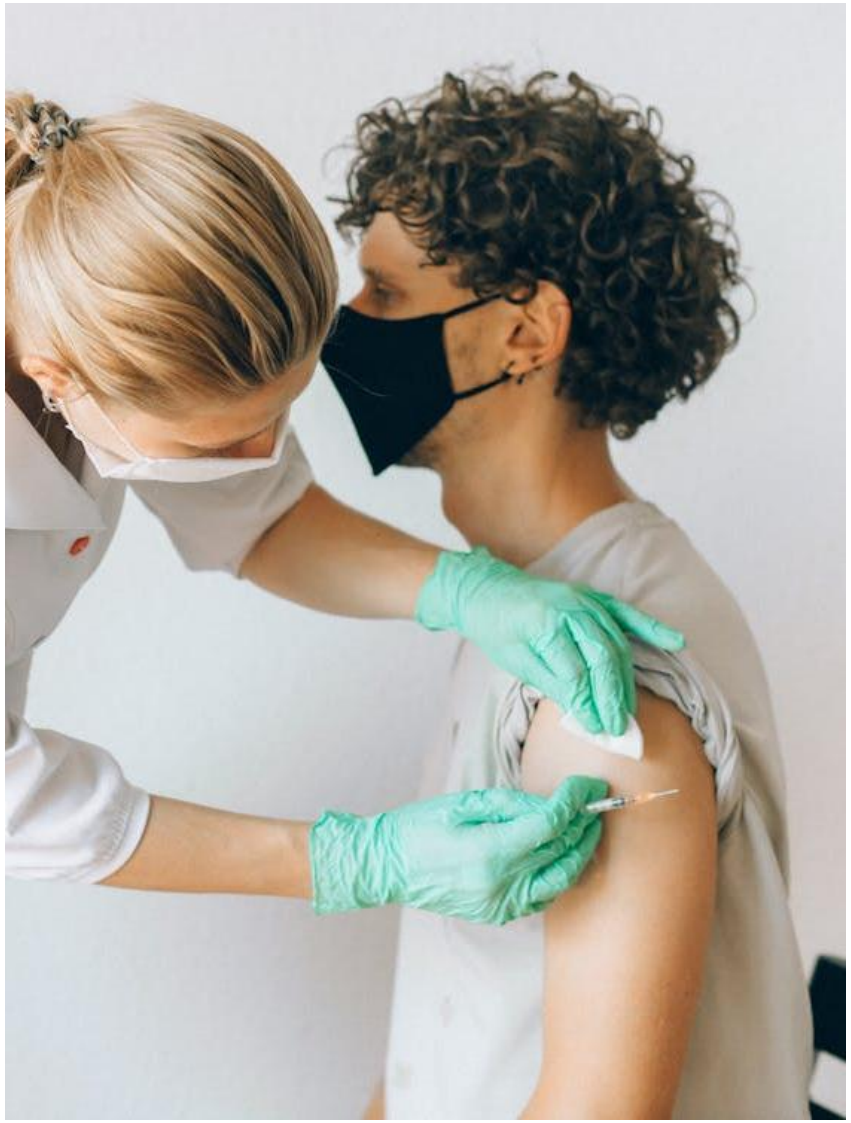
- "Novel coronavirus" added to NC's list of reportable diseases at 10A NCAC 41A .0101
- COVID vaccines first available under FDA emergency use authorization (EUA)
- Minors can consent to COVID EUA vaccines under G.S. 90-21.5(a) as "prevention" of a "reportable disease"

August 2021: change to NC minor's consent law

- Written parental consent now required for administration of *any* EUA vaccine to a minor
- COVID still a reportable disease, so minors can consent on their own to "fully approved" COVID vaccine

May 2023+: COVID-19 is no longer considered a "novel coronavirus"- no longer reportable in NC

- Written parental consent still required for administration of any EUA vaccine to a minor (including COVID)
- Parental consent (not necessarily written) now required for minor to get a "fully approved" COVID vaccine



FAQ: What About HPV Vaccines?

Can minors consent to HPV vaccine?

Answer: **Yes,** if the minor has the requisite decisional capacity.

Why?: G.S. 90-21.5(a) allows a minor (with decisional capacity) to consent to prevention of a venereal or reportable disease.

→ HPV is not reportable in NC (see 10A NCAC 41A .0101)

→ But HPV is a venereal disease (it is transmitted through sex)

→ HPV vaccines are therefore prevention of a venereal disease

FAQ: What About Pregnancy Care?

Can minors consent to contraception, pregnancy testing, and prenatal care?

Answer: **Yes, yes,** and **yes** (as long as they have decisional capacity!).

Why?: G.S. 90-21.5(a) allows a minor (with decisional capacity) to consent to the prevention, diagnosis, and treatment of pregnancy.

→ Contraception (including emergency contraception) = prevention of pregnancy

→ Pregnancy testing = diagnosis of pregnancy

→ Prenatal care = treatment of pregnancy

But remember: G.S. 90-21.5(a) specifically says minors can't consent on their own to sterilization or abortion.

FAQ: What About Mental Health Services?

Can a minor consent to therapy services and prescriptions for mental/behavioral health?

Answer: **Yes** and **yes**, as long as they have decisional capacity.

Why? G.S. 90-21.5(a) allows a minor (with decisional capacity) to consent to the prevention, diagnosis, and treatment for emotional disturbance.

→ "Emotional disturbance"- based on historical meaning and use = mental and behavioral health issues

→ Therapy and certain medications (e.g., SSRIs) are treatment for emotional disturbance

But remember: G.S. 90-21.5(a) specifically says minors can't consent on their own to admission to 24-hour mental health facility except in an emergency.

Also remember: A minor can only give consent to a physician or someone working under a physician. There are many mental health providers who practice without a connection to a physician. In these situations, minor's consent cannot be used.

Knowledge Check

Scenario: Margaret is 15 years old, unemancipated, and sexually active. She's interested in starting hormonal contraception and wants to be tested for gonorrhea. Margaret goes to see a physician's assistant (PA) at the local health department. The PA has a conversation with Margaret about why she wants these services, the risks and benefits, alternative options, etc. and determines that Margaret has the decisional capacity to make decisions about starting birth control and receiving gonorrhea testing.

Question: Can Margaret be provided with these services under NC's minor's consent law?

Knowledge Check

Scenario: Margaret is 15 years old, unemancipated, and sexually active. She's interested in starting hormonal contraception and wants to be tested for gonorrhea. Margaret goes to see a physician's assistant (PA) at the local health department. The PA has a conversation with Margaret about why she wants these services, the risks and benefits, alternative options, etc. and determines that Margaret has the decisional capacity to make decisions about starting birth control and receiving gonorrhea testing.

Question: Can Margaret be provided with these services under NC's minor's consent law?

Answer: Yes. Birth control is a method of preventing pregnancy. Because gonorrhea is a reportable disease, the STI testing falls under diagnosis of a venereal disease or other reportable disease.

The PA has also determined that Margaret has the decisional capacity necessary to consent to these health services. The PA works under the supervision/direction of a physician and can therefore accept consent from Margaret.

Knowledge Check

Scenario: Jay is 17 years old and presents at the local health department inquiring about COVID-19 vaccines. Jay has already received the primary COVID-19 vaccine series and a booster about 9 months ago. Jay wants to receive the most up-to-date COVID vaccine today and asks if they can receive it on their own consent (without involving Jay's parents).

Question: Can Jay access the newest COVID vaccine on their own consent?

Knowledge Check

Scenario: Jay is 17 years old and presents at the local health department inquiring about COVID-19 vaccines. Jay has already received the primary COVID-19 vaccine series and a booster about 9 months ago. Jay wants to receive the most up-to-date COVID vaccine today and asks if they can receive it on their own consent (without involving Jay's parents).

Question: Can Jay access the newest COVID vaccine on their own consent?

Answer: No. As of May 2023, COVID is no longer considered a "novel coronavirus" and is therefore no longer a reportable disease in North Carolina. Therefore, even though Jay has received COVID vaccines in the past, Jay cannot access the COVID vaccine now under the NC minor's consent law. Jay needs one of the following:

- Written parental consent for a COVID vaccine that is under an EUA
- Parental consent (not necessarily written) for a "fully approved" COVID vaccine

Before we shift gears…

What questions do you have about minor's consent?

Other Pathways for Consent to Care for Minors

Consent and Common Pathways for Providing Care to Minor Patients*

Category	Name	Description	Citation
Minor's Consent	Minor's consent	A minor with decisional capacity may give consent to a physician (or provider working under the direction of a physician) for the prevention, diagnosis, or treatment of conditions specified in the statute	G.S. 90-21.5(a)
Urgent/Emergency Care	Urgent/emergency care provided by physicians	A physician (or provider working under the physician's direction) may provide care in certain time-sensitive situations specified in the statute without first obtaining parental consent.	G.S. 90-21.1
	Urgent/emergency care provided by school employees	Public school employees authorized by their local board of education may provide first aid, emergency care, and life saving techniques without first obtaining parental consent.	G.S. 115C-375.1
Non-Parent Authorized to Consent to Care	DSS director consents for minor's care	The DSS director (or her designee) may consent to routine and emergency care, as well as testing and evaluation in exigent circumstances, for a minor in DSS custody. DSS director (or designee) may also consent to other care as set out in a court order.	G.S. 7B-505.1
	Parent authorizes non-parent to consent using a HCPOA	A "custodial parent" may delegate the parent's consenting authority to another person using a health care power of attorney (HCPOA). HCPOA can be broad or narrow in scope and may be time-limited. Note: This is not the exclusive method for a parent to delegate consenting authority to a non-parent.	G.S. 32A, Article 4
Specific Health Care Services	Abortion	In addition to a parent, a grandparent with whom a minor has been living for 6 months can consent to an abortion for the minor. Alternatively, a court may waive the requirement for parental consent to an abortion in limited circumstances. Requirements of G.S. 90, Art. 1I must also still be met.	G.S. 90-21.7, 90-21.8
Parental Consent	Parental consent to treatment	Parent (natural or adoptive parent whose rights have not been limited or terminated by a custody or court order; legal guardian; or person standing *in loco parentis*) consents to care that meets the definition of "treatment." Consent must be memorialized in writing or otherwise documented.	G.S. 90-21.10A, 21.10B, 21.10C

**Chart created by K. Leloudis- UNC SOG- Last updated 12/2023*

Urgent/Emergency Care Proved by Physicians

Under G.S. 90-21.1, a physician* can provide care to a minor in certain urgent or emergency situations without first obtaining consent from the minor's parent

- Specific criteria must be met- see G.S. 90-21.1, 21.2, and 21.3
- Example: child presents at ER unconscious and alone; child's identity is not known; child needs immediate care
- Example: child's identity and parents are known; child needs immediate care; delaying care to track down child's parent and obtain consent could cause the child's condition to seriously worsen

**Extends to providers working under the direction of a physician*

Urgent/Emergency Care Provided by School Employees

G.S. 115C-375.1 allows designated public school employees to administer first aid, emergency care, and other life saving techniques to students

- "First aid," "emergency care," and "life saving techniques" are not defined
- However, this likely includes things such as:
  - Cleaning a scraped knee and providing a bandage and ice pack
  - Administering an EpiPen
  - Administering CPR

Common misconception: school staff can consent to care as a person standing *in loco parentis* (PILP)

- Not supported by law- school staff are not PILPs

Knowledge Check

Scenario: Luke, a third-grader, has no known history of allergic reactions. During lunch, Luke's classmate offers to share her cashew butter sandwich with him. Within moments, Luke begins displaying symptoms of anaphylaxis and is struggling to breathe. Luke's teacher rushes Luke to the school nurse's office. The school nurse assesses Luke quickly and believes it is necessary to administer an Epipen.

Question: Does the school nurse need to pause to obtain parental consent before administering the Epipen?

Knowledge Check

Scenario: Luke, a third-grader, has no known history of allergic reactions. During lunch, Luke's classmate offers to share her cashew butter sandwich with him. Within moments, Luke begins displaying symptoms of anaphylaxis and is struggling to breathe. Luke's teacher rushes Luke to the school nurse's office. The school nurse assesses Luke quickly and believes it is necessary to administer an Epipen.

Question: Does the school nurse need to pause to obtain parental consent before administering the Epipen?

Answer: No. School employees who are authorized to provide first aid, emergency care, or other life-saving techniques to students are not required to pause and get parental consent first. (This continues to be true following the passage of S.L. 2023-106, also known as S49 or the Parent's Bill of Rights).

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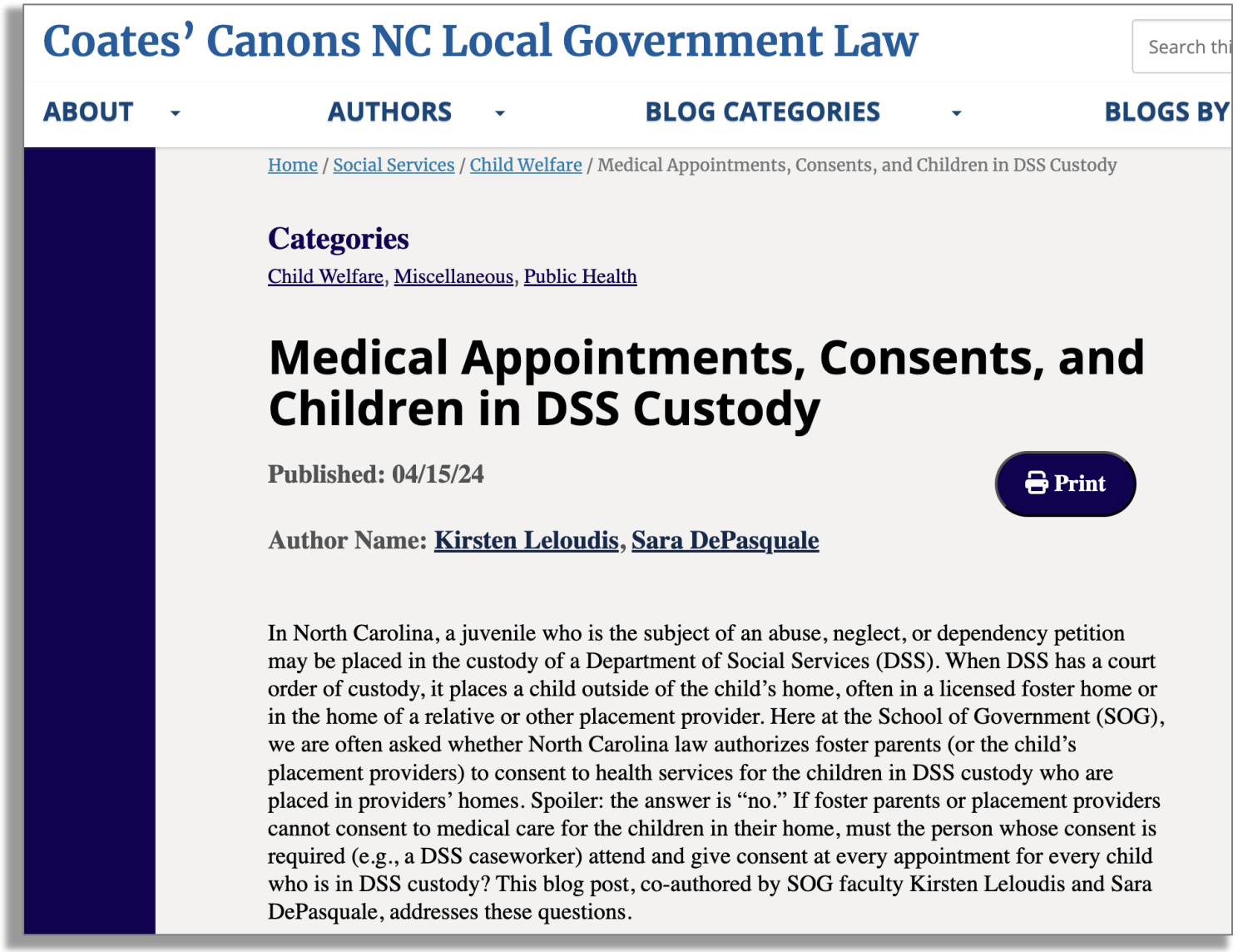
Non-Parent Given Authority to Consent: DSS Director

G.S. 7B-505.1 authorizes the DSS director to consent to certain types of care for a child who is in DSS custody

Important things to know:

- Authority to consent is given to the DSS director- but director can also delegate that authority to a DSS caseworker (who then gives consent)
- DSS director can only consent to routine care, emergency care, and testing/evaluation in exigent circumstances (unless a court order says otherwise)
- **Foster parents not authorized to consent to care**



A Note About Foster Parents

No NC law that authorizes foster parents to consent to care for their foster child

DSS director can delegate their authority to consent to care to their "staff" per G.S. 108A-14(d)

- Foster parents are not DSS staff
- Foster parents are also not PILPs

For more information, see this blog post: https://canons.sog.unc.edu/2024/04/consent-dss-custody/

Non-Parent Given Authority to Consent: HCPOA

G.S. 32A, Art. 4 allows a “custodial parent” to empower an agent to consent to care for the parent’s minor child using a health care power of attorney (HCPOA) authorization

- HCPOA template is included in the statutes
- Can be broad or narrow in scope- cannot be used to let agent withdraw or withhold life sustaining care
- Custodial parent = natural or adoptive parent with legal custody

Statute says the HCPOA is a “non-exclusive” method for parents to delegate authority to consent for a minor’s care

Knowledge Check

Scenario: Bex is 13 and in the custody of her county's Department of Social Services (DSS). Bex is currently living with a foster family. Bex's parents are also receiving DSS services and the goal is for Bex and her parents to be reunified in the next few months. Bex has a well-child visit scheduled for this week.

Question: Can the DSS director (or their designee) give consent for Bex's well-child visit?

Knowledge Check

Scenario: Bex is 13 and in the custody of her county's Department of Social Services (DSS). Bex is currently living with a foster family. Bex's parents are also receiving DSS services and the goal is for Bex and her parents to be reunified in the next few months. Bex has a well-child visit scheduled for this week.

Question: Can the DSS director (or their designee) give consent for Bex's well-child visit?

Answer: Yes. This is routine care, which the DSS director (or designee) is authorized to consent to under G.S. 7B-505.1.

Note that Bex's foster parents do not have a role in providing consent to health care services. Foster parents are not parents, guardians, custodians, or PILPs and do not have legal authority to consent to care for their foster children.

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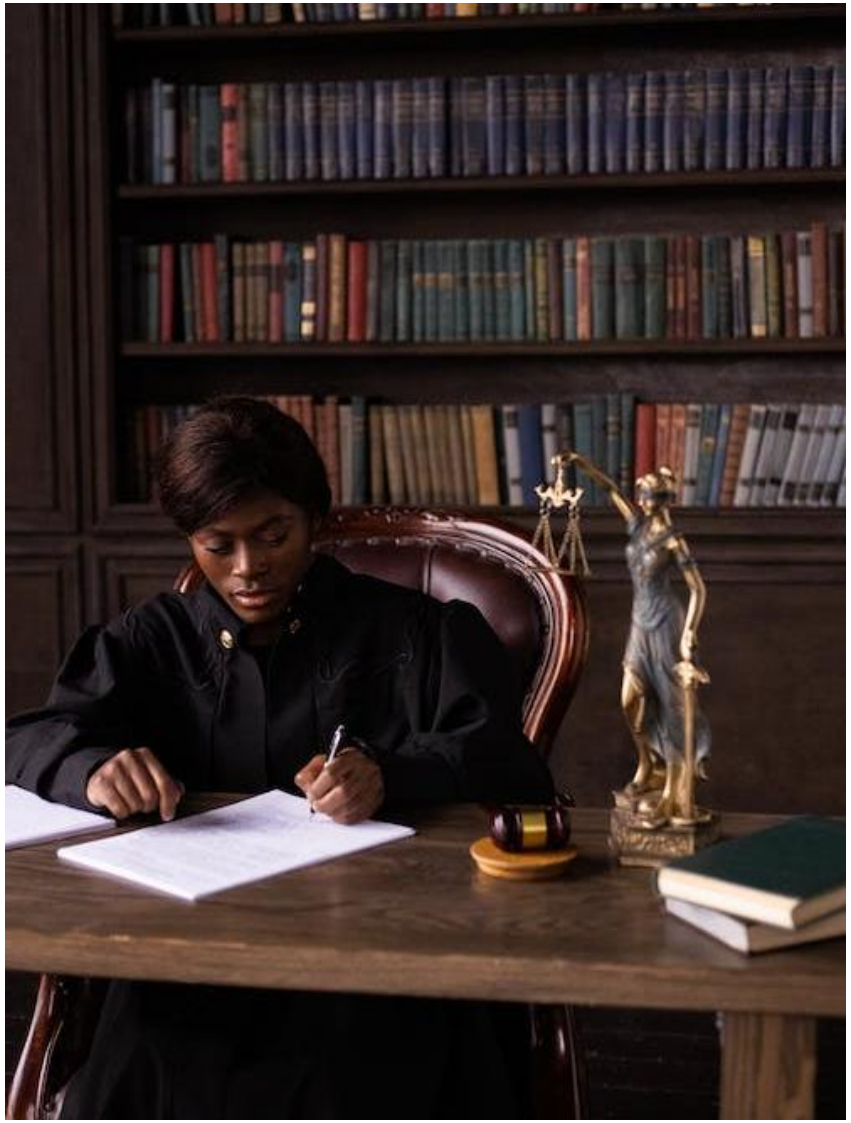

Specific Health Services: Abortion

Under G.S. 90-21.7, provider must obtain consent of the minor and one of the following parent-like figures:

- A parent who has custody of the minor
- Non-parent who is the minor's legal guardian or custodian
- A parent who the minors lives with
- A grandparent who the minor has been living with for 6+ months before the date on which the minor gives written consent to the abortion

Exception: a judge may also waive the parental consent requirement when certain criteria are met ("judicial waiver")

Note: additional consent requirements for abortion set out at G.S. 90, Art. 1I

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Parental Consent

If we are going to talk about parental consent to health services for minor patients, we need to first talk about **S.L. 2023-106**

S.L. 2023-106 (S 49)

Part 1

- Creates a “Parent’s Bill of Rights”
- Effective August 16, 2023

Part 2

- Outlines requirements related to parents’ involvement in their child’s education
- Effective date was August 16, 2023- budget bill (H 259) changed to various 2024 effective dates

Part 3

- Requires health care practitioners and facilities to obtain parental consent before providing treatment to a minor
- Effective December 1, 2023

What Did S.L. 2023-106 Change?

Before S.L. 2023-106, Part 3	After S.L. 2023-106, Part 3
Parental consent required for most care for minors • *Not set out in statute, but implied by other statutes that say when care can be provided to a minor without parental consent*	**Parental consent required for most care for minors** • *Parental consent requirement is now expressly stated in statutes* • *New law also includes defined terms and specific requirement that parental consent be written or otherwise documented*

What Does the Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

*__Bolded__ words have specific definitions under the law

What Does the Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

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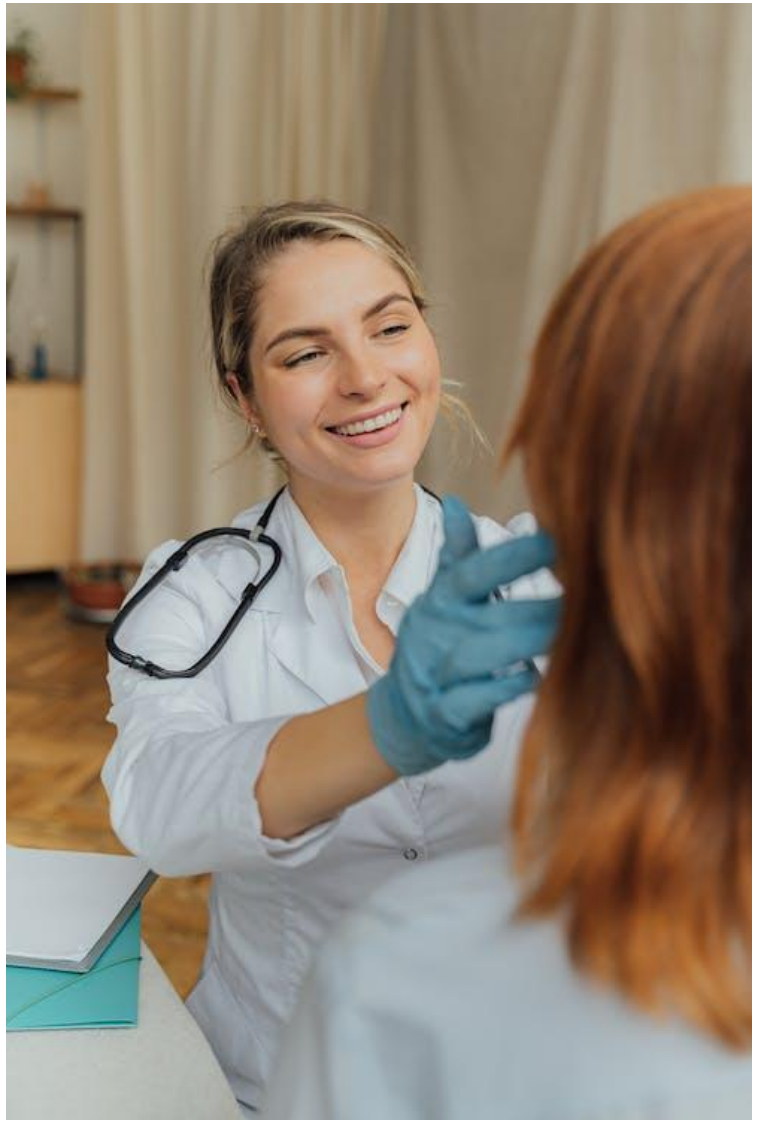


Who is a “Health Care Practitioner?”

G.S. 90- includes 40+ categories of professionals

- Examples: physicians, PAs, NPs, nurses, dentists, pharmacists, athletic trainers, occupational therapists, and more
- Some professionals licensed under G.S. 90 likely not covered because they do not provide health care to humans (e.g., vets)

G.S. 90B- social workers

G.S. 90C- recreational therapists

G.S. 115C- public school employees

What is a “Health Care Facility?”

G.S. 131E- licensure for hospitals and public hospital authorities

G.S. 122C- licensure for certain behavioral/mental health facilities

Note: Local health departments (LHDs) generally do not meet the definition of “health care facility”- however, LHDs likely employ “health care practitioners” who are subject to S.L. 2023-106, Part 3.

What Does the Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

*__Bolded__ words have specific definitions under the law

Who is a "Parent?"

Parent- natural (biological) or adoptive parent

- … whose right to make health care decisions for the minor have not been terminated or limited by a court or custody order

Guardian- a person appointed to that role by a court

Person standing *in loco parentis* (PILP)- person who has assumed parental responsibilities, including support and maintenance of the minor

- Remember: does not include a babysitter, foster parent, or teacher

What Does the Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

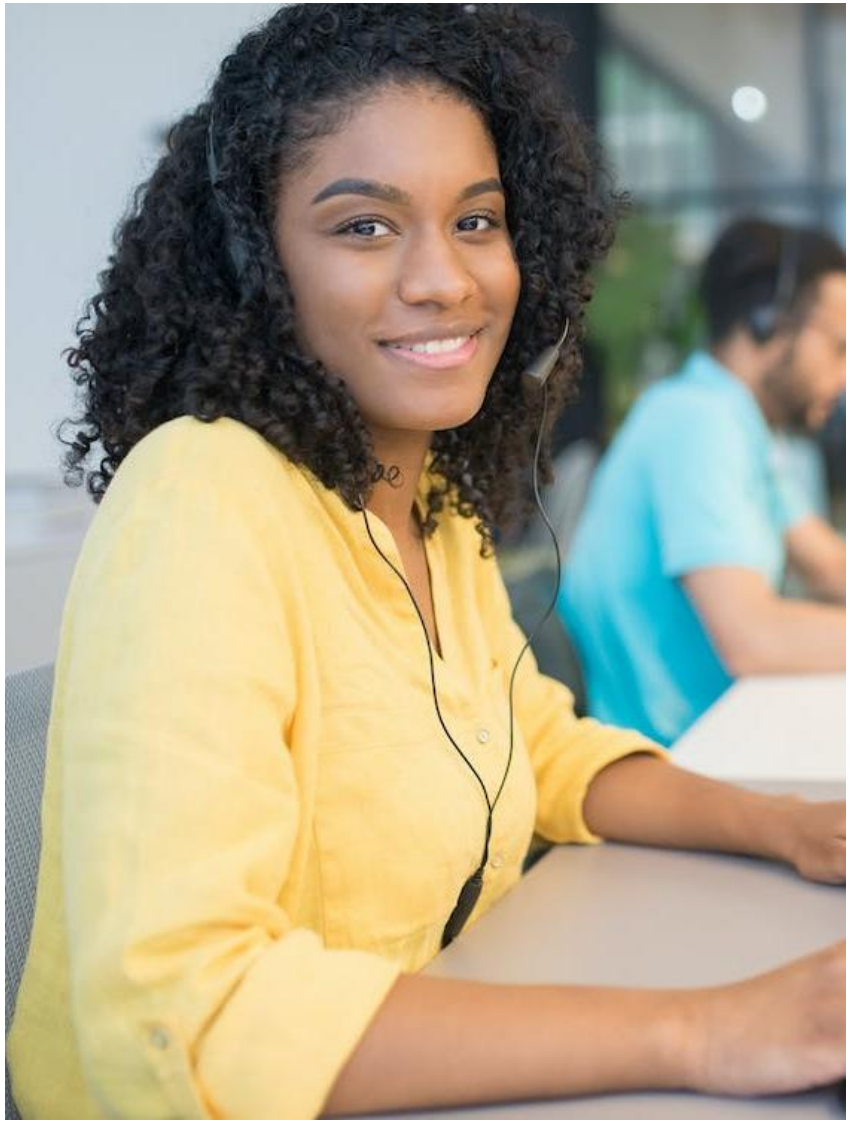
health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

*__Bolded__ words have specific definitions under the law

What is “Treatment?”

S.L. 2023-106, Part 3 definition:

“Any medical procedure or treatment, including X-rays, the administration of drugs, blood transfusions, use of anesthetics, and laboratory or other diagnostic procedures employed by or ordered by a health care practitioner, that is used, employed, or ordered to be used or employed commensurate with the exercise of reasonable care and equal to the standards of medical practice normally employed in the community where the health care practitioner administers treatment to the minor child.”



What is Not “Treatment?”

Services that are not required to be ordered or performed by a “health care practitioner” are not “treatment”

- Examples: peer-to-peer tobacco cessation, certain community education or birth doula services
- These types of services are not “treatment” even if they happen to be provided by a health care practitioner
  - Example: NP who volunteers as a peer tobacco cessation coach

What is *Not* "Treatment?"

Pre-school and school health screenings

- Used for early detection in asymptomatic pop.- not to diagnose/ treat
- Under NC law, vision and hearing screenings can be performed by lay (non-licensed) personnel
- Dental screenings must be performed by public health dental hygienists, but are considered "non-clinical procedures" under NC law

Note: health screenings offered in NC public schools may be subject to new requirement in S.L. 2023-106, Part 2

- School must have procedures for notifying parents of the means for the parent to consent to health screenings
- Means to consent could be opt in or opt out procedures

What Does the Law Require?

Except as otherwise set out in G.S. 90, Article 1A or in a court order,

health care practitioners and **health care facilities** must obtain written or documented consent from the **parent** of a **minor** before providing **treatment** to that **minor**.

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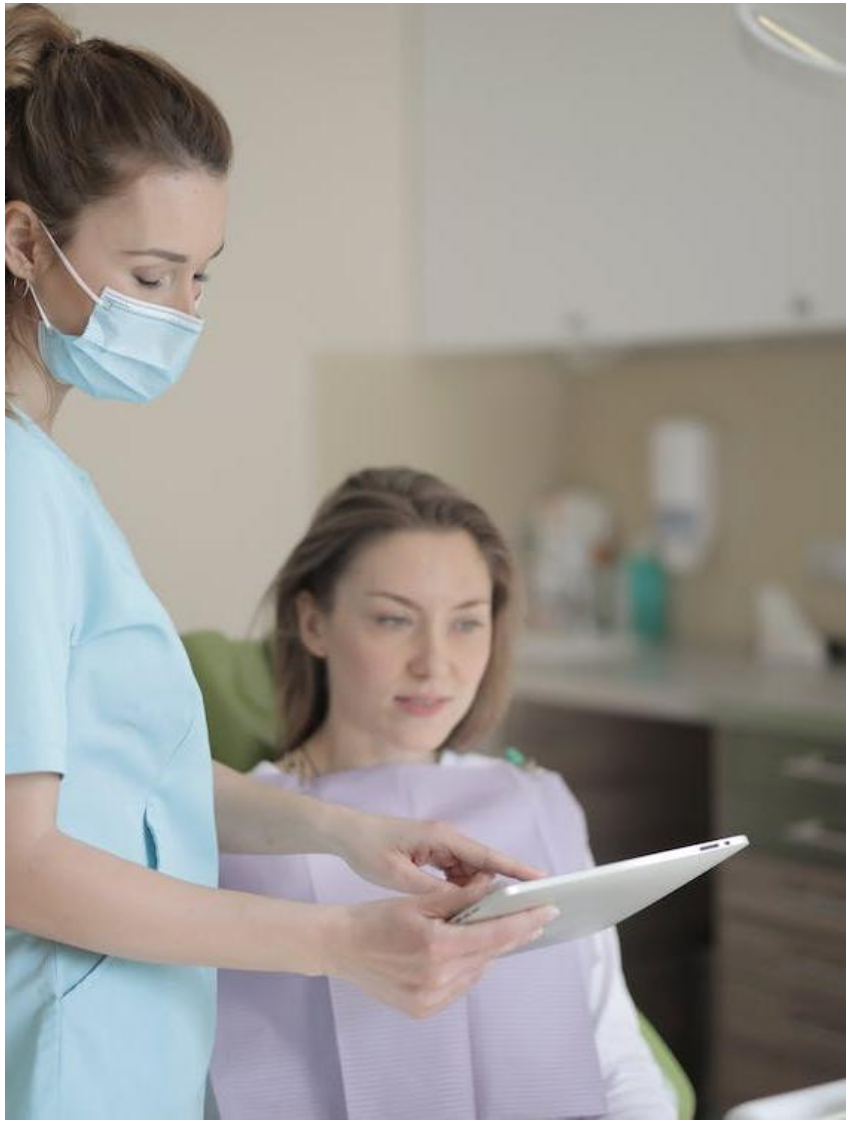


The Consent Process

Consent is a process- not just about getting a signature or a “yes”

- Involves exchange between provider and patient
- Discussion of risks, benefits, alternatives, and more- this is what makes consent “informed”

S.L. 2023-106, Part 3 does not change law or standards for informed consent

- The law codifies requirement that the result of the consent process- a parent agreeing to a treatment for their minor child- is memorialized in writing or otherwise documented

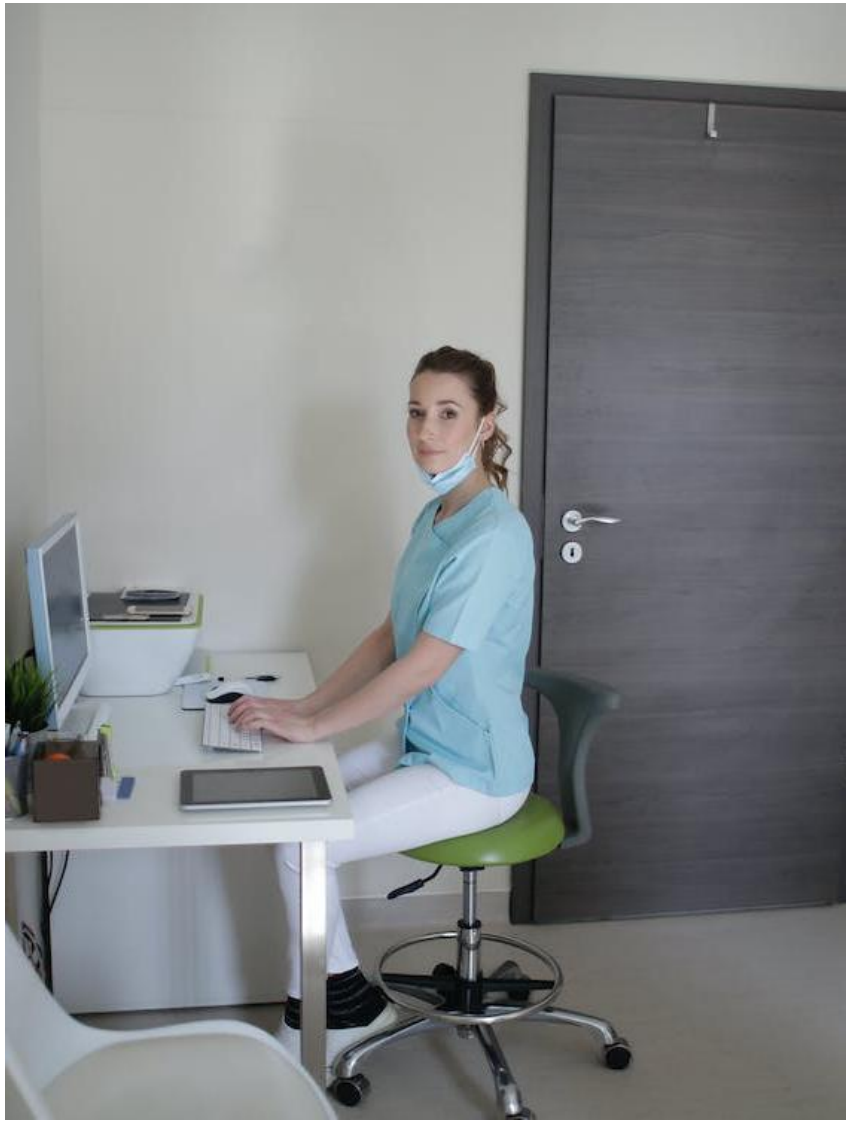
Written Consent

The law does not define “written consent”

Could be in printed hardcopy or electronic

Common examples:

- General consent to treat
- Standardized forms created by a government agency
- Consent checklists



Documented Consent

Law does not define “documented consent”

Common example:

- Provider and patient’s parent go through the consent process for a specific treatment and parent orally gives consent to the treatment. Provider then documents that consent was given in the minor patient’s record.

The law does not appear to prohibit oral consent given over the phone and then documented

- … but appropriateness of this approach will depend on various factors, including standard of care, practitioner’s confidence that person on the phone is a parent, nature of the treatment, etc.

Written v. Documented: Which One Should I Use?

Law requires written “or” documented consent

- Does not appear to give preference to one approach v. the other

However, here may be situations where written consent is required by law or is considered best practice

- Example: G.S. 90-21.5(a1) requires that a health care provider obtain “written consent” from a parent or legal guardian before administering a vaccine that is still under an emergency use authorization (EUA) to a minor

Knowledge Check

True or false?

In situations where parental consent must be obtained before providing treatment to a minor, it is *never* acceptable to obtain consent from a parent orally over the phone and then document the consent in the minor's health record.

Knowledge Check

True or false?

In situations where parental consent must be obtained before providing treatment to a minor, it is *never* acceptable to obtain consent from a parent orally over the phone and then document the consent in the minor's health record.

This is **false.** S.L. 2023-106, Part 3 requires "written or documented" parental consent. The law does not appear to prohibit oral consent given over the phone and then documented in the minor patient's record.

→ *However,* the appropriateness of this approach will depend on various factors, including standard of care, practitioner's confidence that person on the phone is a parent, nature of the treatment, etc.

Image References

The image on slide #4 belong to the presenter and may be copied and used as part of distribution of this slide deck.

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Additional information about the license and use of images from Pexels can be found here: https://www.pexels.com/license/.

Other References

Statutory Citations

- G.S. 90-21.5(a): minor's consent law
- G.S. 90-21.1: provision of care by physicians in urgent/emergency situations
- G.S. 115C-375.1: provision of first aid, emergency care, and life saving techniques by certain public school employees
- G.S. 7B-505.1: DSS director authority to consent to certain care for minor in DSS custody
- G.S. 32A, Art. 4: minor health care power of attorney
- G.S. 90-21.7, 21.8: consent and abortion services for a minor
- G.S. 90-21.10A, 21.10B, 21.10C: newly codified parental consent for treatment requirements

Other Materials

- CDC, "State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services," last accessed February 2, 2024, https://www.cdc.gov/hiv/policies/law/states/minors.html

Additional Resources

UNC School of Government Bulletins

- January 2024- “Consent to Care for Minor Parents: An Update on the Legal Landscape after S.L. 2023-106, Part III,” https://www.sog.unc.edu/publications/bulletins/consent-care-minor-patients-update-legal-landscape-after-sl-2023-106-part-iii

UNC School of Government Blog Posts on S.L. 2023-106

- August 2023- "What’s the Status of North Carolina’s Minor’s Consent Law After S.L. 2023-106?,” https://canons.sog.unc.edu/2023/08/sl2023-106-and-minors-consent/
- September 2023- "S.L. 2023-106: Parents’ Rights, Who Is a Parent, and Juvenile Abuse, Neglect, and Dependency Cases," https://canons.sog.unc.edu/2023/09/s-l-2023-106-parents-rights-who-is-a-parent-and-juvenile-abuse-neglect-and-dependency-cases/ (by Sara DePasquale)
- October 2023- “What Is (or Isn’t) “Treatment” of a Minor Under S.L. 2023-106, Part 3?,” https://canons.sog.unc.edu/2023/10/sl2023-106_treatment/
- November 2023- “Obtaining Written or Documented Parental Consent for Treatment of a Minor Under S.L 2023-106, Part 3,” https://canons.sog.unc.edu/2023/11/parental_consent_treatment/

UNC School of Government Blog Posts on Related Topics

- April 2024- “Medical Appointments, Consents, and Children in DSS Custody,” https://canons.sog.unc.edu/2024/04/consent-dss-custody/
- May 2023- "COVID-19 Is No Longer “Reportable” in North Carolina: Implications for Minor’s Consent," https://canons.sog.unc.edu/2023/05/covid-19-is-no-longer-reportable-in-north-carolina-minors-consent/
- March 2023- “Who is a “Person Standing In Loco Parentis” and When Can They Consent to Health Care for a Minor?," https://canons.sog.unc.edu/2023/03/in-loco-parentis-consent-healthcare-minors/
- October 2022- "An Update on Minor’s Consent: Changes to the Law and Implications for COVID-19, Mpox, and Beyond," https://canons.sog.unc.edu/2022/10/minors-consent-change-covid19-monkeypox-and-beyond/

Questions?

Thank you for your time.

If you have additional questions at a later date, please send me an email or give me a call.

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