

Minor's Authority to Consent to Health Care

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Outline

- General rule of parental consent
- Exceptions:
 - Emancipated minors
 - Parent authorizes another adult to consent
 - Emergencies and other urgent circumstances
 - Minor's consent statute
- Consent for minor's abortion

General rule: Parental consent

- Parent
 - Biological or adoptive
 - Married or unmarried
 - Custodial or not (rare exceptions)
- Parent substitute
 - Legal guardian
 - Legal custodian
 - Person acting *in loco parentis*



Exceptions

- **Emancipated minors**
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Emancipation

What does it mean?	When does it happen?
<ul style="list-style-type: none"> • No longer subject to parental supervision and control • May consent to own medical treatment 	<ul style="list-style-type: none"> • Occurs at age 18 for most young people • Three routes to emancipation for minors under age 18

Routes to emancipation for < 18

Marriage	<ul style="list-style-type: none"> • 14-15: baby + judge's permission • 16-17: parents' permission
Court order	<ul style="list-style-type: none"> • 16 or 17 • Petition to court must give reasons for seeking emancipation and describe minor's plan for providing for his or her own needs and living expenses
Military	<ul style="list-style-type: none"> • 17 years old + parents' permission



Exceptions

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Parent authorizes another adult

- Parent authorizes another adult to consent to a minor's treatment during a period of time the parent is unavailable
- Special rule for immunizations



Parent authorizes another adult – health care generally

§ 32A-34. Statutory form authorization to consent to health care for minor.
The use of the following form in the creation of any authorization to consent to health care for minor is lawful and, when used, it shall meet the requirements and be construed in accordance with the provisions of this Article.

"Authorization to Consent to Health Care for Minor."
I, _____ of _____ County, _____, am the custodial parent having legal custody of _____, a minor child, age _____, born _____. I authorize _____ an adult in whose care the minor child has been entrusted, and who resides at _____ to do any act which may be necessary or proper to provide for the health care of the minor child, including, but not limited to, the power (i) to provide for such health care at any hospital or other institution, or the employing of any physician, dentist, nurse, or other person whose services may be needed for such health care, and (ii) to consent to and authorize any health care, including administration of anesthesia, X-ray examination, performance of operations, and other procedures by physicians, dentists, and other medical personnel except the withholding or withdrawal of life sustaining procedures.
(Optional: This consent shall be effective from the date of execution to and including _____.)
By signing here, I indicate that I have the understanding and capacity to communicate health care decisions and that I am fully informed as to the contents of this document and understand the full import of this grant of powers to the agent named herein.

(SEAL) _____ Date _____
Custodial Parent

STATE OF NORTH CAROLINA
COUNTY OF _____

On this _____ day of _____, personally appeared before me the named _____ to the known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledges that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

Notary Public

My Commission Expires: _____
(OFFICIAL SEALS) (1993, c. 150, s. 1; 1999-456, s. 59.)

- Statutory form available but not required (G.S. 32A-34)
- Limitation: may not use to authorize another adult to consent to withholding or withdrawal of life-sustaining procedures

Parent authorizes another adult – immunizations only

- Physician or local health department may immunize a minor who is presented for immunization by an adult who signs a statement that s/he has been authorized by the parent to obtain the immunization.
- Adult presenting child must sign statement but no requirement for writing from parent.
- Child in DSS custody: See Sara DePasquale's bulletin



Exceptions

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Emergencies/urgent circumstances

- A health care provider may treat a minor without parental consent if:
 - Minor's identity is unknown
 - Effort to obtain parental consent would endanger minor's life or health
 - Parent cannot be located or contacted with reasonable diligence during time treatment is needed
 - Parent has refused treatment and delay caused by attempt to obtain a court order would endanger the child



Emergency

- 14-year-old boy is in a car accident. EMS takes him to the hospital, where physicians determine he needs emergency surgery. Another passenger is able to tell hospital staff the boy's name, age, and the names and location of his parents.
- Is the need for immediate treatment so apparent that trying to contact his parents would endanger his life or worsen his physical condition?
 - If yes, may proceed without parental consent.
 - Special rule for surgery: usually a second physician must agree it's necessary.

Not an emergency, but ...



- 16-year-old boy is a migrant farmworker. He has had a red itchy rash on his arms for a couple of weeks. The rash hurts, makes it hard for him to work, and is getting worse. His parents are not in the US.
- Considerations:
 - Does the boy have another responsible adult, such as a guardian or person standing in loco parentis?
 - If not, can his parents be reached to give consent?
- HCP may treat without parental consent if no other adult and parents can't be reached with reasonable diligence.



Parent refuses treatment

- 14-year-old boy is in a car accident with his parent. EMS takes him to the hospital, where physicians determine he needs surgery. Parent refuses to consent to surgery because it will require a blood transfusion.
- Will delay required to obtain a court order endanger boy's life or seriously worsen his condition?
 - If no, procedure for obtaining court order in G.S. 7B-3600.
 - If yes, may proceed over parental objection if two licensed physicians agree immediate treatment is necessary to prevent immediate harm to the child.



Exceptions

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What is required to be able to give consent to treatment?

Legal capacity	Decisional capacity
<ul style="list-style-type: none"> • Legal recognition of a class of individuals' authority to give informed consent to treatment <ul style="list-style-type: none"> • Example: Everyone over age 18 • Not individualized; if you're in the class you have legal capacity to consent 	<ul style="list-style-type: none"> • Particular individual is capable of making and communicating his or her own health care decisions • Individualized determination: is <i>this</i> person capable of making and communicating <i>this</i> decision?

What is required for a minor to give consent for own treatment?

Legal capacity	Decisional capacity
<ul style="list-style-type: none"> • Legal recognition that the minor may consent <ul style="list-style-type: none"> • Emancipated minors • Minor's consent laws 	<ul style="list-style-type: none"> • Individualized determination: is <i>this</i> minor capable of making and communicating <i>this</i> decision?



Minor's consent law (GS 90-21.5)

- Gives minors legal capacity to consent to services for the prevention, diagnosis, or treatment of:
 - Sexually transmitted infections or other reportable communicable diseases
 - Pregnancy (but minors may not receive abortions or medical sterilization on their own consent)
 - Emotional disturbance (but minors may not consent to admission to a 24-hour facility, except in emergencies)
 - Abuse of controlled substances or alcohol (with the same restriction on admission to 24-hour facilities)

No bright-line age rule

- To give consent, minor needs:
 - **Legal capacity** (which GS 90-21.5 gives for certain services)
 - **Decisional capacity** (which is a developmental issue that can vary from child to child)



Confidentiality of minor's consent information: G.S. 90-21.4(b)

- Need **the minor** to authorize disclosure of information about treatment under minor's consent rule unless:
 - Essential to minor's life or health to notify parents, then may disclose to parents
 - Disclosure otherwise required by HIPAA and other confidentiality laws that apply to it (e.g., to report child abuse or neglect, etc.)

Assent vs. consent



- Expect health care providers to seek an adolescent's *assent* to certain care, even if legal authority to *consent* is given to an adult.
- See American Academy of Pediatrics position on informed consent, parental permission, and adolescent assent.

Abortion for unemancipated minor

Minor herself must give written consent

AND

Minor must have either written “parental” consent or a judicial waiver of the parental consent requirement

Adults who may consent to minor’s abortion

- A parent with custody of the minor
- The minor’s legal guardian or legal custodian
- A parent with whom the minor is living
- A grandparent with whom the minor has been living for at least 6 months immediately preceding the date the minor gives written consent

Judicial waiver

Procedure	Outcome
<ul style="list-style-type: none">• Minor petitions district court (any county) for waiver of parental consent requirement• Confidential hearing and ruling within 7 days• Lawyer/GAL must be available to minor• Evidence required: minor's maturity and understanding; nature, consequences, and alternatives to abortion; other evidence judge requests	<p>Judge must grant petition if:</p> <ul style="list-style-type: none">• Minor mature and well-informed enough to make decision alone, or• Deciding alone is in minor's best interest, or• Minor is a victim of rape or incest (if incest, judge must advise DSS)

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