

**HIPAA Personal Representatives:
Selected North Carolina General Statutes & Statutory Excerpts**

For purposes of HIPAA, a personal representative is a person who is authorized by law to make healthcare-related decisions for another person. This handout reprints several North Carolina statutes that authorize a person to make another person's healthcare-related decisions. It is organized to align with the organization of the HIPAA personal representatives rule, addressing adults and emancipated minors first, then unemancipated minors, then deceased individuals.

This is not a comprehensive list of all potentially applicable NC laws. For example, it does not include the statutes governing power of attorney or guardianship. Nor does it address circumstances such as organ donation or withdrawal of life-sustaining care. It is a selected list of statutes and statutory excerpts that are often consulted by local health departments to determine who constitutes a personal representative for a patient.

Adults and Emancipated Minors

§ 90-21.13. Informed consent to health care treatment or procedure.

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(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

- (1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a).
- (2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted.
- (3) An agent, with powers to make health care decisions for the patient, appointed by the patient pursuant to Chapter 32C of the General Statutes, to the extent of the authority granted.
- (4) The patient's spouse.
- (5) A majority of the patient's reasonably available parents and children who are at least 18 years of age.
- (6) A majority of the patient's reasonably available siblings who are at least 18 years of age.
- (7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

(c1) If none of the persons listed under subsection (c) of this section is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is confirmation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

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Unemancipated Minors

G.S. Chapter 90, Article 1A. Treatment of Minors, Part 1. General Provisions.

§ 90-21.1. When physician may treat minor without consent of parent, guardian or person in loco parentis.

It shall be lawful for any physician licensed to practice medicine in North Carolina to render treatment to any minor without first obtaining the consent and approval of either the father or mother of said child, or any person acting as guardian, or any person standing in loco parentis to said child where:

- (1) The parent or parents, the guardian, or a person standing in loco parentis to said child cannot be located or contacted with reasonable diligence during the time within which said minor needs to receive the treatment herein authorized, or
- (2) Where the identity of the child is unknown, or where the necessity for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the life of said minor, or
- (3) Where an effort to contact a parent, guardian, or person standing in loco parentis would result in a delay that would seriously worsen the physical condition of said minor, or
- (4) Where the parents refuse to consent to a procedure, and the necessity for immediate treatment is so apparent that the delay required to obtain a court order would endanger the life or seriously worsen the physical condition of the child. No treatment shall be administered to a child over the parent's objection as herein authorized unless the physician shall first obtain the opinion of another physician licensed to practice medicine in the State of North Carolina that such procedure is necessary to prevent immediate harm to the child.

Provided, however, that the refusal of a physician to use, perform or render treatment to a minor without the consent of the minor's parent, guardian, or person standing in the position of loco parentis, in accordance with this Article, shall not constitute grounds for a civil action or criminal proceedings against such physician.

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§ 90-21.4. Responsibility, liability and immunity of physicians.

(a) Any physician licensed to practice medicine in North Carolina providing health services to a minor under the terms, conditions and circumstances of this Article shall not be held liable in any civil or

criminal action for providing such services without having obtained permission from the minor's parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment. The physician shall not be relieved on the basis of this Article from liability for negligence in the diagnosis and treatment of a minor.

(b) The physician shall not notify a parent, legal guardian, person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment, without the permission of the minor, concerning the medical health services set out in G.S. 90-21.5(a), unless the situation in the opinion of the attending physician indicates that notification is essential to the life or health of the minor. If a parent, legal guardian[,] person standing in loco parentis, or a legal custodian other than a parent when granted specific authority in a custody order to consent to medical or psychiatric treatment contacts the physician concerning the treatment or medical services being provided to the minor, the physician may give information.

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

(a) 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.

(b) Any minor who is emancipated may consent to any medical treatment, dental and health services for himself or for his child.

Part 2. Parental or Judicial Consent for Abortion.

§ 90-21.6. Definitions.

For the purposes of Part 2 only of this Article, unless the context clearly requires otherwise:

- (1) "Unemancipated minor" or "minor" means any person under the age of 18 who has not been married or has not been emancipated pursuant to Article 35 of Chapter 7B of the General Statutes.
- (2) "Abortion" means the use or prescription of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a woman known to be pregnant, for reasons other than to save the life or preserve the health of an unborn child, to remove a dead unborn child, or to deliver an unborn child prematurely, by accepted medical procedures in order to preserve the health of both the mother and the unborn child.

§ 90-21.7. Parental consent required.

(a) No physician licensed to practice medicine in North Carolina shall perform an abortion upon an unemancipated minor unless the physician or agent thereof or another physician or agent thereof first obtains the written consent of the minor and of:

- (1) A parent with custody of the minor; or
- (2) The legal guardian or legal custodian of the minor; or
- (3) A parent with whom the minor is living; or
- (4) A grandparent with whom the minor has been living for at least six months immediately preceding the date of the minor's written consent.

(b) The pregnant minor may petition, on her own behalf or by guardian ad litem, the district court judge assigned to the juvenile proceedings in the district court where the minor resides or where she is physically present for a waiver of the parental consent requirement if:

- (1) None of the persons from whom consent must be obtained pursuant to this section is available to the physician performing the abortion or the physician's agent or the referring physician or the agent thereof within a reasonable time or manner; or
- (2) All of the persons from whom consent must be obtained pursuant to this section refuse to consent to the performance of an abortion; or
- (3) The minor elects not to seek consent of the person from whom consent is required.

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Deceased Individuals

§ 8-53. Communications between physician and patient.

No person, duly authorized to practice physic or surgery, shall be required to disclose any information which he may have acquired in attending a patient in a professional character, and which information was necessary to enable him to prescribe for such patient as a physician, or to do any act for him as a surgeon, and no such information shall be considered public records under G.S. 132-1. Confidential information obtained in medical records shall be furnished only on the authorization of the patient, or if deceased, the executor, administrator, or, in the case of unadministered estates, the next of kin. Any resident or presiding judge in the district, either at the trial or prior thereto, or the Industrial Commission pursuant to law may, subject to G.S. 8-53.6, compel disclosure if in his opinion disclosure is necessary to a proper administration of justice. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.