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*
- Parent authorizes another adult to consent
- Emergencies and other urgent circumstances
- Minor’s consent statute
# Emancipation

<table>
<thead>
<tr>
<th>What does it mean?</th>
<th>When does it happen?</th>
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<tbody>
<tr>
<td>• No longer subject to parental supervision and control</td>
<td>• Occurs at age 18 for most young people</td>
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<tr>
<td>• May consent to own medical treatment</td>
<td>• Three routes to emancipation for minors under age 18</td>
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## Routes to emancipation for < 18

| Marriage | • 14-15: baby + judge’s permission  
• 16-17: parents’ permission |
|-----------|----------------------------------|
| Court order | • 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 | • 17 years old + parents’ permission |
Exceptions

• Emancipated minors
• Parent authorizes another adult to consent
• Emergencies and other urgent circumstances
• Minor’s consent statute

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

- 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

- Emancipated minors
- Parent authorizes another adult to consent
- **Emergencies and other urgent circumstances**
- Minor’s consent statute

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

• Emancipated minors
• Parent authorizes another adult to consent
• Emergencies and other urgent circumstances
• Minor’s consent statute
### What is required to be able to give consent to treatment?

<table>
<thead>
<tr>
<th><strong>Legal capacity</strong></th>
<th><strong>Decisional capacity</strong></th>
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</table>
| • Legal recognition of a class of individuals’ authority to give informed consent to treatment  
  • Example: Everyone over age 18  
  • Not individualized; if you’re in the class you have legal capacity to consent | • Particular individual is capable of making and communicating his or her own health care decisions  
  • Individualized determination: is *this* person capable of making and communicating *this* decision? |

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

<table>
<thead>
<tr>
<th><strong>Legal capacity</strong></th>
<th><strong>Decisional capacity</strong></th>
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</table>
| • Legal recognition that the minor may consent  
  • Emancipated minors  
  • Minor’s consent laws | • Individualized determination: is *this* minor capable of making and communicating *this* 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

<table>
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<th>Procedure</th>
<th>Outcome</th>
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<tr>
<td>* Minor petitions district court (any county) for waiver of parental consent requirement*</td>
<td>Judge must grant petition if:</td>
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<tr>
<td>* Confidential hearing and ruling within 7 days*</td>
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<tr>
<td>* Lawyer/GAL must be available to minor*</td>
<td>* Minor mature and well-informed enough to make decision alone, or*</td>
</tr>
<tr>
<td>* Evidence required: minor’s maturity and understanding; nature, consequences, and alternatives to abortion; other evidence judge requests*</td>
<td>* Deciding alone is in minor’s best interest, or*</td>
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<td></td>
<td>* Minor is a victim of rape or incest (if incest, judge must advise DSS)*</td>
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