

Treatment of Minors

May I treat a minor without their parent or guardian present?

Georgia

The issue is probably more one of informed consent than general consent. There is nothing in Georgia law that specifically requires the parent/guardian to be present at the time of examination to give general consent. While written general consent is preferable (and is generally the standard), previously granted written general consent and even verbal general consent can work in certain cases. However, if the physician is going to initiate or propose a treatment or procedure that involves a material risk to the patient, then informed consent is necessary. Given the informed consent requirements of OCGA 31-9-6.1 and the Ketchup v. Howard case, it may be practically impossible to obtain valid informed consent of the parent/guardian in all cases if they are not present (even when faxed forms are utilized). The medical practice should obtain legal advice from a licensed attorney to develop appropriate policies and procedures to effectively deal with this situation. Additionally, be aware that consent is implied when emergency care is required. Emergency care is defined as care without which death or worsening of condition will occur with the potential of lasting consequences.

Alabama

Consent for medical treatment or surgery is required except in emergency situations. Consent can be provided orally or in writing. Parents or legal guardians are authorized by law to consent on behalf of minors. Parental consent is not required for medical treatment if the delay in obtaining consent would increase the risk to the minor's life, health, or mental health. Ala. Code § 22-8-3.

In limited situation a minor can consent to medical treatment without parental consent. A minor can consent to medical treatment if he or she is 14 years of age or older, has graduated from high school, has been married, or is pregnant with child. Ala. Code § 22-8-4. Any minor that has been married or divorced may consent to medical treatment for himself or his child. Ala. Code § 22-8-5. A minor 12 years or older may consent to medical treatment for sexually transmitted diseases. Ala. Code § 22-11A-19. Any minor can give consent for diagnosis or treatment of venereal disease, pregnancy, drug dependency, alcohol toxicity, or any reportable disease. Ala. Code § 22-8-6. No consent is required for medical or mental health treatment from a person physically unable to or mentally unable to consent to such treatment. Ala. Code § 22-8-1.

It is advisable to obtain written consent from the patient or an authorized representative prior to medical treatment or surgery. The written consent should plainly state the procedure to be performed and disclose the risks and benefits to such procedure. It is also advisable to have the consent signed and dated by the patient or an authorized representative.

Florida

In Florida, a person under age 18 is considered a minor. Generally, minors cannot consent to medical or surgical treatment without authorization from a parent, guardian or custodian (e.g., teachers or childcare providers who have temporary charge of a minor).

Other persons may give consent for medical care if the person who has the power and consent cannot be contacted and actual notice to the contrary has not been given to the provider as follows: person who possesses a power of attorney, step-parent, grandparent, adult sibling, or adult uncle or aunt (in order of priority listed). See Fla. Stat. § 743.0645 for specific procedures to obtain consent through another person.

However, there are exceptions to this general rule. In an emergency situation, medical or surgical treatment may be rendered to minors without consent if, in the judgment of the physician, the minor suffers from an injury or acute illness and would be endangered by delaying treatment to secure consent. This only applies when parental consent cannot be obtained due to the patient's:

- (1) Inability to communicate the identity of the parent or guardian
- (2) The parent or guardian cannot be located by telephone at the residence or business

In such instances, notification must be made as soon as possible. In the case of an emergency – one which is life-threatening or would result in disfigurement or impairment – consent is implied, unless a person who is authorized to consent to the minor's treatment is available. A note must additionally be made in the medical records reflecting the reason that consent was not initially obtained and affirming the fact that immediate emergency medical care or treatment was necessary for the patient's health.

In emergency situations, treating physicians are advised to try to obtain consent from the minor patient's parent, guardian or custodian whenever possible, and if consent is obtained from someone other than a parent, documentation of this consent is recommended.

When Minors May Consent

Situations in which minors may consent to medical treatment for themselves or others in Florida include the following:

- A married minor may consent to treatment for himself/herself and for his/her spouse, if the spouse is unable to give consent and has not designated a person other than the spouse to make healthcare decisions.
- A minor parent may consent to treatment for his/her own minor children.
- An unwed minor may consent to treatment related to pregnancy, the prevention of pregnancy, childbirth and termination of pregnancy. Fla. Stat. § 743.065.
- A minor may consent to treatment for his/her own sexually transmissible diseases.

In those instances when a minor may consent for himself/herself to medical or surgical treatment, the consent may be oral or in writing. Consent may also be implied in those cases in which the minor voluntarily submits to treatment once he or she has been fully informed of the treatment or procedure. There is one notable exception, however; a minor who has been declared incompetent cannot consent orally or otherwise to any treatment or procedure for himself/herself or for any other person.

North Carolina

In North Carolina, a person under age 18 is considered a minor. Generally, minors cannot consent to medical or surgical treatment without authorization from a parent, guardian or custodian or any person standing in loco parentis to the minor. N.C. Gen. Stat. § 90-21.1

In an emergency situation where the parent, guardian or any person standing in loco parentis to the minor cannot give timely consent, treatment* may be rendered to minors without consent. N.C. Gen. Stat. § 90-21.1(1)-(3)

In an emergency situation where parents refuse to consent to a procedure, a physician may treat a minor; but unless the physician is in a rural community, he must first obtain the opinion of another North Carolina physician that such procedure is necessary to prevent immediate harm to the child. N.C. Gen. Stat. § 90-21.3.

When Minors May Consent

Situations in which minors may consent to medical treatment for themselves or others in North Carolina include the following:

- An emancipated minor, who is a minor that is married, has been emancipated by an order of court, or is serving in the armed forces, may consent to treatment for himself/herself. N.C. Gen. Stat. § 90-21.5(b).
- A minor parent may consent to treatment for his/her own minor child. N.C. Gen. Stat. § 90-21.5(b).
- A minor may consent to the prevention, diagnosis and treatment of (1) venereal diseases and other like diseases,

(2) pregnancy, (3) abuse of controlled substances or alcohol, or (4) emotional disturbance. N.C. Gen. Stat. § 90-21.5(a).

There are specific North Carolina laws which determine what is valid consent for sterilization and abortion procedures

South Carolina

"As a general proposition, except in the event of an emergency, a surgeon will be liable for an assault where he operates on a child without the consent of the child's parents." *Banks v. Medical Univ. Of South Carolina*, 314 S.C. 376, 444 S.E.2d 519 (1994).

In South Carolina, a "child" is defined as an individual under the age of eighteen. S.C. Code Ann. § 20-7-30(1). A physician must look to the parents or guardian for consent before treating a minor. The mother and father are "joint natural guardians" of their minor child or children and share an equal responsibility for the welfare of the child or children. S.C. Code Ann. § 20-7-100.

However, a physician or healthcare provider is allowed to render care to a minor of any age without consent of a parent or legal guardian if in the physician or provider's judgment the proposed care is necessary, unless the care involves an operation, which may only be performed if it is essential to the minor child's life or health. S.C. Code Ann. § 20-7-290.

A minor who has reached his or her sixteenth birthday can consent to healthcare on his or her own and without input from a parent or guardian, unless the care involves an operation. If the proposed care entails an operation, then the operation can only be performed without consent of the minor's parent or guardian if in the opinion of the physician, as well as a consulting physician, if one is available, the operation is essential to the health or life of the minor. S.C. Code Ann. § 20-7-280.

An abortion cannot be performed on a pregnant minor without written consent of the minor and (1) one of the minor's parents, or (2) a legal guardian, or (3) a grandparent, or (4) a person standing in loco parentis to the pregnant minor for the past sixty days or more. The written consent must be obtained from both the minor and the other individual authorized to give consent and it must be witnessed by a third party. In cases involving an emancipated minor, a physician may perform the abortion upon written consent of the minor alone. A physician can also proceed with the consent of the minor alone when the physician has received a copy of a court order allowing the minor to obtain an abortion without parental/custodial consent. S.C. Code Ann. § 44-41-31.

Tennessee

For a minor who is not emancipated, the underlying rule is that a physician must get parental (or guardian) consent before rendering medical treatment, except in cases of emergency. However, the legislature and the courts have carved out exceptions to this rule that allow a minor to consent to medical treatment under certain conditions.

By statute in Tennessee, a physician can treat a minor without parental consent for certain health issues, such as drug abuse, venereal disease, contraception, and prenatal care. Also by statute, a physician may render emergency care to a minor without parental consent. After a reasonable effort has been made to contact a minor's parent or guardian, a physician may render emergency medical treatment to a minor without parental consent if the physician has a good faith belief that the emergency treatment is necessary to save the life of the minor or prevent further deterioration of the minor's condition. In Tennessee, an unemancipated minor cannot obtain an abortion without parental consent or judicial bypass.

The courts in Tennessee have also adopted the "mature minor" doctrine that allows a physician to treat a mature minor without parental consent. In determining who is a "mature minor" Tennessee follows the "Rule of Sevens."

- Under the age of seven there is no capacity, and the physician must have parental consent to treat (unless a statutory exception applies).
- Between the ages of seven and fourteen, there is a rebuttable presumption that there is no capacity, and a physician generally should get parental consent before treating (unless a statutory exception applies).
- Between the ages of 14 and 21 (now 18), there is a rebuttable presumption of capacity, and the physician may treat without parental consent unless the physician believes that the minor is not sufficiently mature to make his or her own health care decisions.

An emancipated minor is someone under the age of 18 who is independent of parental control and support. Legally, an emancipated minor is treated the same as an adult and can make his or her own health care decisions. He or she can also appoint a health care agent or surrogate.

Virginia

In Virginia, a person under age 18 is considered a minor. Generally, minors cannot consent to medical or surgical treatment without authorization from a parent, guardian, or custodian, person standing in loco parentis to the minor, or another individual as set forth in Virginia Code § 54.1-2969. Where a delay in providing medical or surgical treatment to a minor could adversely affect the minor's recovery and no person authorized by Virginia Code § 54.1-2969 is available within a reasonable time under the circumstances, treatment may be rendered to minors without consent. However, if the minor is fourteen years of age or older, his consent must be obtained before such treatment is provided. Va. Code § 54.1-2969.

When Minors May Consent

Virginia Code § 54.1-2969 provides that there are certain occasions upon which minors will be deemed adults for the purpose of consent. Situations in which minors may consent to medical treatment for themselves or others in Virginia include the following:

- A minor who has been married may consent to treatment for himself or herself except with regard to sexual sterilization. A pregnant minor may consent to surgical and medical treatment for herself and her child related to the delivery of the child, when that treatment is provided during the delivery of the child or the hospital stay that follows the delivery.
- A minor parent may consent to treatment for his/her own minor child.
- A minor may consent to the prevention, diagnosis, and treatment of (1) venereal diseases, (2) infectious or contagious diseases that the Board of Health requires to be reported, (3) pregnancy, (4) abuse of controlled substances or alcohol, or (4) mental illness or emotional disturbance.
- Although a minor is allowed by statute to consent to specified medical procedures, Virginia law allows the minor's parent, legal guardian, or a person standing in loco parentis, to obtain the following information:
 - The results of a minor's non diagnostic drug test when the minor is not receiving care, treatment, or rehabilitation for substance abuse; and
 - The minor's other health records, unless the minor's treating physician or clinical psychologist has determined that disclosing those health records to the parent, legal guardian, or person standing in loco parentis would be reasonably likely to cause substantial harm to the minor or to another person.

There are specific Virginia laws which determine what is valid consent for sterilization and abortion procedures.

The risk management advice presented in this Site is intended as general information of interest to physicians and other healthcare professionals. The recommendations and advice published on this Site do not reflect or establish a standard of care and do not establish rules for the practice of medicine. The publication of this information is not intended as an offer to insure such conditions or exposures, or to indicate that MAG Mutual Insurance Company will underwrite such risks for the reader. Our liability is limited to the specific written terms and



conditions of actual insurance policies issued.
