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Treatment of Minors

Background

Fifty years ago, the issue of medical treatment of minors—children under the age of 18—would never have been considered controversial. At that time, parental consent was required for almost any type of medical treatment, as it was required for any other situation involving children. Minors were simply not considered competent to make medical decisions.

However, the past 50 years have witnessed a gradual expansion of the rights of minors, and health care has been no exception. Minors who previously had no medical rights now found themselves in the position of making decisions about the most intimate medical procedures.

But the area of medical treatment of minors is still controversial, especially as it relates to certain procedures and conditions such as ABORTION and sexually transmitted diseases. Many states grant minors broad leeway to determine the course of their medical treatment, and others grant them very few rights. There is little agreement by either medical professionals or state lawmakers as to how far minor rights should go regarding medical treatment.

What is at issue in the debate over minor rights to medical treatment is a tension between the parental responsibilities toward the child, the immaturity and vulnerability of children, and the child's right to be emancipated from the decision of the parent. This tension has produced a patchwork of laws and makes it difficult to make any overriding statements about minor and parental rights in regard to medical treatment.

Informed Consent

The crux of the debate over the treatment of minors is the doctrine of INFORMED CONSENT. A person must offer informed consent to any medical treatment given to them, or the physicians involved can risk legal liability. Informed consent has always been a crucial part of the doctor-patient relationship, and has been viewed by courts as a fundamental right.

But in the case of children, the question is, can they offer informed consent, or does that informed consent have to be provided by their parents, who may be seen as more capable of making a knowledgeable decision on a subject as important as medical care. Beyond this simple question are an important set of underlying questions, pertaining for example to the age at which a child may become capable of informed consent, and whether there are certain procedures in which informed consent is more important than others.

Generally

In general, for most medical procedures, the parent or legal GUARDIAN of the minor still has to grant consent in order for the procedure to be performed. While the state can challenge a parent's decision to refuse medically necessary treatment and can in some cases win the authority to make medical decisions on behalf of the child, the minor can not make his or her own medical decisions.

This general rule is virtually always the case regarding any sort of medical treatment before the minor enters their teenage years—no state or court has ever authorized minors younger than 12 to make any sort of medical decision for themselves. But after the minor becomes a teenager, states begin to digress in terms of the responsibility the minor can take for medical decisions. Exceptions have been carved out for various medical procedures that allow teenage minors to have final say in their medical care.

Family Planning

Twenty-five states and the District of Columbia have laws that explicitly give minors the authority to consent to contraceptive services, and twenty-seven states and the District of Columbia specifically allow pregnant minors to obtain prenatal care and delivery services without parental consent or notification. The Title X federal family planning program, which supports clinics that provide contraceptive service and other reproductive health care to minors on a confidential basis and without the need for parental consent or notification, has seen efforts made by Congress to require consent or notification before a minor receives these services. All of these efforts, the most recent in 1998, have failed.

Probably the most controversial area of family planning and minors is abortion. Two states— Connecticut and Maine—as well as the District of Columbia have laws that give minors the right to obtain abortions on their own. In contrast, 31 states currently have laws restricting minors' rights to obtain abortions by either requiring them to obtain the permission of one or both parents, or to notify one or both of them of the procedure. The rest of the states either have no laws regarding parental consent and notification and abortion or laws that are currently blocked from going into effect by the courts of the state.

The family planning area and its relation to minors has been a difficult one for the states to tackle because of several Supreme Court rulings that have ruled that minors do have a limited right of privacy in respect to family planning issues. The Court has ruled that if states are going to restrict the right of minors to have an abortion, they have to provide an alternative to the requirement of parental consent, to allow the minor to show she is mature enough to make the decision of having an abortion herself. This alternative is generally in the form of a judicial bypass—permitting a court to make the decision regarding whether the minor can get an abortion. Maryland allows a "physician bypass" that permits a doctor to waive parental notice if the minor is capable of giving informed consent or if notice would lead to abuse of the minor.

States that require consent before a minor may have an abortion include Alabama, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, Tennessee, Wisconsin and Wyoming. States requiring notification before a minor's abortion include Arkansas, Delaware, Georgia, Idaho, Iowa, Kansas, Maryland, Minnesota, Nebraska, Ohio, South Dakota, Texas, Utah, Virginia and West Virginia.

Also, because the Supreme Court rulings, states that do not explicitly allow minors to obtain contraceptive and prenatal care services without parental consent still must permit this to happen in practice, as the court has ruled that these are services that are covered by the minors' right to privacy. However, states can still impose limitations on minors' ability to obtain these services, based on factors such as age, marriage status, medical condition or who referred the minors for treatment. In addition, two states—Utah and Texas—prohibit the use of state funds to provide contraceptive services to minors without parental consent.

Emergency

All states allow parental consent for treatment of a minor to be waived in the event of a medical emergency. The circumstances that should be present in order for such an emergency include the patient being incapacitated to the point of being unable to give an informed choice, the circumstances are life-threatening or serious enough that immediate treatment is required, and it would be impossible or imprudent to try to get consent from someone regarding the patient. In these cases, consent of the parent is presumed, since otherwise the minor would suffer avoidable injury.

Sexual Abuse

Most states allow minors to seek treatment for SEXUAL ABUSE or ASSAULT without parental consent; however, many states require the minor's parents or guardian to be notified of the sexual abuse unless the physician has reason to believe the parent or guardian was responsible for the sexual abuse.

Mental Health and Substance Abuse

Twenty states and the District of Columbia give minors the explicit authority to consent to outpatient mental health services. No state specifically requires parental consent to obtain these services, but many states do impose age requirements or other restrictions in regards to minors who obtain these services.

Forty-four states and the District of Columbia have laws or policies authorizing a minor who abuses drug or alcohol to consent to outpatient counseling without a parent's consent. Again, no states require parental consent for these services, but some restrictions may be imposed on which minors can obtain this counseling.

Sexually Transmitted Diseases

Every state currently allows minors over the age of 12 to receive testing for sexually transmitted diseases, including HIV, without parental consent. Most of these states allow minors to receive treatment for all sexually transmitted diseases without parental consent; however, three states—California, New Mexico, and Ohio—as of 2002 do not allow minors to receive treatment for HIV without parental consent. One state, Iowa, requires that parents be notified in the event of a positive HIV test. Many states allow doctors to notify the parents of the results of tests and treatment for sexually transmitted diseases, though they do not require the doctor to get consent.

Status

In addition to making exceptions to the general rule requiring informed consent for specific medical treatments, states will often allow minors to consent to medical treatment on the basis of their status— whether they are considered emancipated from their parents. Most states determine a child has reached the AGE OF MAJORITY and is emancipated from his or her parents upon reaching the age of 18, although in Alabama and Nebraska, 19 is considered the age of majority, and in Pennsylvania it is 21. Mississippi has the age of majority at 21, but 18 as the AGE OF CONSENT for health care decisions.

Beyond age, courts can declare a minor emancipated from their parents and thus able to issue consent, if they meet certain conditions, including self-sufficiency, living separate and apart from the parents, receiving money from a business activity not related to the parents, and proven capability of managing their own affairs. Married and divorced minors are often considered automatically emancipated, as are minors on active duty with the armed forces. In addition, minor parents are allowed to make medical decisions for their children. In 29 states and the District of Columbia, this consent is explicitly authorized.

The Mature Minor Doctrine

The "mature minor" doctrine provides for minors to give consent to medical procedures if they can show that they are mature enough to make a decision on their own. It is a relatively new legal concept, and as of 2002 only a few states such as Arkansas and Nevada have enacted the doctrine into STATUTE. In several other states, including Pennsylvania, Tennessee, Illinois, Maine and Massachusetts, state high courts have adopted the doctrine as law.

In the states where it exists, the mature minor doctrine takes into account the age and situation of the minor to determine maturity, in addition to factors and conduct that can prove maturity. The Arkansas statute states, "any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself [may offer consent]." The standard is typical of the requirements of the mature minor doctrine.

The mature minor doctrine has been consistently applied in cases where the minor is sixteen years or older, understands the medical procedure in question, and the procedure is not serious. Application of the doctrine in other circumstances is more questionable. Outside reproductive rights, the U.S. Supreme Court has never ruled on its applicability to medical procedures.

Confidentiality of Medical Records

States that allow minors to consent to certain medical procedures often provide for confidentiality from parents in regard to those medical procedures. However, this is not always the case. Many states allow the doctor to inform parents of medical procedures, and some states require parental notifications about specific medical procedures done on minors even when the minor has given consent.

When confidentiality is provided for, California's statute is typical of the requirements. It states that except as provided by law or if the minor authorizes it in writing, physicians are prohibited from telling the minor's parents or legal guardian about medical care the minor was legally able to authorize. The physician is required to discuss with the minor the advantages of disclosing the proposed treatment to the minor's parents or legal guardian before services are rendered.

Additional Resources

"Acknowledging The Hypocrisy: Granting Minors The Right To Choose Their Medical Treatment." *New York Law School Journal of Human Rights*. Summer 2000.

"Informed Consent to the Medical Treatment of Minors: Law and Practice." Schlam, Lawrence, Joseph P. Wood, *Health Matrix: Journal of Law-Medicine*. Summer 2000.

"Medical Care For Minors: How To Consent To Medical Care for Minors." Available at <http://www.cmanet.org/>, Aug. 7, 2001.

"Minors and The Right to Consent To Health Care." Boonstra, Heather, Elizabeth Nash. Available at <http://www.agi-usa.org/>, 2000.

Organizations

Alan Guttmacher Institute

120 Wall Street, 21st Floor

New York, NY 10005 USA

Phone: (212) 248-1111

Fax: (212) 248-1951

URL: <http://www.agi-usa.org>

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