



MINORS AND RISK

FREQUENT LIABILITY CONCERNS IN THE HEALTH CARE SETTING

A SURVEY OF NEBRASKA LAW

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INTRODUCTION

Modern health care requires physicians, nurses, and other allied health care professionals to understand the legal landscape. Acquiring this understanding is challenging when the patient is an adult, but can raise even more complex questions when the patient is a minor. This guide is designed to increase a health care professional's understanding when legal issues involving minors arise. We hope that this guide will be a helpful resource for some of the more common questions.

This guide cannot address every situation that health care professionals are likely to encounter in the course of

their minor patients' care. Because each patient's case is different and raises unique facts, we encourage you to seek legal counsel when you have questions that are beyond the scope of our discussion.

Finally, laws undergo periodic change. This guide presents legal discussion that is up-to-date and accurate as of September 2022. When making decisions involving the care and treatment of minors, please contact your medical professional liability insurance carrier or your legal counsel to ensure that the information contained in this guide has not changed.

LEGAL DISCUSSION

Minors are often authorized by Nebraska law to provide informed consent to certain medical treatments without parental consent. However, even in these special circumstances, the health care provider must also determine if the minor is otherwise competent to make the decision to seek treatment.

COMPETENCE

Nebraska statutes are silent to "competence" in almost all respects. At times, courts have resorted to simply using the dictionary definition of competence, such as "having requisite or adequate ability or qualities."¹ There are, however, limited circumstances under which a minor can consent to medical treatment.

WHO IS A MINOR?

The age of emancipation or majority of a minor varies. Generally, a minor is defined as all persons under 19 unless the person marries. Upon marriage, his or her status as a minor ends.²

A PARENT'S RIGHTS AND DUTIES

Parents of minor children generally have the right to exercise custody and control of their children and their affairs. Parents, in turn, have the responsibility to ensure their children have proper clothing, food, education, medical and dental care, and to provide consent for necessary medical treatments.

"Legal custody" may be taken from a parent by a court order as a result of a divorce or child neglect proceeding.³ Consequently, in the absence of a court order to the contrary, a parent may be presumed to have "legal custody" of his or her minor children.

Save the notable exceptions discussed later, parents with legal custody have the right and authority to make medical decisions on their minor child's behalf. A health care provider who fails to obtain the informed consent of a custodial parent before performing non-emergency medical procedures may be held liable.

¹ See e.g. *In re Trust Created by Ziegman*, No. A-01-1053, 2003 WL 21278512, at *4 (Neb. Ct. App. June 3, 2003)

² Neb. Rev. Stat. § 43-2101(1)

³ Neb. Rev. Stat. § 42-364, § 43-292

THE DIVORCED PARENT AND CUSTODY DISPUTES

Under Nebraska law, a court may award custody of a minor child of divorce to one parent or to both.⁴ Following a divorce or legal separation, the custody determination will dictate which parent(s) will have authority to make medical decisions regarding the minor.⁵ Though courts had been reluctant to award joint custody prior to 1993, they have since been increasingly willing to give medical decision-making authority to both parents. Health care providers should request a copy of a court order to confirm that only one parent has decision-making authority.

In 1993, the Nebraska legislature enacted the Parenting Act.⁶ Under the Act, a court may develop a parenting plan based on the best interests of the child. The parenting plan should include determinations of legal custody and physical custody of the child, apportionment of parenting time, and procedures for making decisions regarding the day-to-day care and control of the child consistent with the major decisions made by the person(s) who have legal custody and responsibility for parenting functions.⁷

Should joint custody of a minor be awarded to the parents, both parents are entitled to make medical decisions on behalf of the child. When a dispute arises in such a situation

about the type or necessity of medical treatment, either parent is allowed to obtain necessary medical treatment without violating the joint custody order. However, the parenting plan is required to have procedures for making decisions regarding the day-to-day care and control of the child and, when in the best interests of the child, may encourage mutual discussion of major decisions regarding parenting functions, including the child's health care.⁸

If custody has been awarded to only one parent, the custodial parent has the authority to make all major decisions regarding the minor's education, health care, and religious upbringing. Typically, if one parent produces a court order awarding custody and sole decision-making authority to that parent, the noncustodial parent may not consent to the medical treatment of a minor.

Regardless of the custody determinations in a parenting plan, unless parental rights are terminated, both parents have the right to full and equal access to the child's medical records, and either parent may make emergency decisions affecting the health and safety of the child while the child is in the physical custody of that parent.⁹

DELEGATION OF PARENTAL POWER

A minor's parent or guardian, by a properly executed power of attorney, may delegate to another person any of his or her powers regarding care, custody, or property of the minor child, including the power to consent to medical treatment, for a period not exceeding six months, except the power to consent to marriage or adoption of the minor.

A parent or guardian of a minor who is at least 18 and not a ward of the state, may delegate to his or her minor child, by a properly executed power of attorney, the power to consent to the minor's own health care and medical treatment for a period not exceeding one year.¹⁰

CONFIDENTIALITY AND PARENTS

As a general rule, parents may access their children's medical records without special authorization. This right of access stems from the parent's ability to provide consent for a minor's treatment and extends to both parents after a separation, absent a court order to the contrary.

As discussed later, however, there are certain occasions when a minor is treated as an adult as it relates to medical consent. In these situations, unless the minor has given his or her written authorization to the contrary, medical records relating to a treatment requiring only the minor's consent should not be released to the parents. (Please see the "Minors and HIPAA" section.)

⁴ Neb. Rev. Stat. § 42-364

⁵ Neb. Rev. Stat. § 43-2922(13);
Neb. Rev. Stat. § 43-2929(3)

⁶ Neb. Rev. Stat. § 43-2920 – § 43-2943

⁷ Neb. Rev. Stat. § 43-2929(1)

⁸ Neb. Rev. Stat. § 43-2929(1);

Neb. Rev. Stat. § 43-2929(3)

⁹ Neb. Rev. Stat. § 42-381,

Neb. Rev. Stat. § 43-2929(4)

¹⁰ Neb. Rev. Stat. § 30-2604

MINORS AND HIPAA

HIPAA requires covered entities to allow individuals access to their medical records, with some exceptions, and this includes personal representatives acting on their behalf.¹¹ Whether parents have access to their children's records depends primarily on state law. A parent's access to their child's records flows from their ability to make medical decisions for them. There are three exceptions where a parent would not be considered a minor's personal representative under HIPAA, and the minor has the authority to act as an individual with respect to protected health information pertaining to a health care service. These exceptions are:

- When the minor consents to the service and the consent of the parent is not required under state or other applicable law;
- When the minor obtains care at the direction of a court or someone appointed by a court; and
- When the parent agrees to confidentiality between the health care provider and the minor with respect to such health care service.¹²

However, even in these circumstances, a covered entity may disclose or provide access to a minor's protected health information when a state or other applicable law permits or requires such parental access.¹³ If an applicable provision of state or other law prohibits such disclosure, a covered entity may not disclose or provide access to an unemancipated minor's protected health information.¹⁴ If state or other applicable law is silent on a parent's right of access in these cases, a covered entity may provide or deny access if such action is consistent with state or other law, provided that such decision must be made by a licensed health care professional, in the exercise of professional judgment.¹⁵

Finally, as is the case with respect to all personal representatives under the HIPAA regulations, a covered entity may choose not to treat a parent as a personal representative of the patient when

- The provider has a reasonable belief that
 - ▶ the patient has been or may be subjected to domestic violence, abuse, or neglect by such person; or
 - ▶ treating such person as the personal representative could endanger the patient; and
- The provider, in the exercise of professional judgment, decides that it is not in the best interest of the patient to treat the parent as the patient's personal representative.¹⁶

WHEN CAN A MINOR CONSENT TO MEDICAL CARE WITHOUT PARENTAL CONSENT?

Minors can provide informed consent for medical treatments under certain circumstances:

A. Emancipation

Under Nebraska law, a court may declare a minor emancipated after a showing of circumstantial evidence, express agreement, or implication arising from the conduct of the parties.¹⁷ Typically, a child will be deemed emancipated after his or her parents renounce all their legal duties and voluntarily surrender their legal rights to the minor. In determining whether a minor is emancipated, the intent of the parent governs.¹⁸

Once emancipated, the child's status as a minor ends and he or she is treated as an adult. The emancipated minor can consent to his or her own hospital, dental, emergency, or surgical care and is liable to pay for any medical services rendered. The minor's parents may be held liable for the emancipated minor's medical expenses only if they have expressly agreed.¹⁹

Emancipation is not necessarily a continuing status; even if once established, it may be terminated at any time during the child's minority.²⁰

A minor who is at least 16 years of age, who is married or living apart from his or her parents or legal guardian, may petition the district court in the county of the minor's residence for a judgment of emancipation.²¹ If granted, the minor is treated as an adult and may consent to his or her own medical, dental, or psychiatric care without the consent, knowledge, or liability of parents or a guardian. The emancipated minor is responsible for paying for the medical care.²²

B. Marriage

In Nebraska, a minor must be at least 17 years old to marry. Upon marriage, the minor's minority status ends and he or she acquires all the rights and responsibilities associated with attaining majority, including the obligation to pay for any medical services rendered.²³

A health care provider who relies upon a married minor's consent for medical treatment will not be held liable for failure to obtain parental consent. The minor's parents may be held liable for the married minor's medical expenses only if they have expressly agreed to be liable.²⁴

¹¹ 45 C.F.R. § 164.524(a);

45 C.F.R. § 164.502(g)(1)

¹² 45 C.F.R. § 164.502(g)(3)(i)

¹³ 45 C.F.R. § 164.502(g)(3)(ii)(A)

¹⁴ 45 C.F.R. § 164.502(g)(3)(ii)(B)

¹⁵ 45 C.F.R. § 164.502(g)(3)(ii)(C)

¹⁶ 45 C.F.R. § 164.502(g)(5)

¹⁷ *Accent Service Co, Inc. v. Ebsen*, 306 N.W.2d 575, 576 (Neb. 1981)

¹⁸ *Foxvog v. Foxvog*, 578 N.W.2d 916, 919-920 (Neb. App. 1998)

¹⁹ *Accent Service Co, Inc. v. Ebsen*, 306 N.W.2d 575, 576-577 (Neb. 1981)

²⁰ *Wulff v. Wulff*, 500 N.W.2d 845, 850 (Neb. 1993)

²¹ Neb. Rev. Stat. § 43-4802

²² Neb. Rev. Stat. § 43-4810(1)

²³ Neb. Rev. Stat. § 42-102,

Neb. Rev. Stat. § 43-2101

²⁴ *Accent Service Co, Inc. v. Ebsen*, 306 N.W.2d 575, 576-577 (Neb. 1981)

C. Minors Who Are Parents

Nebraska lacks a statute or case dealing specifically with minor parents' right to consent to their own child's treatment. However, parental rights between the parents or the mother of a child born out of wedlock may be terminated only where it is in the best interests of the child and where there is clear and convincing evidence of certain circumstances listed in the statute (e.g., parent abandonment, neglect, or mental illness or deficiency).²⁵ The parent's minor status alone would not be grounds for terminating parental rights. In practice, the minor parent retains all the rights/privileges of any parent and is subject to the same laws as adult parents.

See, for example, Neb. Rev. Stat. § 42-715 ("A minor parent, or a guardian of...a minor parent, may maintain a proceeding on behalf of of for the benefit of the minor's child.")

D. Birth Control

Nebraska has no statute dealing with the consent required to administer birth control services to minors. However, clinics supported by federal Title X funds are required to provide services without regard to age or marital status on a confidential basis.²⁶ In addition, under federal law, "medical assistance" includes payment of part or all of the costs of programs, such as Medicaid, that must include payment of all or part of the cost of family planning services and supplies furnished to individuals of child-bearing age including minors who can be considered to be sexually active who are eligible under the State plan and who desire such services and supplies.²⁷

The Supreme Court has held that the right of privacy in connection with decisions affecting procreation extends to minors as well as adults.²⁸

E. Sexually Transmitted Diseases, Including HIV

Any physician who has the consent of a minor patient may perform a diagnostic examination for sexually transmitted diseases and may prescribe for and treat such minor for sexually transmitted diseases, including prophylactic treatment for exposure to sexually transmitted diseases, without the consent of or notification to the parent, parents, or guardian of the minor.²⁹

"Sexually transmitted diseases" include syphilis, gonorrhea, chancroid, and others specified by the Department of Health and Human Services (DHHS).³⁰

Under DHHS regulations, sexually transmitted diseases, including HIV infection, must generally be reported within seven days.³¹

The physician shall incur no criminal or civil liability by reason of having made such an examination or rendered such treatment, but may be liable for negligent acts or omissions. The parents are liable for the costs of such treatment to minors under their custody.³²

F. Substance Use Disorder

Nebraska law does not explicitly provide health care providers immunity from civil liability for failure to obtain the consent of a minor's parent when providing the minor with drug or alcohol abuse treatment. Under federal law, where state law requires parental consent to treatment for a substance use disorder, a minor's application for treatment to any federally assisted substance use disorder program may be communicated to the minor's parent or guardian only if the minor has given written consent to the disclosure, unless the minor lacks the capacity to make a rational choice regarding such consent.³³

G. Youthful Offenders

Nebraska law authorizes a state agency to provide consent for a minor offender for medical care where the minor is a ward of the agency.³⁴ Nebraska law is silent as to who can consent to medical treatment for a minor committed to the Department of Correctional Services. Unless another exception applies, the consent of a parent or guardian should be obtained. In the situation of an older minor who can understand the indications, risks, and benefits of treatment, it would be prudent to include in the medical record the minor's participation in the informed consent process.

H. Mental Health Services

A person 18 years or older may consent to mental health services without the consent of a parent or guardian.³⁵

WHO ELSE CAN PROVIDE CONSENT?

Beyond parents, and those to whom authority has been delegated under a properly executed power of attorney, health care providers may assume that no other party has the authority to authorize health care treatment for a minor. The primary exception to this rule is where a court has awarded legal custody to another party as a guardian of the minor pursuant to the minor's best interest. Any court-appointed guardian has the power to authorize medical care and treatment for the minor.³⁶

²⁵ Neb. Rev. Stat. § 43-292;
In re Interest of Leland B.,
797 N.W.2d 282, 286 (Neb. App. 2011)

²⁶ 42 CFR § 59.5(a)(4); 42 CFR § 59.10

²⁷ 42 USC § 1396d(a)(4)(C)

²⁸ *Carey v. Population Services Intern.*,
431 U.S. 678, 693 (1977)

²⁹ Neb. Rev. Stat. § 71-504

³⁰ Neb. Rev. Stat. § 71-502.01;
173 NAC 1-004.05

³¹ 173 NAC 1-004.02

³² Neb. Rev. Stat. § 71-504

³³ 42 CFR § 2.14(b)

³⁴ Neb. Rev. Stat. § 43-285(1)

³⁵ Neb. Rev. Stat. § 43-2101(2)(b)

³⁶ Neb. Rev. Stat. § 30-2613(1)(c)

Similarly, where a court has awarded the care of a minor under 18 to the Department of Health and Human Services, to an association, or to an individual in accordance with the Nebraska Juvenile Code, the association or individual, and the department, have the authority to determine and consent to the medical services of such minor ward.³⁷ The parents of the minor may be held liable for the costs of the medical care received by the minor.³⁸

ABORTION

Except in the case of a medical emergency or as noted below, no person shall perform an abortion upon a pregnant woman who is less than 18 years of age unless he or she first obtains the notarized written consent of both the pregnant minor and one of her parents or a legal guardian.³⁹

If the pregnant woman declares in a signed written statement that she is a victim of abuse by either of her parents or her legal guardians, then the attending physician shall obtain the notarized written consent from a grandparent.⁴⁰

A pregnant minor, for purposes of the abortion statutes, is an unemancipated pregnant female under 18 years of age.⁴¹

A pregnant minor may elect not to obtain the consent of her parents. If so, upon petition or motion and after an appropriate hearing, a judge may authorize a physician to perform an abortion if the court determines by clear and convincing evidence that the pregnant minor is mature and capable of giving informed consent to the proposed abortion.⁴²

The court can also authorize the pregnant woman to consent to an abortion without the consent of a parent or guardian if it finds, by clear and convincing evidence, that it is in the best interest of the minor or if there is evidence of abuse by a parent or guardian.⁴³

EMERGENCY CARE AND TREATMENT

A physician or other therapist, or person assisting or acting at his or her direction, may use force to treat a minor or incompetent person without the consent of a parent or guardian in an emergency when the physician believes that:

- Such force is used for the purpose of administering a recognized form of treatment which the physician believes to be adapted to promoting the physical or mental health of the patient; and
- That no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.⁴⁴

CHILD ABUSE AND REPORTING

A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

- Placed in a situation that endangers his or her life or physical or mental health;
- Cruelly confined or cruelly punished;
- Deprived of necessary food, clothing, shelter, or care;
- Placed in a situation to be sexually exploited through sex trafficking or by allowing, encouraging, or forcing such minor to engage in debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or
- Placed in a situation to be sexually abused or sexually assaulted. (See next section for discussion of sexual assault on a child.)
- Placed in a situation to be a trafficking victim.⁴⁵

The statutory privilege between patient and physician is not available for excluding or refusing testimony in any prosecution for child abuse.⁴⁶

When any physician, medical institution, nurse, or other health care provider has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident to the proper law enforcement agency or to the Nebraska Department of Health and Human Services at its toll-free number (800) 652-1999.

Such report may be made orally by telephone with the caller giving his or her name and address. The oral report shall be followed by a written report, and to the extent available shall contain:

- The address and age of the abused or neglected child;
- The address of the person or persons having custody of the abused or neglected child;
- The nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect;
- Any evidence of previous child abuse or neglect including the nature and extent; and
- Any other information, which in the opinion of the person, may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators.⁴⁷

³⁷ Neb. Rev. Stat. § 43-285(1)

Neb. Rev. Stat. § 43-245(11)

³⁸ Neb. Rev. Stat. § 43-290

³⁹ Neb. Rev. Stat. § 71-6902;

Neb. Rev. Stat. § 71-6906

⁴⁰ Neb. Rev. Stat. § 71-6902.01

⁴¹ Neb. Rev. Stat. § 71-6901(10)

⁴² Neb. Rev. Stat. § 71-6903(2)

⁴³ Neb. Rev. Stat. § 71-6903(3)

⁴⁴ Neb. Rev. Stat. § 28-1413(3)

⁴⁵ Neb. Rev. Stat. § 28-707(1)

⁴⁶ Neb. Rev. Stat. § 28-707(2)

and § 28-714

⁴⁷ Neb. Rev. Stat. § 28-711(1);DHHS

reporting hotline: [https://dhhs.ne.gov/](https://dhhs.ne.gov/Pages/Child-Abuse.aspx)

[Pages/Child-Abuse.aspx](https://dhhs.ne.gov/Pages/Child-Abuse.aspx)

Any person participating in an investigation or the making of a report of child abuse or neglect or participating in a judicial proceeding or providing information or assistance, including a medical evaluation or consultation in connection with an investigation, report, or judicial proceeding, shall be immune from any civil or criminal liability except for maliciously false statements.⁴⁸

Federal privacy laws authorize disclosure of the limited protected health information described previously. Release of the entire medical record requires a HIPAA compliant authorization or court order.

Any person who willfully fails to make any report of child abuse or neglect shall be guilty of a Class III misdemeanor.⁴⁹

Nebraska law is silent on whether a physician can treat a victim of child abuse or sexual assault without the permission of the parent. However, if the Department of Health and Human Services (DHHS) has taken custody of the child, DHHS can consent to medical care for the child. Additionally, Nebraska has set up child abuse investigation teams and child advocacy centers for abused children.⁵⁰ The child advocacy centers are designed to assist in providing forensic interviews and medical evaluations of abused children. Either parental consent or consent by DHHS (if in custody of the child) is necessary.⁵¹

SEXUAL ASSAULT

A person commits sexual assault of a child in the first degree when he or she subjects another person under 12 years of age to sexual penetration when the actor is 19 or older or when he or she subjects another person who is at least 12 but less than 16 to sexual penetration and the actor is 25 or older.⁵²

A person commits sexual assault of a child in the second or third degree if he or she subjects another person 14 or younger to sexual contact and the actor is at least 19 or older.⁵³

“**Sexual contact**” means the intentional touching of the victim’s sexual or intimate parts or the intentional touching of the victim’s clothing covering the immediate area of

the victim’s sexual or intimate parts. Sexual contact also includes the touching by the victim of the actor’s sexual or intimate parts or the clothing covering the immediate area of the actor’s sexual or intimate parts when such touching is intentionally caused by the actor, as well as the touching of a child with the actor’s sexual or intimate parts on any part of the child’s body for purposes of sexual assault of a child. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party.⁵⁴

BLOOD DONATION

Any individual of sound mind and 17 or older may consent to donate whole blood for the purpose of injecting, transfusing, or transplanting such blood in the human body. No person 17 or 18 years of age shall receive compensation for any donation of whole blood without parental permission or authorization.⁵⁵

MINORS AND FILING SUIT

Under the Nebraska Hospital-Medical Liability Act (NHMLA), actions based on alleged malpractice or professional negligence must be commenced within two years after the alleged act or omission unless the cause of action is not discovered and could not be reasonably discovered within that two-year period. In such case, an action may be commenced within one year from the date of discovery.⁵⁶

However, Neb. Rev. Stat. § 25-213 states that “If a person entitled to bring any action mentioned in [the NHMLA] is, at the time the cause of action accrued, within the age of twenty years...every such person shall be entitled to bring such action within the respective times limited by [this chapter] after such disability is removed.” A person is “within the age of 20 years” until he or she becomes 21 years old, meaning that a patient who receives medical services before their 21st birthday, may file a lawsuit alleging malpractice until two years after reaching his or her 21st birthday.⁵⁷

⁴⁸ Neb. Rev. Stat. § 28-716

⁴⁹ Neb. Rev. Stat. § 28-717

⁵⁰ Neb. Rev. Stat. § 28-728 and § 43-285(1)

⁵¹ www.nebraskacacs.com

⁵² Neb. Rev. Stat. § 28-319.01(1)

⁵³ Neb. Rev. Stat. § 28-320.01(1)

⁵⁴ Neb. Rev. Stat. § 28-318(5)

⁵⁵ Neb. Rev. Stat. § 71-4808

⁵⁶ Neb. Rev. Stat. § 44-2828

⁵⁷ Neb. Rev. Stat. § 25-213; *Carruth v. State*, 712 N.W.2d 575, 581-583 (Neb.2006)

RECOMMENDATIONS FOR COMMON SCENARIOS INVOLVING MINORS

We recognize that the law is somewhat confusing when health care providers are asked to apply the rules to everyday practice. The following illustrations show how the law operates.

ILLUSTRATION A: THE BOAT TRIP

Factual Situation: You operate an emergency clinic located near a local lake. A 16-year-old minor patient is brought to the clinic by a friend who indicates that they were water skiing and that the minor lacerated his shoulder during a fall.

Question Posed: Can you provide treatment for the minor patient without obtaining the prior consent of the minor's parents or guardian?

Recommendation: The general rule is that a health care provider must obtain consent from a minor's parents or legal guardian before providing medical care and treatment.

Therefore, the health care provider should make all reasonable efforts to obtain the parents' or legal guardian's consent before providing any care. If the parents or legal guardian are unavailable, the health care provider must answer the question of whether a reasonable person, wishing to safeguard the welfare of the patient, would consent to the proposed emergency medical treatment. If the health care provider believes that a reasonable person would authorize the treatment, he or she may proceed. The health care provider should make notes in the patient's chart showing that the minor patient consented to the treatment and that reasonable steps were made to contact the parents or legal guardian before treatment.

ILLUSTRATION B: GRANDMOTHER (OR STEPPARENT) BRINGS MINOR PATIENT FOR CHECK-UP

Factual Situation: You are a family medicine physician who sees pediatric patients in an office setting. A grandmother (or stepparent) schedules an appointment for her granddaughter (or daughter) for a routine check-up. Upon questioning, you learn that the minor has been living with the grandmother (or stepparent) for several months and that she is unsure of the parents' current whereabouts.

Questions Posed: Is the grandmother (or stepparent) authorized to consent for the minor patient's medical care? Can you perform the examination?

Recommendation: While a technical legal answer would conclude that only a person who has been allocated parental responsibilities or has otherwise obtained legal custody may authorize medical care and treatment for the minor child, this conclusion seems overly legalistic. We would recommend proceeding with the exam in the presence of a nurse. All the circumstances should be fully explained in the child's medical record, including the fact that the examination was conducted in the presence of the nurse. If the minor needs emergency medical treatment or subsequent follow-up care, the health care provider should provide the necessary care.

ILLUSTRATION C: NOTE FROM PARENT

Factual Situation: A 15-year-old minor enters your office with a note from his parent authorizing treatment.

Question Posed: Can you provide treatment to the minor based on the consent contained in the note?

Recommendation: In this situation, the parent's written consent may not be "informed" since the consent was given before the health care provider formulated a diagnosis or treatment plan. Although the physician may be able

to provide care and treatment based upon this written consent, the better course of practice is to contact the parent by telephone, when possible, to confirm the written authorization. If the parent is unavailable by phone, the health care provider should make the original note part of the patient's chart before providing care. The health care provider should also compare the minor's handwriting with the handwriting contained in the note.

ILLUSTRATION D: MINOR WITH A SEXUALLY TRANSMITTED INFECTION

Factual Situation: You are an obstetrician/gynecologist. A minor patient presents with her parent with complaints of painful monthly periods. Upon your examination of the patient, you determine that the minor patient suffers from endometriosis. You also determine that the patient suffers from genital herpes.

Questions Posed: What information needs to be given to the parent to obtain permission to treat the minor? Can the health care provider reveal the minor's complete medical condition to the parent?

Recommendation: The minor cannot be treated for the endometriosis without the informed consent of her parent. Therefore, the health care provider may inform the parent of the diagnosis of endometriosis and must obtain the parent's permission for treatment. The genital herpes, on the other hand, is a sexually transmitted infection. The minor does not need the parent's consent for treatment of a sexually transmitted infection, and the health care provider should not disclose a diagnosis of a sexually transmitted infection to the parent without the minor's consent.

ILLUSTRATION E: MINOR WITH PARENTAL INSURANCE CARD

Factual Situation: A minor patient makes an appointment for a suspected sexually transmitted disease. Examination by the physician reveals that the minor patient has herpes.

Question Posed: Can you proceed with treatment?

Recommendation: Yes. Since the minor patient can consent to the treatment, it is acceptable to treat without the parent's consent. The minor's medical records must also be kept confidential with respect to the parent. The health care provider, however, should counsel the minor patient that the use of the parent's health insurance card could reveal the diagnosis of herpes on the billing statement.

ILLUSTRATION F: PARENTS AWAY ON TRIP

Factual Situation: A minor patient enters your office with an adult. The adult advises you that she is a neighbor who is watching the minor while his parents are away on a trip. The neighbor presents you a legal document that reads "Power of Attorney" and authorizes the neighbor to make decisions concerning the minor's medical care.

Question Posed: Can you proceed with treatment?

Recommendation: Parents may delegate their parental powers regarding care, custody, and decision-making responsibility to others by executing a power of attorney. In Nebraska, however, a power of attorney is only effective for six months for a minor under age 18. If the power of attorney remains effective, the health care provider can proceed with treatment, but should keep a copy of the power of attorney for the minor patient's chart.

ILLUSTRATION G: MINOR WITH A BABY

Factual Situation: A 15-year-old minor presents to your office with a baby. She indicates that she is the baby's mother and that the baby has been sick. The mother also indicates that she believes she has the flu and requests treatment.

Questions Posed: Can you treat the baby? Can you treat the mother?

Recommendation: As a parent, the minor can consent to the treatment of her baby without any further involvement from her parents or legal guardian. Ironically, the minor cannot consent to her own care and treatment unless she is otherwise emancipated.

ILLUSTRATION H: DIVORCED PARENT

Factual Situation: A minor accompanied by his divorced father presents to your office for treatment of a persistent cough.

Question Posed: Can you provide care and treatment to the minor without the other parent's consent?

Recommendation: Health care providers are entitled to rely on the statements of the parent who presents his or her child for medical care. In the absence of knowledge that the father's authority has been taken away by court order, the health care provider should provide the care requested. In an emergency, either parent can authorize medical treatment. In addition, in an emergency, the health care provider can provide medical treatment without either parent's consent.

ILLUSTRATION I: MINOR IS SEXUALLY ACTIVE WITH AN ADULT

Factual Situation: A 14-year-old minor requests birth control pills. During her history, she relates that she is sexually involved (including sexual penetration) with a 19-year-old man, but that she does not wish this information provided to her parents.

Questions Posed: Can you provide the birth control pills? Must the parents be notified of the sexual relationship?

Recommendation: Nebraska law is silent on the issue of minors and birth control, however, clinics acting under federal law may provide confidential birth control services. In this case, however, the minor patient has described a sexual assault because her sexual partner is 19 years old and she is 14 years old. The physician must report the assault to the police or Department of Health and Human Services (DHHS). The physician may also report the assault to the parents, as the physician/patient privilege does not apply, but is not required to notify the parents.

ILLUSTRATION J: PARENT DEMANDS A MINOR PATIENT BE TESTED FOR SEXUALLY TRANSMITTED INFECTIONS AND FOR DRUGS

Factual Situation: A 16-year-old minor accompanied by one of her parents presents to the office. The parent demands that the minor be tested for sexually transmitted infections (STIs) and a drug screening, suspecting the child has been "hanging around the wrong crowd" and may be sexually active. The minor adamantly opposes being tested.

Questions Posed: Can you test for STIs or illicit drugs without the minor's consent? Is the consent and demand of the parent enough? What if the parent secretly asks you to screen for STIs or drugs without the minor patient's knowledge or consent incidental to some other tests that you were running?

Recommendation: Generally, a minor cannot be tested for any sexually transmitted infection without the minor patient's knowledge and consent. The situation described does not fall within any of the narrow exceptions allowed under the law for testing without consent and the STI test cannot be performed, whether the parent demands that you do it openly or secretly.

The drug testing is less clear from a legal standpoint. The law is silent on whether the minor must consent to a drug test if a parent has consented. COPIC advises against drug testing of minors without their knowledge or consent, however, because this can erode the relationship of trust between the physician and patient. It is appropriate to understand the parents' concerns and proceed accordingly, which may include having a confidential discussion with the patient regarding substance abuse.



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