

Who May Consent to A Minor's Medical Treatment? Overview of North Carolina Law

**Jill D. Moore, JD, MPH
UNC School of Government**

I. General Rule: Parental Consent

In most circumstances, a minor child (person under the age of 18) may not receive medical treatment without the consent of the minor's parent, legal guardian, or a person acting *in loco parentis* (PILP).¹ The remainder of this document uses the shorthand term "parental consent" to mean the consent of a parent, legal guardian, or PILP.

The general rule that parental consent is required is not explicitly stated anywhere in North Carolina law. However, we can be confident this is the general rule, for several reasons:

- NC has a number of laws that explicitly set forth when minors may be treated *without* their parents' consent (see section II of this document). We can reasonably infer from these laws that parental consent is ordinarily required.
- Parents have a right to the care, custody, and control of their children that is constitutionally protected.
- Furthermore, there is a state law that specifies that minor children are subject to the supervision and control of their parents. GS 7B-3400. Assuring necessary medical care is part of supervising a child.

II. Exceptions to the Parental Consent Requirement

North Carolina law defines several circumstances in which health care providers may treat minors without obtaining parental consent.

- A. *Parent authorizes another adult to give consent.* A custodial parent or legal guardian may authorize another adult to consent to the minor's care during a period in which the parent or guardian is unavailable. This is a type of "health care power of attorney" that applies only to minors. GS 32A-28 through 32A-34.
- B. *Emergencies and other urgent circumstances.* Physicians may treat a minor without the consent of the parent, legal guardian, or PILP under any of the following emergency or urgent circumstances (GS 90-21.1):
 1. The parent or other authorized person cannot be located or contacted with reasonable diligence during the time within which the minor needs the treatment.
 2. The minor's identity is unknown.
 3. The need for immediate treatment is so apparent that any effort to secure approval would delay the treatment so long as to endanger the minor's life.
 4. An effort to contact the parent or other authorized person would result in a delay that would seriously worsen the minor's physical condition.

¹ *In loco parentis* means "in the place of the parent." A PILP is a person who has informally taken on the rights and duties of a parent with respect to a child, without going through formal legal processes such as adoption or guardianship.

5. The parent refuses to consent, and the need for immediate treatment is so apparent that the delay required to obtain a court order would endanger the minor's life or seriously worsen the minor's physical condition, and two licensed physicians agree that the treatment is necessary to prevent immediate harm to the minor.

Special requirement for surgery: Before performing surgery under any of the above exceptions, two surgeons must agree that the surgery is necessary. (There is an exception for rural communities or other areas in which it is impossible to get the opinion of a second surgeon in a timely manner.) GS 90-21.3.

- C. *Immunizations.* A physician or local health department may immunize a minor who is presented for immunization by an adult who signs a statement that he or she has been authorized by the parent, guardian, or PILP to obtain the immunization for the minor. GS 130A-153(d). We sometimes say that an adult who presents a child for immunization on behalf of the parent, guardian, or PILP has “consented” to the immunization—but strictly speaking, that isn't correct. The parent, guardian, or PILP has consented to the immunization, but has authorized the other adult to obtain it for the child. The adult is simply acting on behalf of the parent, guardian, or PILP. Thus, this special rule for immunizations is not truly an exception to the general rule that parental consent is required; rather, it is an exception to usual *practice*, since health care providers ordinarily do not accept another adult's word that the parent has consented to the treatment.
- D. *Emancipated minors.* Emancipated minors may consent to their own treatment. GS 90-21.5(b). Under North Carolina law, there are only three ways for a minor to be emancipated: (1) by getting married, (2) by obtaining a court order of emancipation, or (3) by entering the armed forces with parental consent. Being pregnant or having a child does *not* emancipate a minor in North Carolina.
- E. *Minors' consent law.* GS 90-21.5(a) allows physicians to accept unemancipated minors' consent for treatment under certain circumstances.
 1. An unemancipated minor may give effective consent for his or her own treatment for the prevention, diagnosis, or treatment of any of the following conditions:
 - a. venereal diseases and other reportable communicable diseases,
 - b. pregnancy,
 - c. abuse of controlled substances or alcohol, or
 - d. emotional disturbance.
 2. Exceptions: A physician may not provide any of the following treatment services to an unemancipated minor solely upon the minor's consent:
 - a. sterilization,
 - b. abortion, or
 - c. admission to a 24-hour mental health or substance abuse facility (except the facility may admit the minor solely upon his or her own consent in an emergency).
 3. A health care provider must not accept a person's consent to treatment unless the person has both *legal capacity* to consent to the treatment, and *decisional capacity*—that is, the ability to understand health care treatment options and make informed decisions. GS 90-21.5(a) gives unemancipated minors the *legal capacity* to consent to treatment for certain conditions. However, the health care

provider may not accept the minor's consent unless the minor also has *decisional capacity*.²

III. Consent for minor's abortion (GS 90-21.6 through 90-21.10)

- A. General rule: An unemancipated minor may not obtain an abortion solely upon her own consent. Before performing an abortion upon an unemancipated minor, the health care provider must obtain the *written* consent of the minor herself *and* one of the following people:
1. a parent with custody of the minor, or
 2. the minor's legal guardian or legal custodian, or
 3. a parent with whom the minor is living, or
 4. a grandparent with whom the minor has been living for at least 6 months immediately preceding the date of the minor's written consent for the abortion. GS 90-21.7.
- B. Exceptions:
1. The minor may petition the district court for a waiver of the parental consent requirement. GS 90-21.8.
 2. The physician may perform the abortion without parental consent when, in the physician's best medical judgment, a medical emergency exists that requires an immediate abortion. GS 90-21.9.

IV. Frequently Asked Questions

- Q1. What is the minimum age for a minor to consent to his or her own treatment for matters covered by the minor's consent law (GS 90-21.5)?
- A1. The law does not establish a minimum age. GS 90-21.5 states that "any" minor may consent—but "any" should not be taken literally. The law gives any minor the *legal authority* to consent to treatment, but a minor must also have *decisional capacity* to give effective consent. Therefore, a health care provider should not accept the consent of an unemancipated minor who is unable to understand health care treatment options and make informed decisions.
- Q2. When a minor has a child, who may consent to treatment for the minor's child? For example, suppose a 6-month-old baby has a 15-year-old mother. Should a health care provider accept the teen parent's consent to treat the baby, or should the provider ask someone else—such as the baby's grandparent—for consent?
- A2. If the teen parent is emancipated, she clearly may consent to the baby's treatment. A North Carolina law states explicitly that emancipated minors may consent to the medical treatment of their children. GS 90-21.5(b). But most minors are not emancipated, and North Carolina law does not explicitly address whether unemancipated minors may consent to the medical treatment of their own children. Furthermore, North Carolina

² For more information about decisional capacity, see Anne Dellinger & Arlene Davis, *Health Care for Pregnant Adolescents: A Legal Guide* (Institute of Government, 2001), pages 6-9 (available on the Internet at <http://www.adolescentpregnancy.unc.edu/pdf/HCP91901.pdf>).

health care attorneys are not in agreement on this issue, so you may encounter different practices in different places.

That said, it is my opinion that a minor parent may consent to the treatment of his or her child, so long as the minor parent has decisional capacity (that is, the ability to understand the health condition and treatment options and make an informed decision). I take this position because parents have a constitutional right to the care, custody, and control of their children, and that right applies to both minor and adult parents. Parents can lose this right in some circumstances—for example, if they abuse, neglect, or abandon their children—but it is a strongly protected right that cannot be impinged easily. You might think that a minor parent would have a diminished right to care, custody and control when compared to adult parents, but when we look at other areas of the law, we see that isn't so. For example, the state's child protective services system holds parents responsible for abuse or neglect of their children regardless of whether they are adults or minors. Another example: a minor's child may not be placed for adoption without the minor's consent. Given that the law does not treat minor parents differently from adult parents in other realms, I do not see a reason for treating them differently when it comes to consenting to medical care.

Another consideration is, if the parent cannot consent to treatment of the child, then who can? No law gives that authority to any person other than the parent. For example, nothing in North Carolina law authorizes grandparents to consent to treatment for their grandchildren. Sometimes others, such as legal guardians, acquire the right to consent to treatment for a child that is not their own, but that requires a legal process.

Taking all of this into consideration, I reach the conclusion that a minor parent may consent to treatment for her child, so long as the minor has decisional capacity.

- Q3. Are health care providers allowed to notify parents that their minor children have received care on their own consent under the minor's consent law?
- A3. Usually the answer is no, but there are three exceptions: a health care provider may notify a parent of services a minor received on his or her own consent if: (1) the minor gives the provider permission to do so; or (2) the provider determines that notifying the parent is essential to the life or health of the minor; or (3) the parent contacts the provider and inquires about the minor's treatment. GS 90-21.4(b). The law gives a provider *permission* to notify parents in those three circumstances, but it does not *require* the provider to do so. However, it is my opinion that if circumstance (2) applies—that is, the provider has determined that notifying the parent is essential to the life or health of the minor—then the provider *should* notify the parent so that the minor's life or health can be protected.³

³ This answer is based on the unemancipated minor provisions of the HIPAA Privacy Rule (45 CFR 164.502(g)) and the state law that specifically addresses the question of notifying parents about minor's consent services (GS 90-21.4(b)). Providers sometimes are subject to other confidentiality laws as well. For example, most N.C. mental health providers are subject to state confidentiality laws (GS 122C-52 et seq.) and most providers of substance abuse services are subject to federal confidentiality regulations (42 CFR Part 2). Providers who are subject to those laws should discuss this issue with their attorneys.