What Constitutes Consent for Treatment of a Minor in Urgent Care?

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Urgent message: Urgent care centers must use all reasonable efforts to comply with informed-consent and consent-to-minors laws. This should include consulting with legal counsel on the specific laws of the state and developing protocols to shield the center from possible litigation.

Introduction

Medical practices like urgent care centers are generally required to obtain patient consent for treatment in nonemergency situations. However, what constitutes *consent* when the patient is a minor may be hard to discern for urgent care owners, practice managers, and clinicians. As we will see in this discussion, many states (eg, Connecticut) have enacted statutes providing that minors may consent to medical treatment only in certain limited circumstances. However, generally, most states have recognized the common law rule that minors are presumed to be incompetent to make medical decisions, and as result, parental consent is required.[1]

Background

Examining the basis of the U.S. legal system of torts, the unwanted touching of an individual by another without consent and without legal justification constitutes a physical battery.[2] Traditionally, this has been the same result when a doctor treats a patient without informed consent.

The United States Supreme Court stated in 1891 that "no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."[3]

The idea of bodily integrity is exhibited in the general requirement that informed consent is required for medical treatment. Justice Benjamin Cardozo described this doctrine: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages."[4]

For more than 100 years, the notion of informed consent has been part of American tort law.[5]

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Consent to Treatment or Informed Consent

In General

As the doctrine simply implies, informed consent requires that a physician must inform the patient of the "diagnosis, the general nature of the contemplated procedure, the risks involved, the prospects of success, the prognosis if the procedure is not performed, and alternative medical treatment" before any medical treatment is performed.[6] The doctrine's rationale is to allow the patient to have the ability to make an informed, intelligent decision on his or her pending medical treatment.[7] Medical malpractice stems from the failure to disclose, or an insufficient disclosure of material risks of a procedure that a "reasonable medical practitioner would have disclosed under the same or similar circumstances."[8]

Substituted Consent for a Minor—Consent by Adult Other than Patient

Each individual state determines the exact role or status of a person who is permitted to give consent for a minor's medical treatment. Typically, if the patient is not legally competent (in this instance, meaning he or she is a minor) to consent to medical treatment, substituted consent must be sought. This is usually a guardian or other person temporarily in *loco parentis* (in the place of a parent) who may provide consent for a minor.[9] For example, Louisiana law states that several persons are authorized to consent to medical treatment that are directed by a physician if the parent is not available:

- Any person temporarily standing in *loco parentis*, whether formally serving or not, for the minor under his care and any guardian for his ward.

- Any adult, for his minor brother or sister.
- Any grandparent for his minor grandchild.[10]

Further, the law in Louisiana states that this provision is to be "liberally construed."[10] All relationships include marital, adoptive, foster, and step-relations, in addition to natural whole blood. A consent by one person so authorized is satisfactory.

The law also provides some protection for medical professionals, noting that a person acting in good faith is justified in relying on the representations of a person "purporting" to give consent, including—but not limited to—that person's identity, age, marital status, emancipation, and relationship to any other person for whom the consent is purportedly given."

If consent to treatment can't be obtained from either the patient or one providing substituted consent, a physician may medicate the patient only if he or she determines that failure to medicate the patient would render him "unsafe" to himself or others.

Consent by Minors

State statutes again set out their specific guidelines for situations in which a minor can consent to medical treatment.

The Tennessee Supreme Court held in 1987 that a minor 14 years of age or older is presumed to have the capacity to consent to treatment.[11] In Massachusetts, a minor may give consent to his medical care when that care is sought if the minor:

- is married, widowed, divorced
- is the parent of a child, in which case he may also give consent to medical or dental care of the child
- is a member of any of the armed forces
- is pregnant or believes herself to be pregnant
- is living separate and apart from his parent or legal guardian, and is managing his own financial affair
- reasonably believes himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health—pursuant, however, the minor may only consent to care which relates to the diagnosis or treatment of that disease.[12]

Emancipated Minors

California law stipulates that an emancipated minor may, *inter alia* (among other things), "consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability."[13] Likewise, West Virginia has recognized the "mature minor" exception to the common law rule that parental consent is required prior to rendering medical treatment to a minor.[14]

Elements of Informed Consent

When there is an issue of consent, states commonly look to the negligence elements and those of medical malpractice to determine whether there has been a breach of informed consent law in the medical facility. Many states have laws like that of Washington, which requires a plaintiff to show the following to demonstrate informed consent was not given:

- The healthcare provider failed to inform the patient of a material fact or facts relating to the treatment
- The patient consented to the treatment without being aware of or fully informed of such material fact or facts
- A reasonably prudent patient under similar circumstances would *not* have consented to the treatment if informed of such material fact or facts
- The treatment in question caused injury to the patient[15]

Application to Urgent Care Centers

Urgent care centers must use all reasonable efforts to comply with informed consent and consent-to-minors laws. This should include consulting with legal counsel on the specific laws of the state and developing protocols to shield the center from possible litigation.

As a reminder, many states allow that those acting in good faith are justified in relying on the representations of a person purporting to give consent.[16] Nonetheless, thorough documentation and record-keeping is mandatory in such situations.

Medical emergencies provide more latitude for medical care providers, permitting treatment without parental consent in certain situations.[17] Obviously, urgent care personnel should attempt to secure parental consent, if possible; however, there will, in most situations, be no liability in emergent circumstances when life-sustaining treatment is provided to a minor child.[18]

References

1. *In re Cassandra C.*, 316 Conn. 476, 499 (Conn. 2015).
2. See W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 9, pp. 39-42 (5th ed. 1984).
3. *Union Pacific R. Co. v. Botsford,* 141 U.S. 250, 251, 35 L. Ed. 734, 11 S. Ct. 1000 (1891).
4. *Schloendorff v. Society of New York Hospital,* 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914).
5. *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261, 269 (U.S. 1990). See Keeton, Dobbs, Keeton, & Owen, supra, § 32, pp. 189-192; F. Rozovsky, Consent to Treatment, A Practical Guide 1-98 (2d ed. 1990).
6. 2 D. Louisell & H. Williams, Medical Malpractice para. 22.01 to 22.65 (1985); *Magana v. Elie,* 108 Ill. App. 3d 1028, 439 N.E.2d 1319 (1982).
7. *Miceikis v. Field,* 37 Ill. App. 3d 763, 347 N.E.2d 320, 324 (1976).
8. *Green v. Hussey,* 127 Ill. App. 2d 174, 184, 262 N.E.2d 156, 161 (1970). See Section E below.
9. See, e.g., *Dehler v. Olmstead*, 959 F. Supp. 1549, 1554 (N.D.Ga. 1996).
10. La. R.S. § 40:1299.53. See *Stafford v. Louisiana State University,* 448 So. 2d 852, 855 (La.App. 2 Cir. 1984).
11. *Cardwell v. Bechtol*, 724 S.W.2d 739, 744 (Tenn. 1987).
12. Mass. Gen. Laws c. 112, § 12F.
13. Cal Fam Code § 7050(e)(1). In California, a minor may petition for a declaration of emancipation if he or she is at least 14 years of age, willingly lives separate and apart from parents or guardian with their consent, and is managing his or her own financial affairs. Cal Fam Code § 7120. See Va. Code § 16.1-334(1) (right of emancipated minor to make her own medical care decisions without parental consent); Mass. Gen. Laws c. 112, § 12F (the state's legislative "mature minor" or emancipated minor rule allows consent for most medical and dental care).
14. *Belcher v. Charleston Area Medical Ctr.,* 188 W. Va. 105, 113 (W. Va. 1992).
15. Wash. Rev. Code § 7.70.050(1); *Luke v. Family Care & Urgent Med. Clinics,* 246 Fed. Appx. 421 (9th Cir. Wash. 2007).
16. O.C.G.A. 31-9-6 (2010).
17. Fay A. Rozovsky, Consent to Treatment § 5.2 (2d ed. 1990).
18. See *Miller v. HCA, Inc.*, 118 S.W.3d 758 (Tex. 2003) (a physician will not be liable under a battery or negligence theory solely for proceeding with the treatment absent consent in exigent situations.).