

## TREATMENT OF MINORS (UNDER 18)

**General Rule:** Consent of a minor to medical care or treatment is ineffective. A physician must secure the consent of the minor's custodial parent or a person standing in loco parentis. (*Reference: Virginia Code §54.1-2969*)

### **STATUTORY EXCEPTIONS:**

**Minors Treated As Adults** – A minor may consent as an adult for the following medical treatment:

- Health services to diagnose or treat venereal disease.
- Health services for birth control (except sterilization), pregnancy or family planning.
- Health services for outpatient treatment or rehabilitation for substance abuse.
- Health services for outpatient treatment or rehabilitation for mental illness.

Parents or legal guardians may also consent to this treatment for a minor.  
(*Reference: Virginia Code §54.1-2969*)

**Emancipated Minors** – Where a court has legally recognized by court order a child as emancipated, that minor is to be treated as an adult for all purposes, including consenting to medical care or treatment. If a child states that he/she has been legally recognized by a court as emancipated and the health care provider has no reason to believe otherwise, the provider may rely on the minor's representation that he/she is an emancipated minor without actually seeing the court order. (*Reference: Virginia Code §16.1-334*)

In many states, a court order recognizing a minor as emancipated is not necessary. Rather, if a child lives on his/her own and supports himself/herself entirely on his/her own, he/she will be recognized as emancipated. This is not the case in Virginia; a court order is required.

**Mature Minors** – In some states, minors over the age of 14 or 15 years old may be considered a "mature minor" and given the right to consent to medical care or treatment. However, Virginia has not, to date, recognized mature minors as being legally empowered to consent to medical care or treatment.

**Married Minors** – Except for purposes of sexual sterilization, if a minor is married or has been married, the minor is treated as an adult. The minor may consent to his/her own medical treatment. If the minor is incapacitated, then the spouse, not the parents, is the most appropriate person to provide consent for the patient. (*Reference: Virginia Code §54.1-2969*)

**Minors Who Are Parents** – If a minor is a parent, the minor parent is capable of consenting to the care of his/her child, unless legal custody has been awarded by a court to someone other than the minor parent. If this is the case, the legal custodian of the child is the appropriate person to consent to the child's care.

Although a minor parent is able to consent to the care of his/her child, the minor may **not** consent to his/her own care unless he/she may consent as an adult for some other reason, e.g. marriage, legal emancipation, statutory exceptions, etc.

**Minors In Military Service** – If a minor is on active duty in a branch of the United States military, then the minor is treated as an adult and may consent to medical care or treatment.

**Inpatient Psychiatric Treatment Of Minors** – Minors who are 14 years of age or older may be admitted to a mental health facility on the *joint* application and consent of the minor and the parent. The minor must participate in the decision to obtain in-patient psychiatric treatment. (*Reference: Virginia Code §16.1-338*)

***SPECIAL CONSIDERATION:***

**Consent Issues with Minors** – A child left in the temporary custody of another may be treated in the absence of parental consent only if:

- The parent left written authorization with the temporary custodian of the child to consent to medical care or treatment.
- A medical emergency exists creating an exception to the need for consent to care or treatment.

(*Reference: Virginia Code §54.1-2969*)

- Consent is given by an authorized representative of the Department of Social Services when a *child is in the custody of Social Services*. Parental consent is not valid when Social Services has taken custody of the minor.
- A *non-custodial parent is not authorized* to consent to his/her minor child's medical care or treatment. Consent must be sought from the custodial parent, except in the case of an emergency.
- When *two parents have custody of a minor child* and they disagree on what medical care or treatment should be provided, the law provides that only one parent's consent is required. However, where there is true conflict and significant care issues, consideration should be given to seek a court order for reasonable and necessary medical care or treatment for the minor child.

**Refusal of Treatment for Minors** – A parent or legal guardian of a minor may refuse to consent to medical care or recommended treatment for a minor child. If a health care provider believes the decision to refuse care or treatment is not in the minor's best interests and has exhausted all efforts to mediate the issues, a court order authorizing care may be sought. If there is a medical emergency which requires care immediately, the physician may choose to provide treatment over the objection of the parent and, after the fact, if challenged in court, defend the decision to provide care. Whenever a court order is necessary, it should be sought in advance of treatment.

**Court Order:** The State may order medical care or treatment for a seriously ill minor over the objections, religious or otherwise, of the minor's parents. The court will balance five considerations in making its decision:

- child's age
- risks of treatment
- benefits of treatment
- likelihood of benefit being achieved
- likelihood of serious consequence if treatment is withheld

**Abortion for Minors** – A physician may not perform an abortion on an un-emancipated minor unless notice has been given to an authorized person, with a few exceptions. The law defines "authorized person"

as a parent or legal guardian or a person standing in loco parentis, including grandparents or adult siblings with whom the minor resides regularly and customarily and who has care and control of the minor.

Proper notice is achieved when:

- the physician notifies an authorized person by telephone or in person at least 24 hours before performance of an abortion;
- after a reasonable effort to notify an authorized person by telephone or in person, the physician mails notice by certified mail with return receipt requested at least 72 hours prior to performance of an abortion;
- at least one authorized person accompanies the minor, or
- the minor delivers a written statement that an authorized person knows of the minor's intent to have an abortion, signed by the authorized person and witnessed by a competent adult.

**Exceptions:** Notice of an authorized person is not required when:

- the minor asserts she is abused or neglected and the physician has reason to suspect the assertion is true and reports the abuse or neglect to the Department of Social Services;
- the abortion is medically, immediately necessary to avert the minor's death; or
- there is insufficient time to obtain either notice or judicial authorization without creating serious risk of substantial physician impairment.
- All exceptions require that the attending physician certify the facts justifying an exception in the minor's medical record.

**(Reference: Virginia Code §16.1-241)**