



Adolescent Health Care
Legal Rights of Teens

Fifth Edition

Center for Children's Advocacy
Medical-Legal Partnership Project

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The fifth edition of this book (August 2016) reflects current law regarding adolescent healthcare and confidentiality in the healthcare setting.

The Center for Children's Advocacy first published *Adolescent Health Care* fifteen years ago, when our Medical-Legal Partnership Project was the second medical-legal collaborative in the United States. We opened our doors at Connecticut Children's Medical Center in April 2000. Today, we have offices in three Connecticut hospitals and several clinics, serving populations of Connecticut's poorest and most vulnerable children and families.

The law has changed considerably since our first publication. This edition amends the landscape on core issues such as emergency contraception (Plan B) and expedited partner therapy (for patients diagnosed with sexually transmitted diseases). We added sections that address recent trends in the law and society, such as legal requirements surrounding HPV vaccination, the right to refuse vaccinations, the growing problem of sex trafficking of minors, and the confusing but critically important legal doctrine known as "mature minor." Relevant sections of state and federal statutes, as well as healthcare policy, are included in the Appendix.

We believe we have captured the most up-to-date laws, regulations and policies, but – as is always the case with general manuals – providers and administrators should seek independent counsel before making legally binding decisions regarding patient care and confidentiality.

The Center's Medical-Legal Partnership staff is available for trainings and symposia on adolescent health care and the legal rights of teens. We have given over 500 presentations on adolescent health care and confidentiality to attending physicians, physician assistants, nurses and health care administrators. We have presented in pediatric, family medicine and OB-GYN settings, to school-based administrators, healthcare clinicians, social workers, and state agency personnel.

Practitioners are our best link to the day-to-day questions that arise in the clinical setting and we welcome your critique of this book. For comments or to arrange a training or presentation, please call the Center's MLPP director at 860-570-5327, our office at Connecticut Children's Medical Center at 860-545-8581, or our office at Yale-New Haven Hospital at 203-688-0113.

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Definitions

Asylee

An alien already in the U.S. or at a U.S. port of entry who is unable to return to his or her country of nationality because of a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. (Asylees differ from Refugees in that Refugees have not yet entered the U.S. when their status is determined, while Asylees have.)

Bullying

Repeated physical act or gesture, oral or electronic communication (cyberbullying) directed at or referring to another student in the same district that causes physical or emotional harm to the student or damage to the student's property, places the student in reasonable fear of harm, creates a hostile environment at school, infringes on the student's rights at school, or substantially disrupts the education process. Bullying is unwanted, aggressive behavior among school-age children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. See www.stop-bullying.gov/what-is-bullying/definition/index.html.

Consent

Consent means consent given in writing by the patient or his authorized representative. See, e.g., Conn. Gen. Stat. § 52-146c.

DACA (Deferred Action for Childhood Arrivals)

On June 15, 2012, the Secretary of Homeland Security announced that certain people who came to the United States as children and meet several guidelines may request consideration of deferred action for a period of two years, subject to renewal. They are also eligible for work authorization. Deferred action is a use of prosecutorial discretion to defer removal action against an individual for a certain period of time. Deferred action does not provide lawful status.

Emancipated Minor

One who is 16 or 17 years of age and has been declared "emancipated" by the court because 1) the minor is married; 2) the minor actively serves in the U.S. Armed Forces; 3) the minor willingly lives away from home and manages his or her own finances with or without parental consent; or 4) the court determines "for good cause" that emancipation is in the "best interest" of the minor. See Conn. Gen. Stat. § 46b-150b.

Expedited Partner Therapy

Expedited Partner Therapy (EPT) is the clinical practice of treating the sex partners of patients diagnosed with chlamydia or gonorrhea by providing prescriptions or medications to the patient to take to his/her partner *without the health care provider first examining the partner*. See DPH Clinical Advisory, updated November 2014 at www.ct.gov/dph/lib/dph/infectious_diseases/std/ept_clinical_advisory.pdf.

HIPAA

The Health Insurance Portability and Accountability Act, first passed by Congress in 1996. While HIPAA was originally intended to simplify rules regarding the portability of insurance coverage for employees leaving their places of employment, it has transformed into a complicated statutory and regulatory structure that dictates much of how health information is protected due to privacy and confidentiality concerns.

See www.hhs.gov/ocr/hipaa.

HUSKY Health Insurance

(Healthcare for Uninsured Kids & Youth)

Connecticut's health insurance program for children and teenagers up to the age of nineteen, with eligibility based on a family's or youth's income. Children insured under the state's HUSKY Plan, Part A may be covered if the family's income is equal to or below 201% of the federal poverty level (FPL). Parents of eligible children may be insured under the HUSKY A program if the household income does not exceed 155% of the FPL. Pregnant women may be insured under the program if household income does not exceed 258% of the FPL.

HUSKY Part A

Connecticut's Medicaid program for children, authorized by Title XIX of the Social Security Act.

HUSKY Part B

Insurance program for children in higher-income families. Children's Health Insurance Program (CHIP) in national lexicon, authorized by Title XXI of the Social Security Act.

HUSKY Plus

For children with special physical and behavioral health needs.

Informed Consent

The medical doctrine whereby medical providers (physicians, hospitals, etc.) inform patients of the risks and benefits of alternative approaches to treatment and the risks and possible consequences resulting from those approaches. After such an explanation, the medical provider obtains a signed consent from the patient who acknowledges receipt of the information and an understanding of the risks and benefits of the procedure or treatment. The root premise in the doctrine of informed consent is that "every human being of adult years and sound mind has a right to determine what shall be done with his own body ..."¹

Lawful Permanent Residents (LPR)

Sometimes referred to as "green card" holders, LPRs are residents or citizens of other countries who are legally permitted to remain in the United States indefinitely and generally have the same rights as citizens, except that they cannot vote or hold elected office.

¹ *Schloendorff v. Soc'y of N.Y. Hosp.*, 211 N.Y. 125, 129-30 (1914) (Cardozo, J.).

Definitions

Living Will

A legal document that states a person's wishes regarding any aspect of health care, including withholding or withdrawal of life-support systems. It is a sub-category of "advanced directives," which are written instructions, such as a living will or durable power of attorney, which are recognized under Connecticut law to express a person's wishes as to health care if the person is unable to communicate treatment decisions. It is a process regulated by statute in Connecticut. See Conn. Gen. Stat. §§ 19a-570 *et seq.*

Mandated Reporter

A health care professional/provider (e.g. physician, surgeon, registered nurse practitioner, registered nurse, etc.) who, in his/her professional capacity, has reasonable cause to suspect or believe that a child has been abused/neglected or is at imminent risk of serious harm, shall report such abuse/neglect or risk of imminent serious harm to the Department of Children and Families or the police. See Conn. Gen. Stat. §§ 17a-101, 17a-101a. A mandatory reporter must report if a reasonable suspicion exists of suspected abuse, neglect or risk of imminent serious harm to a minor is present and discovered in the ordinary course of such person's employment or profession.

Minor

Defined for these purposes as anyone under 18 years of age, except as otherwise noted. See Conn. Gen. Stat. §1-1d.

Parental Consent

Defined for these purposes as the consent of a parent or legal guardian. Only one parent need give "parental consent." For definitions of "parent" and "guardian," please see Conn. Gen. Stat. § 45a-604.

Privileged Communication

Any confidential oral or written communication and record relating to the diagnosis and treatment of a person, between such person and a treatment provider, or between a member of such person's family and a treatment provider. The physician-patient privilege is part of the statutory code for evidence purposes only. See Conn. Gen. Stat. § 52-146o.

Refugee

An immigrant who is unable to return to his/her country of origin because of a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. (Refugees differ from Asylees in that Refugees have entered the United States with their status already determined by the U.S. Department of State, while Asylees have not.)

Sexually Transmitted Infection

A venereal disease. See Conn. Gen. Stat. § 19a-216. A venereal disease is traditionally defined as any of several contagious diseases, such as syphilis, gonorrhea, chlamydial infections, chancroid, or genital warts, that is contracted through sexual

intercourse. The confidentiality of such care and treatment of sexually transmitted infection to a minor is guaranteed by statute.

Statutory Rape

Defined by statute in Connecticut, and consists of various separate criminal offenses classified under the "sexual assault" category. The offenses are:

Sexual Assault in the First Degree

When a person engages in sexual intercourse with another person and the person is under thirteen years of age and the "actor" is more than *two* years older than the person. See Conn. Gen. Stat. §53a-70. See *also* Conn. Gen. Stat. § 53a-65 for definitions of "sexual intercourse" and "actor".

Sexual Assault in the Second Degree

When an actor engages in sexual intercourse with another person and the other person is thirteen years of age or older but under sixteen years of age, and the actor is more than *three* years older than such person. In addition, a school employee or coach may be charged with this offense regardless of the student's age or capacity to consent. See Conn. Gen. Stat. § 53a-71.

Sexual Assault in the Fourth Degree

When a person (a) intentionally subjects a person under thirteen years old and more than two years younger to sexual contact, or (b) intentionally subjects a person who is older than thirteen years old but younger than fifteen years old, to sexual contact and the person is more than *three* years older. In addition, a school employee or coach may be charged with this offense regardless of the student's age or capacity to consent. See Conn. Gen. Stat. § 53a-73a.

Supplemental Security Income (SSI)

A federal income supplement program that helps aged, blind and disabled people (including children) who have minimal or no income, and provides cash to meet basic needs for food, clothing and shelter. A minor (under the age of eighteen) is eligible for SSI benefits (through a parent or other representative payee) if the child's household income and resources are low, and the child's disability meets the Social Security Administration's criteria regarding disability.

Undocumented Immigrants

Sometimes referred to as "illegal immigrants" or "illegal aliens", they are non-citizens who are present in the United States but do not have legal permission to be present. This includes people who arrived legally on tourist or student visas but stayed beyond the time allowed on their visas, people who arrived legally and then were ordered to leave voluntarily by an immigration court, and people who came into the country illegally, usually by crossing the border undetected.

Medical or Surgical Treatment

Must a hospital/health care provider obtain the informed consent of a parent/legal guardian before performing a medical or surgical procedure/treatment?

Although there is no statute directly governing this question, traditionally, under common law, parental consent is necessary for medical or surgical treatment that requires informed consent, except in cases where an explicit statutory exception exists, such as abortion, HIV/AIDS, STD testing and treatment, treatment of drug or alcohol abuse, hospitalization for mental disorder, outpatient mental health treatment (six visits), or if the minor is emancipated. The only other exception to this rule is during an emergency when it is either impractical to obtain parental consent or any delay would unduly endanger the patient's life. In these situations, permission by the parents/legal guardian for medical or surgical care is implied by law, since, assuming that the parents had known of the situation, they would have authorized the medical or surgical care. However, the AMA Code of Ethics (AMA Code) indicates that physicians should permit a "competent minor" to consent to medical care without parental notification or consent.²

This creates a tension in the law. By definition, a minor does not have the legal capacity to provide consent for treatments/procedures that require informed consent. The AMA Code implies that a "competent minor" may give such consent. This remains an unresolved issue under Connecticut law, though in a 2015 case, the state Supreme Court ruled that a seventeen year old minor was not a "mature minor" capable of refusing life-saving medical treatment.³ The general rule, however, is that anyone under the age of majority (eighteen in Connecticut) does not possess the legal capacity to consent to a procedure that requires informed consent.

Is informed consent from a parent/legal guardian required prior to routine or non-emergent examination of a minor?

Connecticut law does not require informed consent for non-emergent or routine medical care for minors other than to mandate informed consent in general for "any procedure or treatment which ... is appropriate."⁴ Note that the AMA Code recommends that physicians should encourage minors to consult with their parents and involve them in the decision-making process. It further indicates that where the law permits, a "competent minor" may consent to medical care without parental notification and consent.⁵ As noted above, minors in Connecticut do not have the legal capacity to provide informed consent for procedures that ordinarily require informed consent. In addition, the AMA Code provides that physicians are charged with the responsibility of evaluating the "competence" of minors when dealing with these self-determination issues.⁶ The AMA Code further provides, however, that a physician is ethically justified in disclosing a confidence when the physician believes that, without parental involvement, the minor will face serious health consequences, and the parents will be helpful and understanding. In the event of such a disclosure, the physician must discuss the breach of confidentiality with the minor prior to the disclosure.⁷

The American Academy of Pediatrics (AAP), in a policy statement issued in 1989 and reaffirmed in 2004, echoed the AMA's Code in that it recommended that adolescents should be provided with confidential examinations and counseling apart from their parents.⁸

4 Conn. Regs. § 19-13-D3(d)(8). The requirement is that each hospital must assure that the bylaws or rules or regulations of the medical staff include the requirement that, except in emergency situations, responsible physicians shall obtain proper informed consent as a prerequisite to any procedure or treatment for which it is appropriate and provide evidence of a form signed by the patient in the hospital record.

5 See www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion5055.page

6 *Id.*

7 *Id.*

8 Confidentiality in Adolescent Health Care, AAP News, April 1989 (last reaffirmed in 2004), Joint Organizational Statement (AAP, AAFP, ACOG, NAACOG, and NMA).

2 See www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion5055.page

3 See *In re Cassandra C.*, 316 Conn. 476 (2015).

Medical or Surgical Treatment

Are hospitals/clinics required to obtain informed consent from a parent/legal guardian when a minor requires a procedure that requires informed consent but involves a protected confidential area, such as reproductive health care (e.g. epidural anesthesia, amniocentesis)?

While this is an unsettled area of the law, it is probable that the general rule that a parent/legal guardian must provide informed consent for procedures/surgical matters does not apply when the issue involves a protected confidential right of treatment, such as in the reproductive health care arena. While there is no statute or regulation that supports this tenet, the minor's constitutional right to reproductive freedom and confidentiality in the protected areas of reproductive rights, birth control, etc. provides legal support to the proposition that the minor possesses the legal capacity to provide informed consent without parental permission. The reality of risk management and liability issues, however, often intrude in this complex area of health care delivery, and hospitals/clinics often require parental consent in areas where the law suggests otherwise. See *Reproductive Health Care* beginning on page 15.

This dichotomy in care creates an interesting tension. For example, as noted on page 17, a minor may obtain an abortion, an invasive surgical procedure involving anesthesia, without parental consent. It is a logical extension that a minor should be able to consent for additional invasive or surgical procedures relating to reproductive care (e.g. amniocentesis, administration of an epidural during pregnancy, etc.), but these procedures are not governed by statute, as is the right to an abortion. Because of this lack of statutory authority, many clinical providers are wary of liability concerns or providing invasive care without parental consent. It is generally understood, however, that the confidentiality and privacy protections afforded minors in the realm of reproductive care should be extended to all care, regardless of whether the care is articulated by statute, or by general constitutional protections.

May a legal guardian consent to medical or surgical treatment?

Yes.⁹

⁹ Conn. Gen. Stat. § 45a-604.

Is a grandparent, aunt, or other kinship caretaker automatically authorized to provide informed consent on behalf of minor relatives?

Absent an order from a court of appropriate jurisdiction (e.g. Superior or Probate Court in Connecticut) that provides legal status to the kinship caretaker (legal guardianship, legal custody, etc.), a kinship caretaker does not possess the legal status to provide informed consent for his/her relative. In the case that informed consent is mandated, the provider must obtain consent from the legally responsible caretaker (parent or legal guardian/custodian, or Department of Children and Families) absent an emergency.¹⁰

Can a foster parent consent for medical care on behalf of a child who is in DCF custody?

No. If a child is placed in foster care pursuant to a court order, DCF is the child's legal guardian and only an appropriate DCF employee (social worker, social work supervisor, etc.) can consent to the child's medical care. If the child is placed in foster care pursuant to a 96 hour hold (but before a court order is entered), then DCF may take whatever steps are necessary to ensure appropriate medical care (including mental health treatment), provided that DCF makes reasonable attempts to obtain the consent of the parent or guardian.

Can a parent write a letter to a health care provider indicating that a friend or relative is empowered to make health care decisions for their child?

A "letter" from a parent or legal guardian does not convey legal status for healthcare decision making to a kinship caregiver, relative or friend, absent a court order from the Probate or Superior Court. However, a legally appropriate "power of attorney", signed by a parent or legal guardian and duly notarized may convey decision making status to a third party. Providers are urged to seek counsel from a risk manager or practice attorney regarding this issue.

¹⁰ To date, only two states have enacted legislation empowering kinship caregivers who have not obtained court-sanctioned guardianship/custody providing the caretaker authority to consent to medical treatment of minors. In 1999, Delaware enacted 13 Del. C §708, Affidavit of Establishment of Power to Consent to Medical Treatment of Minors, authorizing caretaker relatives to consent or refuse medical treatment of a minor pendant upon presentation of an affidavit authorizing such treatment, signed by parents or legal guardians of the child. In 2004, Ohio enacted §3109.69 of the Ohio Rev. Code providing kinship affidavit power assigning routine medical and dental care to relative caregivers.