



Pediatric Consent Issues

Practice Managers' Round Table Forum
MaineGeneral Medical Center, Thayer Campus
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Aspects of Minors' Health Care

- Consent to treatment
- Access to & control of PHI & medical records
- Related issues



Consent to Treatment



General Rule

- Minor: an individual who has not yet reached 18 years of age.
- Practitioners must obtain consent of a parent or guardian for treatment of a minor, although the minor generally is involved in the process.
- Generally accepted that one parent may consent to treatment, but note *Donna L. Andrews v. The Board of Social Worker Licensure*, Cumberland County Superior Court Docket No. AP-05-008, 9/2/05.



Exceptions to the General Rule

- Emergency care. AMA Ethics Opinion 8.08, *Informed consent*; 24 M.R.S.A. sec. 2905, *Informed consent to health care treatment*.
- Minor's status. *Some* minors may consent to *all* health care treatment.
- Sensitive types of treatment. *All* minors may consent to *some* health care treatment.



Minor's Status

- A minor may consent to all types of treatment if he/she meets 1 or more of the following:
 - Independent. Minor has been living separately from parents or guardians for at least 60 days & is independent of parental support.
 - Married. Minor is or was legally married.
 - Military. Minor is or was a member of the Armed Forces of the U.S.
 - Emancipated. Minor has been emancipated by the court pursuant to 15 M.R.S.A. sec. 3506-A (age 16 or older).
- 22 M.R.S.A. sec. 1503.



Sensitive Types of Treatment

- All minors may give consent to certain sensitive types of treatment where an obligation of parental consent may be an obstacle to treatment and, therefore, may not be in the best interest of the minor.



Sensitive Types of Treatment Include

- Family planning services, including contraception, pregnancy testing, & emergency contraception. 22 M.R.S.A. sec. 1908. (prenatal & OB services?)
- Treatment of venereal disease or drug or alcohol abuse by a physician. 32 M.R.S.A. secs. 2595 & 3292.
- Treatment of drug or alcohol abuse or for emotional or psychological problems. 22 M.R.S.A. sec. 1502.
- Certain services provided by alcohol & drug counselors, social workers, or psychologists. 32 M.R.S.A. secs. 6221, 7004, & 3817.



Sensitive Types of Treatment Include (continued)

- Treatment of venereal disease or drug or alcohol abuse in the hospital setting, but parental consent is required if hospitalization continues for more than 16 hours. 22 M.R.S.A. sec. 1823.
- Collection of sexual assault evidence through a sexual assault forensic examination. 22 M.R.S.A. sec. 1507.
- Consent to give blood by a 17 year-old. 22 M.R.S.A. sec. 1502-A.



Sensitive Types of Treatment: Abortion Services

- A minor may consent to an abortion if she accomplishes *one* of the following:
 - Provides the physician performing the abortion with her informed written consent & the written consent of a parent or another adult family member such as an aunt or grandmother.
 - Provides the physician performing the abortion with her informed written consent & receives abortion counseling from a physician or an approved counselor who may be a psychiatrist, psychologist, social worker, ordained clergy member, PA, NP, guidance counselor, RN, or LPN.
 - Provides the physician performing the abortion with her informed written consent and a court order.

22 M.R.S.A. sec. 1597-A.



Practitioner Retains Discretion to Notify Parents

- Statutory provisions regarding sensitive types of treatment *permit* but *do not require* practitioners to rely on minor's consent.
- Practitioner retains the discretion to notify the parents if he/she believes that failure to do so would “seriously jeopardize the health of the minor or would seriously limit the practitioner’s or provider’s ability to provide treatment.” 22 M.R.S.A. sec. 1505(2).



Immunity for Good Faith Reliance on Minor's Consent

- A practitioner who takes reasonable steps to determine that a minor is entitled to consent to health care treatment is immune from liability for a parent's claim that the practitioner provided care without parental consent.

22 M.R.S.A. sec. 1504.



Access to & Control of PHI & Medical Records



General Rule

- Parents have the legal authority for control of & access to PHI & medical records of a minor.



Consenting Minor Controls PHI & Medical Records

- However, a minor who consents to health care treatment is entitled to the same confidentiality rights as adults. 22 M.R.S.A. sec. 1505(1).



Financial Responsibility

- In general, a minor who consents to health care treatment is financially responsible to the practitioner for that treatment. 22 M.R.S.A. sec. 1506.
- Risk of breach of confidentiality through EOB of minor covered by parents' health insurance?



Rights of Divorced Parents to Access PHI

- Family law presumption is “*shared* parental rights & responsibilities.”
- Generally, this means that each divorced parent has the right to participate in medical decision-making for the minor child & to access PHI.
- Where the child resides & the parent with whom the practice has the primary relationship has no bearing on access.



Court Order Must Include

- “A statement that each parent must have access to records and information pertaining to a minor child, including, but not limited to, medical, dental and school records and other information on school activities, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.”

19-A M.R.S.A. sec. 1653(2)(D)(4).



“Red Flags” Against Access

- Divorce judgment limiting one parent’s right of access.
- Court order determining parental rights & responsibilities, if parents never married.
- Court order terminating parental rights resulting from DHHS action.
- Protection from harassment or abuse order.



Related Issues



Minors & Sexual Activity

- In general, the age of consent, unless the minor is married, is 14 years of age. 17-A M.R.S.A. sec. 253, Gross sexual assault (rape).
- However, a number of other provisions of Maine's criminal code apply sexual activity involving a minor.



Gross Sexual Assault

- A person engages in a sexual act with another person &:
 - The other person, not a spouse, has not reached age 14 (Class A);
 - The other person, not a spouse, has not reached age 12 (Class A);
 - The other person, not a spouse, has not reached age 18 & is a student in a “private or public elementary, secondary or special education school, facility or institution & the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student” (Class C);



Gross Sexual Assault (continued)

- The other person, not a spouse, has not reached age 18 & is a resident in or attending a “children’s home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, & the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the person” (Class C);
- The other person, not a spouse, has not reached age 18 & the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care & welfare of the other person” (Class B);
- The actor is a psychiatrist, psychologist, licensed social worker, or purports to be, & the other person, not a spouse, is a patient or client for mental health therapy (Class C);



Sexual Abuse of Minors

- A person is guilty of sexual abuse of a minor if:
 - The other person, not a spouse, is either 14 or 15 years of age & the actor is at least 5 years older than the other person (Class D);
 - Facts as above & actor knows other person is related within 2nd degree of consanguinity (Class C);
 - Facts as above except actor is 10 years older than the other person (Class C);



Sexual Abuse of Minors (continued)

- Actor is at least 21 years of age & other person, not a spouse, is 16 or 17 years of age & is a student in a private or public elementary, secondary or special education school, facility or institution & the actor is a teacher, employee or other official in the school or district (Class E);
- Facts as above, & actor knows the student is related within the 2nd degree of consanguinity (Class D);
- Facts as above, & actor is 10 years older than the student (Class D);
- Actor subjects person, not a spouse, who is either 14 or 15 years of age to any sexual contact & actor is 10 years older than the person (Class D);

17-A M.R.S.A. sec. 254.



Unlawful Sexual Contact

- A person is guilty of unlawful sexual contact if:
 - The other person, not a spouse, is not 14 years of age & the actor is 3 years older (Class C; with penetration, Class B);
 - The other person, not a spouse, is not 12 years of age & the actor is 3 years older (Class B; with penetration, Class A);
 - Other circumstances tracking gross sexual assault.

17-A M.R.S.A. sec. 255-A.



Reporting of Abuse or Neglect

- Health care practitioners & other adults in positions of authority over minors are required to report suspected abuse or neglect to the DHHS, Bureau of Child & Family Services at 1-800-452-1999. 22 M.R.S.A. sec. 4011-A.
- “Abuse or neglect” means “a threat to a child’s health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, *by a person responsible for the child.*” 22 M.R.S.A. sec. 4002(1).
- Report is required to District Attorney if alleged wrongdoer is *not* a person responsible for the child. 22 M.R.S.A. sec. 4011-A(2).



Reporting of Prenatal Exposure to Drugs

- A practitioner “involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, shall notify the department of that condition in the infant.” 22 M.R.S.A. sec. 4011-B.
- Does not necessarily constitute “abuse or neglect.”
- Does not necessarily require prosecution.



Immunity From Liability

- A practitioner participating in good faith in the reporting process or in a child protection proceeding is immune from civil or criminal liability. 22 M.R.S.A. sec. 4014.



Safe Haven Provider

- A safe haven provider, including a “medical services provider” who accepts an abandoned child less than 31 days of age shall:
 - Promptly notify the department of the delivery of the child;
 - Transfer the child to the department at the earliest opportunity; &
 - Provide the department all information provided by the person delivering the child to the safe haven provider. 22 M.R.S.A. sec. 4018.
- Includes immunity provision.



Short-Term Emergency Services

- DHHS can authorize “short-term emergency services,” including emergency medical services not longer than 72 hours following its assumption of responsibility for a child who has been or appears to be:
 - Threatened with serious harm;
 - A runaway from the child’s parents or custodian;
 - Without any person responsible for the child;
 - Taken into interim care by a law enforcement officer (6-hour hold);
 - In a situation in which the child has lost both parents as a result of a homicide or has lost one parent & the other is arrested or detained for an offense related to the homicide.

22 M.R.S.A. sec. 4023.



Medical Treatment Order

- DHHS, a physician, or a CMO of a hospital may petition the court to order medical treatment for a child if the parent or guardian is unable or unwilling to consent to it & if the “treatment is necessary to treat or prevent an immediate risk of serious injury.” 22 M.R.S.A. sec. 4071.
- Petitioner must make an effort to notify the parent or guardian, unless delay would result in increased harm, & hearing must be held within 10 days of issuance of the order, if not before.



Religious Objections to Medical Treatment

- “Endangering the welfare of a child” includes a parent or guardian who “knowingly deprives the child of necessary health care, with the result that the child is placed in danger of serious harm.” 17-A M.R.S.A. sec. 554(1)(B-3).
- “Jeopardy” in child protection act includes “[d]eprivation of necessary health care when the deprivation places the child in danger of serious harm.” 22 M.R.S.A. sec. 4002(6)(B-1).
- Religious “defenses” substantially narrowed by L.D. 482, *An Act to Ensure Adequate Health Care for Children* (P.L. 2005, Chapter 373).



Lead Poisoning Program

- Blood lead level testing required for all children covered by MaineCare at ages 1 & 2. 22 M.R.S.A. sec. 1317-D(3).
- Blood lead level testing required for all other children at ages 1 & 2, unless practitioner judges it not to be necessary based upon the lead poisoning risk assessment tool. 22 M.R.S.A. sec. 1317-D(4).
- DHHS must pay for the testing & evaluation “as resources permit.” 22 M.R.S.A. sec. 1317-D(6).



Immunizations

- Generally required for enrollment in school. 20-A M.R.S.A. Chapter 223, Subchapter II, *Immunization* & D.O.E. Rule Chapter 126, *Immunization Requirements for Children*.
- Medical exemption if physician provides written statement that immunization “may be medically inadvisable.” 20-A M.R.S.A. sec. 6355(2).
- Philosophical or religious exemption available if parent puts statement of objection in writing. 20-A M.R.S.A. sec. 6355(3).
- Note thimerosal controversy in Maine legislature & around the country.



Administration of Medication in Schools

- All public & private schools must have a written local policy & procedure for administering medication, including the training of unlicensed personnel. 20-A M.R.S.A. sec. 254(5) & D.O.E. Rule Chapter 40, *Rule for Medication Administration in Maine Schools*.
- Includes provision for self-administration of emergency medication from an asthma inhaler or an epinephrine pen with prior written approval of the primary care provider & parent. 20-A M.R.S.A. sec. 254(5)(C).



Resources on the Web

- You can find any statute cited in this presentation on the state legislature's web site at <http://www.maine.gov/legis/statutes/>.
- You can find any administrative rule cited in this presentation on the Secretary of State's web site at <http://www.maine.gov/sos/cec/rules/rules.html>.



For Further Assistance

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