CONSENT & CONFIDENTIALITY

Providing Medical and Mental Health Services to Minors in Minnesota

Legal Guidelines for Professionals

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Persons who have used this booklet previously should note that there are three significant changes in the 2002 version; specifically in mental health admissions (pp. 8-9), the criminal sexual conduct statute (p. 14), and institutional abuse (pp. 15-16).

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Contents

Introduction

This document was developed to provide a brief review of the laws that guide the provision of health care to minors in the state of Minnesota. It is intended to:

- encourage providers to become knowledgeable about the legal parameters of minor consent,
- discuss the legal parameters of confidentiality as they pertain to the care of minors, and
- differentiate between the mandated reporting of sexual abuse and the voluntary reporting of sexual assault.

Facilitating collaborative decision-making between a minor and her or his parent regarding health care should be the goal of practitioners. This goal, though often achieved without difficulty, may at times be problematic. Given the brevity of this document, it is impossible to elaborate on all aspects of decision-making or to propose categorical answers for each clinical dilemma faced by health care providers. However, this document does outline the legal aspects of a framework within which responsible decisions can be made. Practitioners should also be guided by an assessment of 1) the adolescent's cognitive, physical, social, and emotional development, and 2) the extent to which the adolescent needs and has access to supportive adults who will assist in making important decisions. Ultimately, it is this assessment along with the ethical principles of our various professions as well as an understanding of basic legal principles that guide our provision of care to minors.

This document is not intended as legal advice or consultation in regard to providing health care to minors. Specific questions regarding interpretation or application of these guidelines should be referred to an attorney. Lastly, since law is an expression of public policy, it changes and evolves over time. This document is current at the time of publication. Information about statutes may be obtained from the Minnesota Attorney General's office at (651) 296-6196. Text of Minnesota Statutes and the most recent session changes can be accessed on the Internet through: **http://www.leg.state.mn.us/leg/statutes.htm**.

We hope this document will enhance understanding of basic legal concepts regarding minor consent and confidentiality. This understanding, along with knowledge of adolescent development, family systems, and professional ethical principles, is intended to assist practitioners in keeping the best interest of their patients as their primary motivation in decisions related to the provision of care.

Definition of Terms and Concepts

Key Sources of Legal Authority

What are the types of law that govern the provision of health care to minor patients?

Statutes:
Law as determined and written by a legislative body, such as Congress or the Minnesota State Legislature.

Court Decisions:
Law as determined by a court. This law is based on judicial decisions, i.e., how a court has ruled in previous similar situations. Generally, this law prevails if there is no applicable statute.

Regulations:
An implemental interpretation of a statute having the force of law which is issued by an executive body. (Example: regulations issued by the Minnesota Department of Health or by the U.S. Department of Health and Human Services.)

Key Legal Concepts

What are the important legal terms that provide the basis for understanding the laws that govern the provision of health care to minor patients?

Minor: Individual under 18 years of age.

Consent: With regard to medical and mental health care, this is generally defined as informed consent. The following criteria must be fulfilled to meet the requirement of informed consent. The patient must be informed of and able to understand:

1. Diagnosis
2. Nature and purpose of proposed treatment
3. Risks and consequences of proposed treatment
4. Probability that treatment will be successful
5. Feasible treatment alternatives and have the ability to make a voluntary choice among the alternatives
6. Prognosis if treatment is not given

Parental Consent: The traditional requirement that a parent give consent for treatment of a minor child. Parental rights is a time-honored principle that parents have the right to make decisions for their children while they are minors.

Confidentiality: The principle of confidentiality limits the disclosure of medical and mental health care information and protects the privacy of the patient.

Exceptions to Parental Consent

Is parental consent always necessary to provide medical or mental health care to minors?

Yes, unless certain exceptions can be applied. These exceptions are based primarily on two mechanisms:

1. Statutory Law
2. Court Decisions

Based on statutory law and court decisions, what are the two broad areas of exception regarding parental consent?

The two broad areas of exception are:

1. **Status** of the minor, or
2. **Category** of care provided

Status of Minor: Medical and Mental Health Care

What are the two exceptions to parental consent based on status of the minor?

Emancipated Minor: In Minnesota there is no procedural court process by which a minor can be designated an "emancipated minor" with full rights and privileges of adult status. However, there are state statues that "emancipate" the following categories of minors for purposes of giving consent for health care. *No other consent is required regardless of age.*

1. Minor living separate and apart from parents or guardian (with or without consent, regardless of duration) who is managing her or his own financial affairs. [Minn. Stat. §144.341]
2. Minor who has married. [Minn. Stat. §144.342]
3. Minor who has borne a child. [Minn. Stat.§144.342]

Mature Minor: The concept of "mature minor" is based on principles and prior decisions of a court. Although there is no specific precedent in Minnesota case law related to application of the "mature minor" concept, there is significant case law from other states supporting practitioners who elect to provide care under this doctrine. If the mature minor doctrine is employed, the minor must be judged capable of giving informed consent. It applies where:

- no other exceptions to parental consent apply, *and*
- parental involvement is impractical or problematic.

It is generally accepted that the risk of liability for treating a "mature minor" is negligible if all of the following criteria are met:

1. Minor is 15 years of age or older.
2. Minor is able to give informed consent.
3. Proposed treatment is for the minor's benefit.
4. Proposed treatment is deemed necessary.
5. Proposed treatment does not involve complex, high-risk medical procedures or complex, high-risk surgery.

What is the risk of liability for providing care under the "mature minor" doctrine?

Careful searches have found no reported cases of a physician being successfully sued for failure to obtain parental consent when providing non-negligent treatment to a mature minor [AMA 1994, Morrissey et al. 1986, English 1990].

If it turns out that a minor did not have legal authority to give consent, is a medical or mental health provider protected from liability?

Yes, if the medical or mental health care provider relies in good faith on a minor's claim of ability to give effective consent, concluding therefrom that the minor's consent is valid. [Minn. Stat. §144.345]

Category of Care: Medical and Mental Health Care

What are the categories of medical, mental, and other health services for which a minor may give her or his own consent in the state of Minnesota?

Under Minnesota law a minor may consent to certain categories of care. These categories are:

1. **Emergency care***
   Risk to the minor's life or health is of such a nature that treatment should be given without delay and requiring consent would delay or deny treatment. [Minn. Stat. §144.344]

2. **Pregnancy-related care***
   Any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat pregnancy and conditions associated with pregnancy. [Minn. Stat. §144.343(1)]

3. **Sexually transmitted disease* (STD)**
   Any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat conditions associated with sexually transmitted diseases. [Minn. Stat. §144.343(1)]

4. **Contraceptive care***
   The practice of giving contraceptives to minors without parental consent by physicians is not criminal conduct [Op. Atty. Gen. 494-B-39, 8/25/72]. In practical application this extends to nurse practitioners and others with prescriptive authority.

5. **Abortion***
   No abortion shall be performed upon an unemancipated minor until at least 48 hours after written notice has been delivered to both of the

A minimum age is not specified in the statutes.

minor's parents or her guardians. Notification of one parent is sufficient if the other parent cannot be located through reasonably diligent effort. No notification is required if:

- the abortion is authorized in writing by those entitled to notice as stated above; or
- the attending physician certifies that the abortion is necessary to prevent the minor's death and there is insufficient time to provide notice; or
- the pregnant minor declares that she is the victim of sexual abuse, neglect, or physical abuse. Notice of that declaration shall be made to the proper authorities.

If a pregnant minor elects not to allow the notification of one or both of her parents or guardian, she may petition the court for a waiver of notification. The judge shall authorize a physician to perform the abortion if the judge determines that:

- the pregnant minor is mature and capable of giving informed consent for the abortion; or
- the abortion without notification is in the best interest of the pregnant minor.

[Minn. Stat. §144.343, Hodgson v. Minnesota, 110 S.Ct. 2926]

6. **Alcohol and other drug abuse***
   Any minor may give effective consent for medical, mental, and other health services to determine the presence of or to treat alcohol and other drug abuse. [Minn. Stat. §144.343(1)]

   A minor consenting for inpatient chemical dependency treatment has the right to leave the facility within 72 hours (exclusive of Saturdays, Sundays, and legal holidays) after submitting a written request to the head of the treatment facility, unless legal petition has been filed for commitment. The treatment facility must inform the minor of this right in writing at the time of admission. [Minn. Stat. §253B.04]

7. **Inpatient mental health services**
   A minor 16 years of age or older may request to be admitted to a treatment facility for observation, evaluation, diagnosis, care, and treatment. A minor consenting for admission has a right to leave the facility within 12 hours of submitting a written request to the head of the treatment facility, unless an emergency hold has been placed on the minor or a legal petition has been filed for commitment. The treatment facility must inform the minor of this right in writing at the time of admission. [Minn. Stat. §253B.04]

Can a parent or guardian admit a minor to a mental health or chemical dependency treatment facility on an informal (voluntary) basis without the minor's consent?

If the minor is under 16 years of age, the consent of a parent or guardian alone is sufficient to admit the minor to a chemical dependency or mental health treatment facility if it is determined by independent examination that there is reasonable evidence the proposed patient is:

- mentally ill, mentally retarded, or chemically dependent, *and*
- suitable for treatment [Minn Stat §253B.04].

If a minor is 16 or 17 years of age and refuses to consent personally to admission, he or she may be admitted as a patient for mental illness or chemical dependency treatment with the consent of a parent or legal guardian if it is determined by an independent examination that there is reasonable evidence that the proposed patient is chemically dependent or has a mental illness and is suitable for treatment. [Minn Stat. §253B.04]

Category of Care continued

Under what circumstances can a minor be admitted to a mental health or chemical dependency treatment facility on a formal (involuntary) basis?

Any minor may be transported on a "transportation hold" to a treatment facility by a peace or health officer if the officer has reason to believe that the minor is:

- mentally ill, mentally retarded, or chemically dependent, *and*
- in danger of causing injury to self or others if not immediately detained.

An examiner of the treatment facility can place the minor on a 72-hour emergency hold with the consent of the head of the treatment facility if:

- the examiner has examined the minor in the last 15 days,
- the examiner believes the person is mentally ill, mentally retarded, or chemically dependent and in danger of causing injury to self or others if not immediately detained, *and*
- an order of the court cannot be obtained in time to prevent the anticipated injury.

A minor may be held up to 72 hours after admission (exclusive of Saturdays, Sundays, and legal holidays). To hold a minor for more than 72 hours after admission, a court petition for commitment must be filed. [Minn. Stat. §253B.05]

Confidentiality

Are health care providers obligated to provide confidentiality to minors who give consent for their own care?

Yes, the minor alone may authorize release of medical and mental health care information in situations where the minor has given her or his consent for care. [Minn. Stat. §144.335] This statute assumes the minor received services pursuant to Minnesota Statute §144.341-347 (see pages 6 - 9).

Are health care providers obligated to provide minors' health records to parents upon request?

Not if the minor consented to treatment under Minnesota §144.341-347. Under these circumstances, Minnesota law does not authorize release of medical and mental health records to anyone other than the minor. [Minn. Stat. §144.335]

Can health care providers assure confidentiality to minors consenting for their care under Minnesota Statute §144.341-343 when third-party payors are involved?

There is no assurance that an itemized billing statement or hospital bill will not be sent to the person who holds the insurance policy (i.e. the parent or guardian of the minor). Third-party payors differ and providers should inform themselves regarding payor policy on explanation of benefit notification. Health care providers should be familiar with policies regarding itemized statements sent out by third-party payors or individual health care facilities in order to inform the minor whether confidentiality can be maintained.

Parental Notification

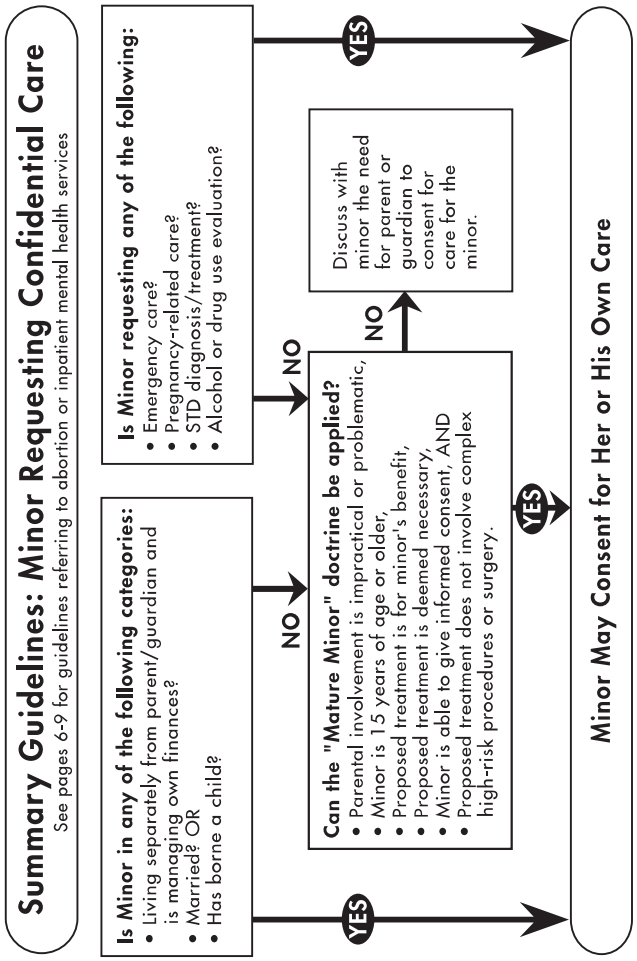
If a minor has consented for her or his own care, is there any circumstance under which a clinician can break confidence and inform the minor's parents of the care given?

Minnesota Statute §144.346 states that a medical professional may inform the minor's parent or guardian of any treatment given or needed when, in the professional's judgment, failure to inform the parent or guardian would seriously jeopardize the health of the minor.

Financial Responsibility

Who is financially responsible for the cost of services when a minor consents for her or his own care?

The minor assumes financial responsibility for health care services when she or he consents for health care services. [Minn. Stat. §144.347]



Sexual Abuse and Sexual Assault

What is the difference between *sexual abuse* and *sexual assault*?

Many people confuse the terms *sexual abuse* and *sexual assault*. The distinction between the two is the relationship of the offender to the minor and the fact that health care professionals are mandated to report *sexual abuse*.

- It is a case of *sexual abuse* if the offender is responsible for the minor's care, is in a position of authority over the minor, or has a significant relationship to the minor.
- It is a case of *sexual assault* if the offender is a stranger or does not meet the criteria for sexual abuse as listed above.

What is the definition of *position of authority*?

Position of authority includes but is not limited to any person who is a parent or acting in the place of a parent and is charged with any of a parent's rights, duties or responsibilities to a child; or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. [Minn. Stat. §609.341]

What is the definition of *significant relationship*?

Significant relationship is defined as a relative by blood, marriage, or adoption, or an adult who resides intermittently or regularly in the same dwelling as the minor. [Minn. Stat. §609.341]

Sexual Abuse and Sexual Assault continued

What are the circumstances in which a health care provider is *mandated* to report sexual contact?

When the sexual contact falls within the child abuse/sexual abuse reporting statute [Minn. Stat. §626.556]. This statute states a report is mandated when the sexual contact took place within the past three years *and*:

- was with a person who is responsible for the minor's care,
- was with a person who is in a position of authority over the minor,
- was with a person who has a significant relationship to the minor, *or*
- is an indication of parental/responsible person neglect.

If an adolescent was *sexually assaulted* but does not want to file a police report, is the provider *mandated* to report the assault?

No. While filing a police report in the case of sexual assault is important for protection of the public, it is not mandated by law unless it falls within the state's child abuse/sexual abuse reporting statute (as cited above).

If an adolescent reveals having consensual sex with someone considerably older than she or he, is the health care provider mandated to report this as statutory rape?

No, even though the sexual contact between a minor and an older individual may constitute criminal sexual conduct (see page 16); health care providers are not mandated to report unless the sexual contact *also* falls within the child abuse/sexual abuse reporting statute (as cited above).

What actions constitute criminal sexual conduct?

In Minnesota, criminal sexual conduct ranges from first to fourth degree [Minn. Stat. §609.341-345]. The degree of severity varies according to the age of the victim, the cognitive and physical capacity of the victim, the nature of the sexual contact, the age difference between the offender and the minor victim, and whether force or coercion was used.

In addition to those actions that mandate a child abuse/sexual abuse report, other actions constituting criminal sexual conduct in the first to fourth degree (the degree dependent on the variables listed in the previous paragraph) include any of the following:

- sexual contact or penetration and the minor is less than 13 years of age,
- sexual contact and the offender has reason to know that the person is mentally impaired, mentally incapacitated, or physically helpless,
- sexual penetration and the minor is at least 13 but less than 16 and the offender is more than 24 months older,
- sexual contact and the minor is at least 13 but less than 16 and the offender is more than 48 months older,
- sexual contact and the offender uses force, coercion, or threat of injury, *or*
- nonconsensual sexual contact.

Although the above actions constitute criminal sexual conduct, they do not meet the criteria of a mandated report unless the offender is responsible for the minor's care, the offender has a significant relationship to the minor, the offender is in a position of authority over the minor, *or* the action was the result of parental neglect or neglect of a responsible person/agency.

Sexual Abuse and Sexual Assault continued

If a provider has reason to believe a minor has been a victim of criminal sexual conduct in a licensed facility, is the provider mandated to file a report?

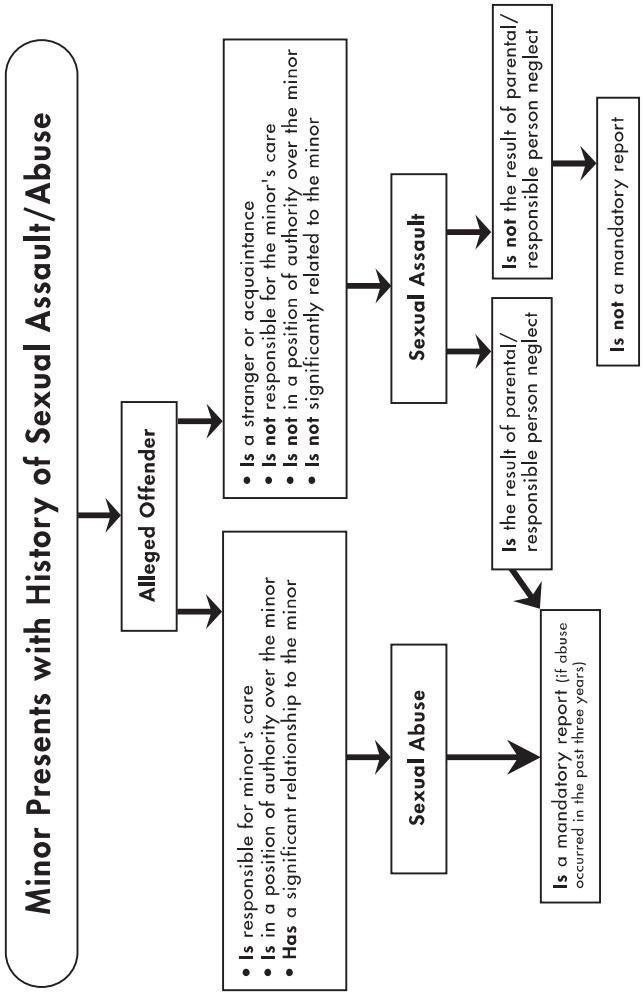
It depends upon the relationship of the offender to the victim and the circumstances under which the event occurred.

A report must be filed with law enforcement or the appropriate state licensing agency if:

- the offender is an employee or representative of the licensed facility, *or*
- the sexual contact is an indication of failure to protect on the part of the licensed facility, *and*
- the criminal sexual conduct occurred within the past 3 years.

For criminal sexual conduct meeting the above criteria in schools, reports are called to the Department of Families, Children and Learning (651-582-8546). In licensed health care facilities, reports are called to the State of Minnesota Health Facilities Complaints division (651-215-8713). The local county welfare agency is responsible for assessing or investigating allegations of maltreatment in child foster care, family child care, legally unlicensed child care, and in juvenile correctional facilities located in the county.

Reports must be called in within 24 hours and followed by a written report within 72 hours, exclusive of weekends and holidays. Written reports must identify the child, any person believed to be responsible for the abuse or neglect (if known), the nature and extent of the abuse or neglect, and the name and address of the reporter [Minn Stat. §626.556].



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