

KEEPING CENTRAL  
TEXAS CHILDREN WELL

# TREATING MINORS

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# WHAT WE WILL COVER

- Minors and Minor Consent
  - What is a minor?
  - Who can consent for a minor?
  - When can a minor consent?
- Minors and Reproductive Health
  - Consenting for contraception
  - STIs
  - Sexual activity and when to report
  - Pregnancy

# REMI NDERS

- I am not a lawyer.
- *“The views expressed by speakers and content of presentations are solely those of the presenters and may not reflect those of the Seton Family of Hospitals.”*

# ALEX

- Alex is a 16 y.o. coming in for a sports physical
- His school trainer brought him?
- Can you see him?

## ALEX-2

WHAT IF....

His guardian signed a note allowing school to bring him?

He lives with a friend's family and supports himself?

His 19 y.o. brother is with him?

# WHO IS A MINOR?

- A "minor" is a person under 18 y.o. who has never been married and never been declared an adult by a court. Generally, minors do not have the legal capability to consent to medical treatment.
- However, there are exceptions!
- <http://www.texmed.org/pmt/lel/consentminors.asp>

# WHO MAY CONSENT TO THE MEDICAL TREATMENT OF MINORS?

**Parents** have the **duty** of providing medical and dental care to their children, the explicit **right to consent** to that treatment (medical, dental, psychiatric, psychological and surgical treatment). *Texas Family Code §151.003*. As a general rule, if a minor requires medical attention, a Texas physician should obtain the consent of one of the child's parents.

## **Does that include access to the child's medical records?**

- Yes. The duty to provide treatment and the right to consent to treatment logically imply the right to access to information necessary to make treatment decisions.

- <http://www.texmed.org/pmt/lel/consentminors.asp>



# WHO ELSE CAN GIVE CONSENT ?

- Grandparent
- Adult brother or sister
- Adult aunt or uncle
- Any education institution in which the minor is enrolled and has written authorization from persons having power to consent
- Any adult who has actual care, control, and possession of the minor and has written authorization to consent from the parent
- A court having jurisdiction, an adult under court jurisdiction, or a peace officer
- When the person having the power to consent cannot be contacted and actual notice to the contrary has not been given

*Texas Family Code §32.001*



# WHAT KIND OF CONSENT FORM IS NEEDED?

When a **non-parent** gives consent for treatment, the consent must:

- Be in writing,
- Include the name of the child,
- Include the name of one or both parents, if known, and the name of any managing conservator of the child,
- Include the name of the person giving consent and their relationship to the child,
- Include a statement of the nature of the medical treatment to be given, and
- The date the treatment is to begin

*Texas Family Code Sec 32.002*



# WHEN CAN MINORS CONSENT?

- A minor on active duty with the armed forces of the United States can consent to any medical treatment.
- A minor who is 16 years of age or older, resides apart from his or her parents (with or without parental consent), and manages his or her own financial affairs, regardless of the source of income, can consent to any medical treatment.
- A minor can consent to diagnosis and treatment of any reportable infectious, contagious or communicable disease.

*Texas Family Code Sec 32.003*



## WHEN CAN MINORS CONSENT?-2

- A minor who is unmarried and pregnant can consent to treatment of pregnancy **other than abortion**.
- A minor can consent to examination and treatment for addiction, dependency, or any other condition related directly to drug or chemical use.
- A minor can consent to counseling for suicide prevention, chemical addiction or dependency, or sexual, physical or emotional abuse.

Note: **May rely on minor's written statement and may tell parents**

*Texas Family Code Sec 32.003*



# WHEN CAN MINORS CONSENT TO THEIR OWN MEDICAL TREATMENT?-2

- A minor who is unmarried and pregnant can consent to treatment of pregnancy **other than abortion**.
- A minor can consent to examination and treatment for addiction, dependency, or any other condition related directly to drug or chemical use.
- A minor can consent to counseling for suicide prevention, or sexual, physical or emotional abuse.

Note: **May rely on minor's written statement and may tell parents**

*Texas Family Code Sec 32.003*



# BECOMING LEGALLY EMANCIPATED

**“Removal of Disability of Minority”, Chapter 31 of the Texas Family Code requires all of the following:**

- Minor must be living in Texas.
- Minor must be at least 16 years old.
- Minor must be living separate from parent(s) or legal guardian(s) *(however, although this is a requirement if 16 years-old, this is not a requirement if 17 years-old, but is helpful).*
- Minor must be self-supporting and managing own financial affairs.
- Minor must be able to prove that parents no longer being legally and financially responsible is in minor’s best interests

<http://www.janesdueprocess.org/emancipation.htm>



# ALEX-SUMMARY

- Trainer can bring with signed consent
- Can consent if living on own
- Adult brother can give consent

# SARAH

- 16 y.o. patient with CC of "I think I have an STD"
- 16½ y.o. boyfriend brought her and is patient of yours
- Can you see her?

## SARAH-2

- You determine that she has cervicitis
  - and suspect Chlamydia
- She also wants birth control
- Can you treat her cervicitis?
- Can you give her birth control?
- Will you notify her mother?

# CONSENTING FOR STIs

- A minor can consent to diagnosis and treatment of any reportable infectious, contagious or communicable disease.

# REPORTABLE STIs

- **Notifiable Conditions:** all diseases shall be reported by name, age, sex, race/ethnicity, DOB, address, telephone number, disease, date of onset, method of diagnosis, report date, type and results of tests, and name, address, and telephone number of physician. . Report directly to the [local or health service regions](#) within 1 week.
- **A**cquired immune deficiency syndrome (AID)
- **C**hancroid
- *Chlamydia trachomatis* infection
- **G**onorrhea
- **H**epatitis B, D, E, and unspecified (acute)
- **H**epatitis B (chronic) identified prenatally or at delivery
- **H**epatitis C (newly diagnosed infection)
- **H**uman immunodeficiency virus (HIV) infection
- **S**yphilis

<http://www.dshs.state.tx.us/idcu/investigation/conditions/default.asp>



# MINORS AND CONTRACEPTION

- Parental consent not required in any state for minors to buy non prescription contraceptives or receive information about birth control.
- No state explicitly prohibits minors from receiving contraceptive prescriptions.
- But Texas prohibits use of state funds to provide contraception without parents consent (one of only 2 states)

# MINORS AND CONTRACEPTION -2

- Married minors explicitly can consent
- Minors may be able to consent based on their status even if the statute allowing minors who have that status to consent for their own health care does not mention contraceptive services explicitly
- Federal law explicitly states that minors on Medicaid, or at a Title X- funded clinic must be provided confidential family planning services on request.

[http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save\\_Full%20Report.pdf](http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save_Full%20Report.pdf)



## MINORS AND CONTRACEPTION -3

- Parental consent for contraceptives IF funded by
  - Title V (Maternal & Child Health)
  - Title XX (Social Services/TANF) (and NOT Title X)
- NO Parental consent IF funded by
  - Medicaid
  - Title X (or X and XX)

## MINORS AND CONTRACEPTION -4

The constitutional right of privacy in the United States Constitution has been found to protect minors as well as adults, and extends protection to contraceptive decisions by minors as well as adult women.

Minors may be able to receive confidential contraceptive services if their parent has agreed to allow them to receive confidential care from their physician or other health care provider.

Diligent searches have not found cases in which health care providers have been held liable for providing contraceptive services to minors without parental consent.

[http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save\\_Full%20Report.pdf](http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save_Full%20Report.pdf)



# SARAH-3

Does Sarah's situation require reporting?

If so, to who?

# CHILD ABUSE REPORTING CHAPTER 261, TEXAS FAMILY CODE

- Unmarried under 17 cannot consent to sex
- If has had sexual contact, is a victim of a crime/abuse
- Must be reported (unless an “affirmative defense” is documented)

[http://www.dshs.state.tx.us/childabuserreporting/gsc\\_pol.shtm](http://www.dshs.state.tx.us/childabuserreporting/gsc_pol.shtm)



# SEXUAL ACTIVITY IN A MINOR LESS THAN 17 IN TEXAS

Must be all reported unless affirmative defense of prosecution is determined including:

- **Minor is not less than 14**
- **Any partners not more than 3 years older**
- **Partners are not of the same sex**
- **Force is not involved**
- **Partners have no history of being sex offenders**

[http://www.dshs.state.tx.us/childabuserreporting/gsc\\_pol.shtm](http://www.dshs.state.tx.us/childabuserreporting/gsc_pol.shtm)



# REPORTING

- Professionals must report within 48 hours- can be anonymous
- *May* report to law enforcement
- Generally report to DFPS by phone (1-800-252-5400), fax (1-800-647-7410), or Web -  
<https://www.txabusehotline.org/Default.aspx>
- State-funded organizations at biggest risk for not reporting. Can lose all state funding!

# MUST REPORT UNDER 14

- [http://www.dshs.state.tx.us/childabuserereporting/docs/DSHS\\_Child\\_Abuse\\_Reporting\\_Form.pdf](http://www.dshs.state.tx.us/childabuserereporting/docs/DSHS_Child_Abuse_Reporting_Form.pdf)

# *Protecting Adolescents: Ensuring Access to Care and Reporting Sexual Activity and Abuse*

**Position Paper from American Academy of  
Family Physicians, the American Academy of  
Pediatrics, the American College of  
Obstetricians and Gynecologists, and the  
Society for Adolescent Medicine**

AAP News; November 2004, 250-251



# KEY POINTS

- Not all adolescent sexual activity is abuse
- Sexually active adolescents should receive appropriate health care and counseling
- A child abuse report should be made when sexual activity involves abuse or exploitation of an adolescent
- Clinicians must exercise appropriate clinical judgment in deciding if abuse has occurred

AAP News; November 2004, 250-251



# SARAH-SUMMARY

- Can see for reportable STI eval and tx
- If appropriate, can confidentially give birth control
- Partner < 3 years older and she is >14- do not have to report to state
- If Chlamydia is (+), have to report this

# LIMITS OF CONFIDENTIALITY

- **Consent does not always mean Confidential**
- Abuse (you can evaluate for without parental or minor consent)
- Suicidal/Homicidal
- Reportable Disease
- Your Best Judgement

# SUPPORT CONFIDENTIAL CARE FOR ADOLESCENTS

- Texas Medical Association
- American Academy of Pediatrics
- American Medical Association
- American Academy of Family Physicians
- American Public Health Association
- American College of Obstetricians & Gynecologists
- Society for Adolescent Medicine



# CONFIDENTIALITY IN ADOLESCENT MEDICINE

- Essential component in adolescent health care.
- Encourages adolescents to seek care and provide candid information.
- Health care providers should educate pts. about meaning, importance, scope and limitations of.
- Support parent-adolescent communication; encourage but don't mandate parental participation

## CONFIDENTIALITY - 2

- As possible, review and revise scheduling, billing record keeping, etc. to protect confidentiality.
- Providers should receive ongoing training in state and federal laws.
- Laws allowing consent and confidentiality to certain types of care are necessary and should be maintained.
- Research should focus on increasing numbers of adolescents receiving high quality, confidential healthcare.

Society for Adolescent Medicine Position Paper

[http://www.adolescenthealth.org/AM/Template.cfm?Section=Position\\_Papers  
&Template=/CM/ContentDisplay.cfm&ContentID=1466](http://www.adolescenthealth.org/AM/Template.cfm?Section=Position_Papers&Template=/CM/ContentDisplay.cfm&ContentID=1466)



# HIPPA AND MINORS

- When minor is allowed to consent, minor is treated as individual who receives protection under Privacy Rule.
- Also true when confidentiality agreement between minor and health care provider to which minor's parent assented.
- Contains special provisions regarding sharing of information with parents- depends on state law and if unclear, provider can decide.

[http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save\\_Full%20Report.pdf](http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save_Full%20Report.pdf)



# DO YOU TELL?

- Should you tell a teen what you have to report before you ask?
- Should you tell a teen and/or parent when you do report?
- Are there situations when you break confidentiality?

# DIANA

- Diana is a 17 y.o. with a (+) urine pregnancy test
- Her LMP was 8 weeks ago
- She came to your office by herself
- She is unsure what she plans to do
- She is worried her parents will kick her out.

# DIANA-2

- Can you see Diana without parental consent?
- Can you test her for STIs?
- Can you counsel her about pregnancy options?
- Do you need to report her sexual activity?

# DIANA-3

- Diana returns a week later
- Will you need to notify her parents if she chooses termination?
- If Diana chooses to keep the pregnancy, can she be dismissed from her pre-AP classes?

# JUDICIAL BYPASS

- Since 9/05 in Texas, minors required to obtain *written consent* from one of parents or guardians prior to abortion.
- Minor who does not wish this must seek judicial bypass hearing to determine:
  - if she is mature and sufficiently well informed to make decision,
  - if notification would not be in her best interest, or
  - if notification may lead to physical, sexual or emotional abuse
- If any one of above is found by court, must enter an order authorizing minor to consent to an abortion without notification of parent or guardian

[www.janesdueprocess.org](http://www.janesdueprocess.org)



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# DIANA-4

- Diana kept her pregnancy and continues to live with her mother
- Diana is in your office with her son
- Can she consent to her son's vaccines or medical care?
- Can she consent to her own Tdap or medical care?

# IMPORTANT RESOURCES

- [www.janesdueprocess.org](http://www.janesdueprocess.org)
- [www.cahl.org/PDFs/HelpingTeensStayHealthy&Save\\_Full%20Report.pdf](http://www.cahl.org/PDFs/HelpingTeensStayHealthy&Save_Full%20Report.pdf)
- <http://www.dshs.state.tx.us/idcu/investigation/conditions/default.asp>
- [http://www.dshs.state.tx.us/childabusereporting/gsc\\_pol.shtm](http://www.dshs.state.tx.us/childabusereporting/gsc_pol.shtm)
- [http://www.adolescenthealth.org/AM/Template.cfm?Section=Position\\_Papers&Template=/CM/ContentDisplay.cfm&ContentID=1466](http://www.adolescenthealth.org/AM/Template.cfm?Section=Position_Papers&Template=/CM/ContentDisplay.cfm&ContentID=1466)