



New York State
Department of Health
Bureau of Emergency Medical Services

POLICY STATEMENT

Supercedes/Updates:

No. 99 – 09

Date: 11/24/99

**Re: Patient Care
and Consent
for Minors**

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It is the purpose of this policy to clarify the legal issues surrounding consent to medical care and/or the refusal of care by minors in the pre-hospital EMS setting.

Emergency Medical Services (EMS) providers are often presented with patients who are considered by law to be minors. The issue of providing care and/or the patient's right to refuse care becomes a complex circumstance EMS providers must address. In the prehospital situation the issue at hand is not usually providing care but rather the failure to treat.

Legal Background

A minor, in New York State, is defined as a person who is under eighteen (18) years of age.

This is defined by the General Obligations Law §1-202, Domestic Relations Law §2 and Public Health Law §2504. Under this section of Public Health Law, a person who is eighteen or older may give effective consent for health care.

Public Health Law § 2504

Enabling certain persons to consent for certain medical, dental, health and hospital services.

1. Any person who is eighteen years of age or older, or is the parent of a child or has married, may give effective consent for medical, dental, health and hospital services for himself or herself, and the consent of no other person shall be necessary.

2. Any person who has been married or who has borne a child may give effective consent for medical, dental, health and hospital services for his or her child.

3. Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care.

4. Medical, dental, health and hospital services may be rendered to persons of any age without the consent of a parent or legal guardian when, in the physician's judgment an emergency exists and the person is in immediate need of medical attention and an attempt to secure consent would result in delay of treatment which would increase the risk to the person's life or health.

5. Anyone who acts in good faith based on the representation by a person that he is eligible to consent pursuant to the terms of this section shall be deemed to have received effective consent.

In addition to these provisions for health care consent by 'emancipated' individuals, there are other statutory provisions for minors who are in military service or are seeking treatment for AIDS (PHL §2781) and other sexually transmitted diseases (PHL §2305). So long as the individual is a minor, the presumption is that he or she is not emancipated and the burden of proof rests on the individual asserting it.

The Mental Hygiene Law also addresses consent but for situations not usually within the scope of EMS. Additionally in §9.41 it permits peace and police officers to 'direct the removal of any person to a hospital who is conducting himself in such a manner which is likely to result in serious harm to himself or others'.

Other governmental agencies, such as law enforcement, mental health or corrections, may have legal definitions for individuals under eighteen that describe specific rights or responsibilities. Unfortunately, these do not impact health care decisions including the ability to consent or refuse care in the prehospital setting.

Refusal of Medical Assistance (RMA)

An individual who is legally a minor cannot give effective legal/informed consent to treatment and therefore, conversely, cannot legally refuse treatment.

Documentation

Complete an assessment of the patient. Fully document all circumstances including subjective and objective findings, attempts to contact parents, note any objections or refusals by the patient and all other pertinent situational facts. Include witness statements. Always consider contacting medical control for assistance.

Collaboration with other Agencies

EMS agencies are advised to work with hospital administrators, local law enforcement agencies, school administrators and community youth group leaders to develop policies and procedures to best serve the medical needs of minors in time of an emergency.

There are alternatives to EMS and hospitals for custody and supervision of minors. An uninjured child **may** be supervised by law enforcement personnel or a school or activity (soccer, etc.) supervisor until a parent is contacted. In some situations, a responsible adult (grandparent, aunt, brother, etc.) with the child can assist in the decisions making.

EMS agencies should work with local youth activities to ensure they have made plans to contact parents, have provided consent to treatment forms or have other permissions in place for the children in their supervision.

EMS agencies also need to work and plan with all police agencies for those situations involving minors, particularly those who are not injured and do not require hospitalization. Local and state police have broad powers which can be used to protect minors and facilitate custody.

However, all else failing, the EMS provider may remain responsible for providing care and/or transportation of a minor to a hospital.

EMS Agency Protocols

Agency policies and regional BLS and ALS protocol sets can contain guidance for treating minors in the prehospital setting. Contacting medical control is always an acceptable option for EMS providers faced with uncertain situations. Medical control may be able to influence the situation, even if it can't change the consent options.

Recommendations

EMS providers may find themselves responsible for minors, in situations they have been called to when there is no parent or guardian present or reachable.

Although it is easy to determine a legal definition of a minor, the responsibility to treat or

release is a much more complex legal, ethical, social and public relations problem. The

nature of children and their special needs coupled with their inability to legally give informed consent, present special and unique matters for EMS personnel to consider and evaluate. Careful assessment, decision making and documentation are key as is discussion and planning with other agencies.

Act in the best interest of the patient – EMS providers must strike a balance between abandoning the patient and forcing care. There may be instances in which a minor appears mature enough to make an independent judgment, however legally, the minor is unable to make a decision. Always contact medical control for assistance if there is any question !

Common sense, prior agreements, sufficient documentation, and acting in the best interest of the patient must prevail.

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