The Tennessee Medical Association (TMA) created this resource based on logging years of calls to the legal department from pediatric and other medical practices with questions regarding the treatment of minor patients and the rights and duties of parents and guardians for minors under their legal responsibility. This guide is not an exhaustive recitation of Tennessee law but merely a guide to help TMA members with frequently encountered situations involving the treatment of minors. These materials contain statutory and regulator references to help the reader locate more information. We address issues of consent to treatment, access to medical records and other PHI, confidentiality issues, reporting requirements, and vaccine laws. We also attempt to demystify custody and family law circumstances which can be confusing and potentially disruptive to care. Thank you for your membership in TMA.

TMA members can contact the TMA legal department with general questions or clarification of any matter discussed in this resource by calling 1-800-659-1862 or legal@tnmed.org.
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I. DEFINITIONS

a. Emancipated minor - means any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor’s parents. (TCA § 37-10-302).

b. Loco Parentis – means in the place of a parent.

c. Minor - A patient under the age of 18 years of age. A patient 18 years of age or older is an adult.

d. “May” or “can” – Discretionary.

e. “Must” or “shall” – Mandatory.

f. PHI – protected or private health information.

g. TCA – means the law of Tennessee codified, Tennessee Code Annotated.

II. CONSENT TO TREATMENT OF A MINOR PATIENT

This section addresses the question of when a minor patient can consent to their own medical treatment as opposed to the treating physician or health care provider having to obtain consent to treat the minor patient from the minor’s parent (or legal guardian).

a. General rule – A health care provider must obtain parental (or legal guardian) consent before treating a minor patient. Otherwise, informed consent is not established. If informed consent is not established, treatment of the minor may be considered a battery, and subject the health care provider to possible criminal and civil liability. There are exceptions to this general rule, described below.

b. HIPAA [45 CFR § 164.502(g)(3)] – Uses and Disclosures of PHI

   1. Standard rule: Personal representatives. Except as otherwise provided, treat an individual's personal representative as the individual with respect to uses and disclosures of PHI and consent to treatment issues.

   2. Emancipated minors. Generally, emancipated minors have the legal ability to consent to their own medical treatment. If for some reason recognized by state law, an emancipated minor cannot make his/her own medical decisions and someone else has the authority to make medical decisions for the emancipated minor, then the physician and medical office must treat that individual as a personal representative with respect to PHI relevant to the treatment of the emancipated minor. An example of this situation might be if the emancipated minor is unconscious due to an emergency and a relative acts as a personal representative based on the patient’s advance directive or power of attorney for health care.

   3. Unemancipated minors. When the law allows a parent, guardian, or other person acting in loco parentis to make decisions related to consent to treatment for an unemancipated minor, a covered entity must treat this person as a personal representative of the minor with respect to PHI access and the treatment of the minor unless an exception applies. The individual may not be a personal representative of an unemancipated minor and access the PHI or consent to treatment if:
A. The minor may lawfully obtain such health care service without the consent of a parent, guardian, or other person acting in loco parentis, and the minor, a court, or another person authorized by law consents to such health care service. OR

B. A parent, guardian, or other person acting in loco parentis assents to an agreement of confidentiality between a covered health care provider and the minor with respect to such health care service.

4. In Tennessee, an unemancipated minor may consent to treatment under the circumstances outlined in sections II.d, e, and f below.

c. Parents (or legal guardians/custodians) or courts can transfer the power to consent to treatment for a minor child to another adult. Here are ways this can occur:

1. Power of Attorney for Care of a Minor Child Act (TCA § 34-6-301 et seq)

A. A power of attorney for care of a minor child is a means by which a parent can designate another adult residing in Tennessee temporary care-giving authority for minor child if a hardship arises that prevents the parent from caring for the child. The document providing for the power of attorney must be signed by the parent, notarized, and two witnesses are required to sign and date it in each other’s presence. (TCA § 34-6-302).

B. If both parents are living and have legal custody of the minor child, the document must be signed by both parents. If only one parent has legal custody of the minor child, then that parent shall sign it. The document must describe the hardship as to why the parent cannot take care of the child. The other parent must consent in writing to the appointment of the person allowed to make health care decisions for the child or else shall explain in the power of attorney document why the consent cannot be obtained. (TCA § 34-6-303).

C. The parent may authorize the caregiver to obtain medical, dental, and mental health treatment for the child. (TCA § 34-6-304).

D. While the power of attorney is in effect, the decision of a caregiver to consent to or to refuse medical, dental, or mental health care for a minor child takes precedence over any decision of the parent having legal custody of the minor child. If the parent disagrees with the decision of the appointed caregiver or chooses to make any healthcare decisions for the minor child, then the parent must revoke the power of attorney for care of a minor child and provide the health care provider written documentation of the revocation. (TCA § 34-6-307).

E. The power of attorney for care of a minor child may be terminated in writing signed by either parent with legal custody or by a court order. (TCA § 34-6-306).

F. A person, such as a physician, who relies on the power of attorney for care of a minor child to receive treatment decisions from the caregiver has no obligation to make any further inquiry or investigation. (TCA § 34-6-310).
G. Immunity. No person or health care provider who acts in good faith reliance on a power of attorney for care of a minor child to provide medical, dental, or mental health care, without actual knowledge of facts contrary to those authorized, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for that reliance. This section shall apply even if medical, dental, or mental health care is provided to a minor child in contravention of the wishes of the parent with legal custody of the minor child, as long as the person, or health care provider has been provided a copy of an appropriately executed power of attorney for care of a minor child, and has not been provided written documentation that the parent has revoked the power of attorney for care of a minor child. (TCA § 34-6-308).

2. Legal Custodian of a Minor (TCA § 37-1-140)

A. A custodian to whom legal custody has been given by the juvenile court has the right to the physical custody of the child, the right to determine the nature of the care and treatment of the child, including medical care and the right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child, subject to the conditions and limitations of the court's order and to the remaining rights and duties of the child's parents or guardian.

TMA Note: Ask the custodian for the document from the court naming him/her the legal custodian. You should make a copy of it and place it in the minor’s medical record.

3. Durable Power of Attorney (TCA § 34-6-101 et seq)

A. A durable power of attorney is a means by which a parent (called principal" in the statute) can designate another person to act for him/her in the event the principal becomes disabled or incapacitated. (TCA § 34-6-102).

B. A durable power of attorney, unless it says otherwise, authorizes the person to provide for the support and protection of the principal, or of the principal's spouse, or of any minor child of the principal or of the principal's spouse dependent upon the principal, including, without limitation, provision for food, lodging, housing, medical services, recreation and travel. (TCA § 34-6-109).

4. Durable Power of Attorney for Health Care (TCA § 34-6-201 et seq)

A. A durable power of attorney for health care is where a person (called a principal" in the statute) designates another (called “attorney in fact” in the statute) to make health care decisions for the principal. (TCA § 34-6-201).

B. It must be in writing and signed by the principal and either attested by a notary or witnessed by two witnesses as evidenced by the witnesses' signatures on the document. There are several legal requirements as to who can sign as a witness. (TCA § 34-6-203).

C. Neither the treating health care provider nor an employee of a treating health care provider can be designated as an attorney in fact in most cases. (TCA § 34-6-204).
D. If a provisions of a valid durable power of attorney for health care designates a person other than a child’s parent to consent to treatments or procedures, the provisions of the power of attorney shall control. (TCA § 34-6-216).

d. Exceptions to the general rule under Tennessee statute – when parental (or guardian) consent is NOT required and the minor patient CAN consent to his/her own treatment:

1. Minors who are parents. A minor may consent to the treatment of their own children. (TCA § 63-6-229).

2. Contraceptives. Medically acceptable contraceptive procedures, supplies, and information shall be available to each person regardless of age. However, a physician can refuse to provide them for medical reasons. (TCA § 68-34-104).

3. Sterilization. A minor can consent to a sterilization procedure if the minor is married (TCA § 68-34-108).

4. Juvenile drug users. A physician may treat a juvenile drug user without parental consent but may notify the juvenile’s parent of such treatment. (TCA § 63-6-220).

5. Emergency. If a physician has a reasonable medical belief that emergency treatment should not be delayed, such physician can treat the minor without parental consent if treatment is necessary to save the minor’s life or prevent further deterioration of the condition. A physician should try to notify the minor’s parents or guardians if known or readily ascertainable. (TCA § 63-6-222).

6. Prenatal care. Physicians may provide prenatal care to minors without parental consent. (TCA § 63-6-223).

7. Sexually transmitted diseases. Physicians may examine, diagnose and treat minors with an STD without the consent or knowledge of the parent. (TCA § 68-10-104).

e. Exception to the general rule under Tennessee case law (“common law”) – The Mature Minor Doctrine – The “Rule of Sevens” - when parental (or guardian) consent is NOT required and the minor patient CAN consent to treatment:

1. In the absence of appropriate parental consent, Tennessee courts will look to “the age, ability, experience, education, training, and degree of maturity or judgment obtained by the minor, as well as the conduct and demeanor of the minor at the time.” Cardwell v. Bechtol, 724 S.W.2d 739, 748 (Tenn. 1987).

2. “The Rule of Sevens”
   
   A. Under age 7 - no capacity for minor to consent to care.
   B. Age 7-14 – rebuttable presumption of no capacity to consent to care.
   C. Age 14+ - rebuttable presumption minor has capacity to consent.

f. Circumstances under which a parent CANNOT consent to the treatment of a minor child:

1. When the right of the parent to consent has been taken away by a court order.
2. A non-custodial parent cannot consent to treatment absent a court order or other legal instrument.

TMA Note: Always require the non-custodial parent to provide the practice with the court order before treating the minor, unless it is an emergency. Make a copy of the order and keep it in the minor’s medical record.

3. When the parent has transferred his/her right to make health care decisions for a minor child. See the discussion in section II.c above.

4. When the minor patient is deemed to be emancipated.
   A. An emancipated minor is defined under Tennessee law as either a minor who is married or a who has received a court order freeing the minor from the care, custody, and control of the minor’s parents (or guardian). (TCA § 37-10-302).
   B. Definitive proof of a minor’s emancipation is a court order or valid proof of the minor’s marriage.

5. When the minor patient is determined to be a “mature minor” for purposes of consenting to treatment. See the discussion of the Mature Minor Doctrine and “Rule of 7s” above in section II.e.

6. When statute specifically provides that the minor patient has the right to consent. See the list of Tennessee statutes giving minors the authority to consent to their own treatment in section II.d.

III. ACCESS TO A MINOR PATIENT’S MEDICAL RECORDS AND PERSONAL HEALTH INFORMATION (PHI)

Questions frequently arise in medical practice about who can access a minor patient’s medical records. This can be a complex issue, especially in cases where the minor patient’s parents are divorced or someone else has legal custody of the minor patient. The TMA legal department has been contacted in situations where divorced parents give instructions to the practice as to who can and cannot have access to medical information. This section addresses circumstances when the minor’s parents (or legal guardian) cannot access a minor’s medical record, PHI, or when a physician or health care provider is prohibited from discussing the minor’s medical issues with the parent or guardian.

a. Under HIPAA, the general rule is that parents of minors are recognized as personal representatives of unemancipated minors and can have access to their minor child’s private health information, including medical records and the ability to discuss the minor’s medical issues with the treating physician or provider [(45 CFR 164.502(g)] unless an exception applies. The exceptions are discussed in section III.b below.

1. Domestic Relations and Custody
   A. A court can award control and custody of a minor child to one parent or award joint custody. The parent(s) with custody can access their minor child’s PHI.
B. A parent who does not have legal custody of the child is considered the non-custodial parent. Unless otherwise provided by law, such non-custodial parent has fewer rights with regard to access to the child's PHI. They have the right to receive copies of the child's medical records directly from the physician or health care provider who provided treatment or health care. (The keeper of the records may require a written request which contains a current mailing address and the payment of reasonable costs of duplication.) No person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person. (TCA § 36-6-101).

C. An award of joint custody grants both parents the right to the companionship of the child, and the right to make decisions as to his care, education, health, and religion. See Damron v. Damron, 212 Tenn. 14, 367 S.W.2d 476, 479 (1963).

D. A copy of a child’s medical records shall be furnished by the treating physician or treating hospital upon a written request by any of the following:

   a. The noncustodial parent;
   b. In the case of parents having joint custody of a child, the parent with whom the child is not residing; or
   c. In the case of a child in the custody of a legal guardian, then either parent. (TCA § 36-6-101).

E. Such request must contain the current address of the requesting party.

F. Upon receiving such a request, the treating physician or hospital shall send a copy of the medical records to the requesting party unless furnished with a court order closing the records.

G. All expenses for copying records shall be paid by the requesting party. The medical record copying law for Tennessee is found at TCA § 63-2-101 and 102.

H. Any judge having jurisdiction over the custody of such child may close the medical records of the child to the requesting parent upon a showing that the best interests of the child will be harmed if the records are released.

b. Exceptions to the general rule:

1. Parental or legal guardian consent to access a minor’s PHI is not required when state law or other law does not require parental consent in order for a minor to obtain a service. If the minor can consent to treatment, the parent is not the personal representative and cannot have access to the minor’s medical records. See II.d above. Thus, parents and legal guardians cannot have access to minors’ PHI without the minor’s consent for the following services or for the services listed in III.b.2-5:
   A. Minors who are parents (TCA § 63-6-229)
   B. Contraceptives (TCA § 68-34-104)
   C. Sterilization (TCA § 68-34-108)
D. Juvenile drug users (TCA 63-6-220)
E. Emergency treatment (TCA § 63-6-222)
F. Prenatal care (TCA § 63-6-223)
G. Sexually transmitted diseases (TCA 68-10-104)
H. When consent is given by the minor patient after a “Rule of Sevens” determination by the physician that the minor patient is a mature minor.

2. When a court authorizes someone other than the parent to make treatment decisions for the minor, then the parent is not the personal representative of the minor patient and has no right to access the minor’s PHI.

3. When the parent agrees to the confidential relationship between a physician and the minor.

4. When a physician believes that the disclosure of information to the minor’s parent endangers the child, the physician can deny access to the endangering PHI.

5. Physician’s Orders for Scope of Treatment (POST Form)

   A. The POST may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship, but only where the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order and the agent, surrogate, or other person authorized to consent on the patient’s behalf under the Tennessee Health Care Decisions Act, is not reasonably available, if the physician determines that the provision of cardiopulmonary resuscitation would be contrary to accepted medical standards.

IV. CONFIDENTIALITY IN THE TREATMENT OF MINORS (AMA ETHICS OPINION 5.055)

This section is included to provide ethical guidance to physicians who treat minors who request that a medical procedure or service be treated confidentially. This especially applies when the procedure or service is not one of the laws that specifically only allow the minor to consent, such as those listed in III.b.1 above.

   a. Generally, a physician who treats a minor has an ethical duty to promote the autonomy of the minor patient by involving such minor patient in the medical decision making process to the degree commensurate with their decision-making abilities. See discussion of Tennessee common law’s “Rule of Sevens” in section II.e.

   b. When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor’s reasons for not involving their parents and correcting any misconceptions that may be motivating their objections.

V. TENNESSEE CHILD VACCINE LAWS

Tennessee child vaccine laws can be confusing for both providers and parents of small children. At the present time, there is no law mandating that all children receive vaccines. There are medical and religious exceptions under Tennessee law. This section lists the vaccines that the State recommends and those which it requires in order for a child to enroll in school. It also addresses circumstances when a child does not have to receive a vaccine in order to be enrolled.
a. Childhood Immunization Law

1. Immunizations that parents (and legal guardians) are encouraged, but not required, to get the children under their care before age 2. (TCA § 37-10-401):
   
   A. Diphtheria-tetanus-pertussis (DTP)
   B. Polio: oral polio vaccine (OPV) or inactivated polio vaccine (IPV)
   C. Measles-mumps-rubella (MMR)
   D. Hepatitis B vaccine (Hep B)
   E. Haemophilus influenza type B conjugate vaccines (Hib)
   F. Pneumococcal, when indicated
   G. Influenza vaccine, when indicated
   H. Varicella, when available

2. Vaccines required prior to school attendance (Tenn. Comp. R. & Regs. 1200-14-01-.29) unless an exception applies:
   
   A. Applies to public, private, and church-related schools K-12.
   B. Applies to pre-school, day care and Head Start Center.
   C. Vaccines:
      a. Diphtheria
      b. Measles (rubella)
      c. Pertussis (whooping cough)
      d. Poliomyelitis
      e. Rubella
      f. Mumps
      g. Hepatitis B
      h. Tetanus
      i. Varicella, for any child entering kindergarten, 7th grade, or new students entering any school
      j. Diphtheria-tetanus-pertussis, for any child entering 7th grade
      k. Pneumococcal, for any child under 5 entering any child care facility
      l. Hepatitis A, for any child over 18 months but younger than 5 years old for any child entering child care facility and any child entering kindergarten.

   D. Exceptions to vaccine requirement (TCA § 49-6-5001):
      a. Conflicts with parent or guardian's "religious tenets and practices". This must be in a signed statement to the school; or
      b. Written statement from the child's physician excusing the child from immunization; or
      c. The child is homeless.

3. Meningococcal Disease (TCA § 49-7-124)
   
   A. Required for:
      a. New students in higher learning (college, university, community college, etc.)
      b. Who live in on-campus student housing.

   B. Exceptions:
      a. Where a physician certifies in writing that a particular vaccine is contraindicated for one (1) of the following reasons:
         i. The individual meets the criteria for contraindication set forth in the manufacturer’s vaccine package insert; or
         ii. The individual meets the criteria for contraindication published by the CDC or the advisory committee on immunization practices; or
iii. In the best professional judgment of the physician, based upon
the individual’s medical condition and history, the risk of harm
from the vaccine outweighs the potential benefit;
b. Where a parent or guardian or, in the case of an adult student, the
student provides to the school a written statement, affirmed under
penalties of perjury, that vaccination conflicts with the religious
tenets and practices of the parent or guardian or, in the case of an
adult student, the student.

VI. REPORTS AND DISCLOSURES

There is a lot of misinformation about the laws regarding mandatory and discretionary reporting
to the state or to law enforcement. This section attempts to demystify reporting requirements. It
addresses under what circumstances reports must be made, to what entity the reports must be
made, and how the reports can be submitted.

a. Sudden Infant Death Syndrome. An attending physician must report any sudden,
unexplained death of an infant under one year of age to the county medical examiner.
(TCA § 68-1-1102).
b. Injuries.
   1. Pertains to (TCA § 38-1-101): Health care providers must report:
      A. Knife wounds, pistol wounds, gun wounds, other deadly weapon wounds,
         other means of violence wounds;
      B. Wounds believed to be from meth lab exposure;
      C. Female genital mutilation.
   2. Reporting is to local law enforcement and the local district attorney. (TCA § 38-1-
101).
c. Child abuse.
   1. Pertains to (TCA § 37-1-403):
      A. Wound, injury, disability, or physical or mental condition to a child;
      B. Child sexual abuse;
      C. Death by suspected child abuse;
      D. Suspected institutional child abuse;
      E. STD listed in TCA § 68-10-112 (listed on the department of health website),
         or venereal herpes and chlamydia, in children 13 or younger.
   2. Reporting (TCA  § 37-1-403):
      A. If the harm is of a nature as to reasonably indicate that:
         i. It was caused by brutality, abuse, or neglect, or
         ii. On the basis of available information, reasonably appears to have
            been caused by those causes
            iii. Must be reported to a juvenile judge, DCS, or local law enforcement.
      B. Death by suspected child abuse must be reported to the medical examiner.
      C. Suspected institutional child abuse must be reported through the child
         safety website. See VI.d.3 below for web address.
      D. STDs must be reported in writing on a form supplied by the department of
         health.
      E. Diagnosis of pregnancy of an unemancipated minor, the provider shall
         provide to the parent, if the parent is present, and the minor consents, any
         readily available information on how to report sex abuse to DCS if sex abuse
         may have resulted in the pregnancy.

d. Child Sexual Abuse.
   1. Pertains to (TCA § 37-1-602):
      A. Children under 13.
B. Children age 13-17 if by a relative, someone residing in the home, or person responsible for care or custody of the child.

2. Reporting (TCA § 37-1-605):
   A. Anyone who knows, or has reasonable cause to suspect child sexual abuse must report it to DCS.
   B. Each report shall be made immediately to the local office of the department responsible for the investigation of reports made pursuant to this section or to the judge having juvenile jurisdiction or to the office of the sheriff or the chief law enforcement official of the municipality where the child resides.

3. Website for reporting: www.tn.gov/youth/childsafety.htm
4. Information in a report provided to DCS may not be disclosed. (TCA § 37-1-612).

e. Overdoses. If a physician diagnoses or treats a person who is believed to be in school, K-12, for a drug overdose, then the physician shall report the case to public school officials under rules of the department of health. (TCA § 68-24-301).
   1. The following information shall be provided to the appropriate public school superintendent on a form provided by the Tennessee Department of Health. Each report shall contain no other information.
      A. Type of drug
      B. Name of school in which student is enrolled
   2. Name and address of reporting authority (Rule 0940-06-03-.02)

VII. FAILURE TO OBTAIN TREATMENT FOR A MINOR (TCA § 39-15-402)

There have been high profile news stories in recent years about the prosecutions of parents for failing to obtain medical treatment for their minor children. Usually these stories center on parental interpretation of Tennessee’s “religious exception” to child abuse laws.

   a. TCA § 39-15-402 provides the religious exception to the offenses of aggravated child abuse and aggravated child neglect or endangerment. The law does not construe these offenses to be committed if a child is being provided treatment by spiritual means through prayer alone, in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner of the recognized church or religious denomination, in lieu of medical or surgical treatment.

VIII. HANDY RESOURCES

   b. Commissioner of Health office – 615-741-3111
   c. TMA website - www.tnmed.org
   d. TMA online Law Guide – members only area, login required to access www.tnmed.org/TMA/Member_Resources/Healthcare_Law_Guide_Directory.aspx
   e. TMA legal department – 1-800-659-1862 or legal@tnmed.org

DISCLAIMER: This discussion of legal issues in the treatment of minor patients in Tennessee is intended to be a resource, general summary, and outline for Tennessee Medical Association (TMA) members. It should not be construed as legal advice or representation by the TMA. It does not constitute an attorney-client relationship between any health care provider or practice and any TMA employee. Laws and regulations change or are updated from time to time. TMA does its best to update these materials after it becomes aware of changes. It is highly recommended that the online version of this resource be accessed for reference. This unwarranted material is provided only for informational purposes. Should you require legal advice or representation, you should contact your personal attorney.

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