COMPLICATIONS: Informed Consent and Treating Minors in Urgent Care

JOHN SHUFELDT, MD, JD, MBA, FACEP

STATES HAVE ENACTED STATUTES, and courts have proffered an abundance of case law on the treatment of minors. There have been no reports of physicians being held liable for rendering emergent or urgent care to minors prior to obtaining parental consent.

Still, informed consent issues surrounding the care and treatment of minors are often a source of confusion and are, at best, problematic.

Essentially, competency to give consent is determined in the same way for both minors and adults:

- Does the individual understand what he or she is consenting to?
- Can the person paraphrase the information given?
- Can the patient think in the abstract and have an understanding of the future consequences of either accepting or refusing the treatment?
- Is the decision entered into voluntarily, without duress?
- Given the nature of the decision, does the patient understand the risks and benefits and its reversibility?

If a minor is legally capable of giving consent, the patient's right of confidentiality also attaches. However, it is prudent to try to persuade the minor to allow notification of the guardian so the parent can take part in the decision-making process; this is especially preferable if the minor is seriously ill. Statutes allowing minors to consent do not mandate parental notification unless the failure to do so would place the minor in additional risk.

Historically, issues surrounding parental availability were uncommon. Today, however, family dynamics have changed and children may be left unattended for long periods or left in the care of siblings, neighbors, grandparents or babysitters. During these times, who can consent for the child's care? Who can refuse care and how does an urgent care provider sift through this web to do what is best for the child?

John Shufeldt is chief executive officer of NextCare, Inc. and sits on the Editorial Board of *The Journal of Urgent Care Medicine*.

"Competency to give consent is determined in the same way for minors and adults."

Low Risk: Emergency Care

The most clear-cut scenario is when an emergency situation exists. Care should never be delayed while waiting for consent when evaluating a child with an emergency condition. In an emergent or urgent situation, any patient young or old can be

treated without consent, since consent is implied. What constitutes an emergency condition is broadly defined and courts are reluctant to second guess a practitioner's subjective interpretation surrounding the facts of the situation.

Parental consent to treat the minor is also not required in cases of alleged or suspected child abuse; the proper governmental authorities must be contacted in such a situation.

In some states, a caretaker can assume a parental role by acting in *loco parentis* (in the place of a parent). However, physicians should still attempt to contact the parents as soon as possible and document those attempts in the medical record.

"The definition of an emancipated minor varies from state to state."

Most importantly, again: urgent care physicians should never delay the urgent or emergent care of a minor while waiting for consent. Common sense should prevail; thus, physicians should be guided by the proviso to provide what is in the patient's best interest.

The Question of Competence

In some instances, a minor is deemed competent to consent for his own treatment. This competence is closely aligned to cognitive ability, as opposed to being strictly tied to chronological age. All states allow a minor to consent for the diagnosis and treatment of drug- and alcohol-related issues and for the diagnosis and treatment of sexually transmitted disease. Some states also allow for the diagnosis and treatment of issues surrounding pregnancy, HIV, and AIDS.

Many state's statutes also address consent issues surrounding an emancipated minor. However, the definition of an emancipated minor varies from state to state. Some of the typical conditions which define "emancipation" are marriage, minors in the military, pregnancy, minors emancipated by court order or decree, minor mothers, and minors who are supporting themselves.

When minors present in a non-emergency situation, or with a condition other than the aforementioned exceptions, consent for treatment must be obtained from the parent or guardian.

For routine health matters, consent may be given by any number of persons acting in *loco parentis* (e.g., foster guardians, adult relatives, officials in child welfare agencies, or the juvenile justice system). If the minor is not legally competent to consent for treatment and presents with a guardian, the provider should still make every effort to inform the minor patient of the treatment to the extent of their cognitive capacity.

When Minors Refuse Care

The clinician should be extremely wary of treating a minor patient who declines treatment. If a minor refuses routine care after its explanation and has an intelligent understanding of the treatment and available options, a provider who continues with the treatment over the minor's reasonable objections runs a considerable legal risk unless a medical emergency makes the treatment time critical.

If the treatment is needed in the immediate future, the provider should obtain a court order before proceeding; this can be obtained directly via the judicial system or indirectly through the state's child protection agency.

If the treatment is not necessary in the reasonably foreseeable future, the minor should be discharged with an appropriate follow-up referral.

Generally, providers should not order drug or alcohol screens on a minor unless medically justified.

Summary

Urgent care physicians should have an understanding of their own state's statutes surrounding the treatment of minors. To date, courts have not held physicians who acted in good faith liable for initiating the emergent or urgent care of minors. Generally, you should be guided by what is in the patient's best interest; however, it is important to document your attempts to reach a guardian and why you believed the minor's condition warranted treatment prior to obtaining parental consent.

In non-emergent situations, physicians should proceed with extreme caution with minors who do not meet the criteria for legal capacity or emancipation and who refuse care despite the ability to make an intelligent decision.

Minors who present without a parent and whose condition does not require treatment in the foreseeable future should be discharged with appropriate follow-up. It is prudent for the urgent care physician to form relationships with local emergency departments, child protective agencies, and the courts to prospectively formulate guidelines surrounding the care and treatment of minors. ■

TAKE-HOME POINTS

- Care should never be delayed to wait for consent in an emergency situation.
- Rules on "patient competency" can be tricky.
- Try to persuade the minor to let the parent take part in decision-making.
- No parental consent is required for STD treatment or if child abuse is alleged or suspected.
- Be guided by what is in the patient's best interest.
- Treating a minor patient who declines treatment places the clinician in legal risk.