

Minors may not refuse care

by Bradley M. Pinsky, JD/MHA/EMT-D

Anyone familiar with the new Basic Life Support refusal protocol recently implemented by the N.Y.S. Department of Health will note a protocol permitting an "emancipated minor" to refuse medical care. We suggest that persons contact their attorney regarding whether or not to follow this protocol.

Despite the D.O.H.'s statement, in New York State, there is no such thing as an emancipated minor for purposes of refusing medical care.

The D.O.H. refusal protocol permits a person less than eighteen years of age to refuse care if the minor is pregnant, married or has been married, or a parent of a child. This is incorrect and possibly illegal.

The Department of previously published policy 99-09. In that policy, the Department of Health correctly stated "An individual who is legally a minor cannot give effective legal/informed consent to treatment and therefore, conversely, cannot legally refuse treatment." For some reason, the D.O.H. has now confused this issue. We suggest that policy 99-09 is the correct view of the law, and not the recently enacted BLS protocol on refusals regarding this issue.

This article sets forth the law in New York State.

The law regarding treatment of minors.

Any person less than eighteen years of age may never refuse medical care. A parent or guardian of that minor must refuse medical care for that minor.

Public Health Law Section 2504 provides that:

" 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."

"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."

"Any person who is pregnant may give effective consent for medical, dental, health and hospital services relating to prenatal care." (Emphasis added by author).

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Note that nowhere in this law is there any suggestion that any parent, pregnant or married minor may refuse medical care. Indeed, the New York State legislature has consistently refused to create emancipated minor status in New York State. Courts have also refused the opportunity to create a "mature minor" standard. In other states, a mature minor could have the status of an adult. New York has no such status for minors.

EMTs may provide medical care to minors as Public Health Law 2504 states that "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." Presumably, EMTs are permitted to treat minors in emergencies under this statute.

Finally, persons should recognize that the law provides that "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." Thus, if a person claims to have been married, pregnant, or a parent, the EMT will have no liability for treating them if the patient is actually lying.

Remember the one simple rule. A MINOR MAY NEVER REFUSE MEDICAL CARE FOR HIMSELF OR ANY OTHER PERSON.

What to do with a minor

The law simply does not provide EMTs with an acceptable solution to this problem. There is no power for the minor to refuse. Other states have a "mature minor" standard where a minor that lives by him/herself or is otherwise considered "mature" can refuse care. New York has not adopted this rule.

If you encounter a minor that desires to refuse, attempt to contact the minor's parents by phone, to obtain a phone refusal. Verify and document that you verified that the person you spoke with is actually the parent. For example, request the minor's birthdate or social security number. Document extensively in the PCR that you spoke with the parent and that you explained the injury (or lack thereof), the need for treatment and/or transportation, and the risks involved in refusing treatment and/or transportation.

Certainly, appearing in person is a better option if possible.

If a parent is not available, attempt to contact another adult family member for the same purposes.

Conclusion

There is no such thing as an emancipated minor in New York State for purposes of refusing medical care. This issue creates significant problems for EMTs and exposes EMTs to liability for abandonment of a minor. The law should be changed to address this issue.

One association that focusses on doing this is the Association for Not For Profit EMS Organizations. You can link to the Association's site through our site at www.emsfirelaw.com.

About the Author

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