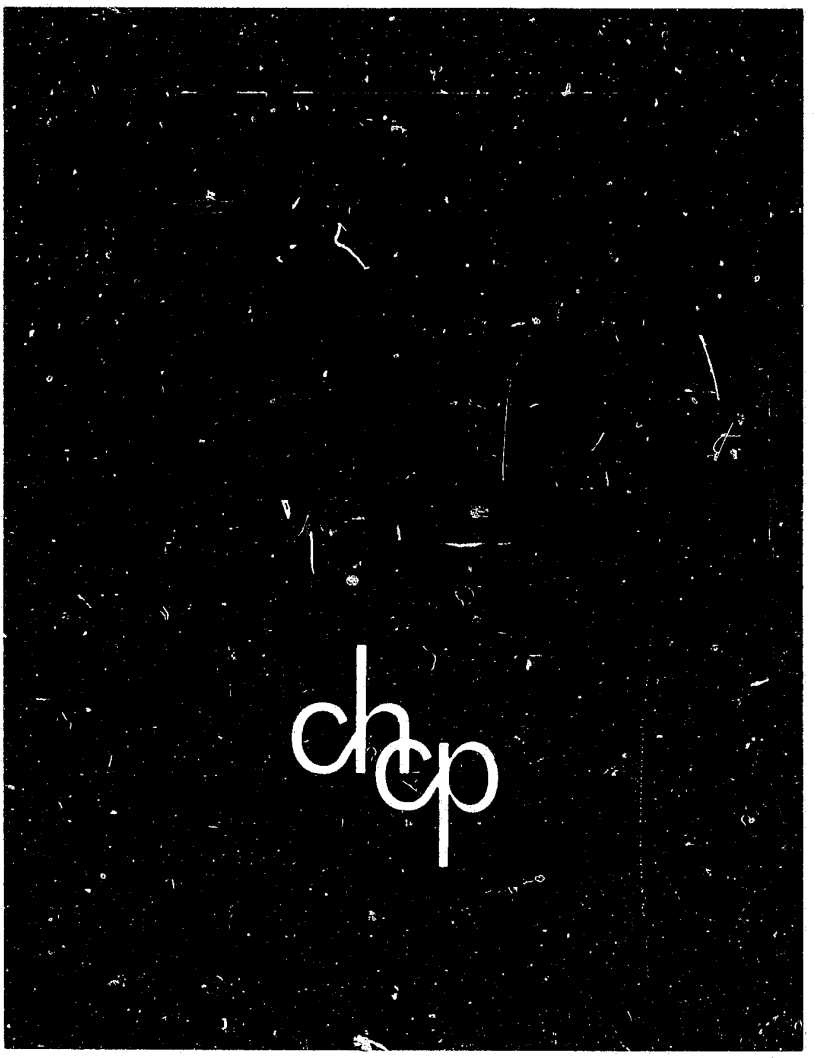

CORRECTIONAL HEALTH CARE PROGRAM

Correctional Health Care Program

RESOURCE MANUAL

INFORMED CONSENT IN CORRECTIONAL HEALTH CARE PROGRAMS

MICHIGAN DEPARTMENT OF CORRECTIONS
OFFICE OF HEALTH CARE

LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
UNITED STATES DEPARTMENT OF JUSTICE

CORRECTIONAL HEALTH CARE PROGRAM

RESOURCE MANUAL

INFORMED CONSENT

IN

CORRECTIONAL HEALTH CARE

PROGRAMS

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Problem Oriented Medical Records In Correctional Health Care

Quality Assurance: A Brief Overview for the Correctional Health Care Administrator

Resident Guide To Self-Care

Sample Policy Manual For Correctional Health Care

C O N T E N T S

APPENDIX C

Sample General Consent Form (Hospital)
Sample Specific Consent Form (Hospital)
Consent to Surgery, Anesthetics and Medical Treatment
(Michigan Department of Corrections)
Consent to Treatment and Refusal of Treatment
(Rikers Island Health Services, NY)
Refusal of Treatment Form
(Michigan Department of Corrections)
Policy on Informed Consent (Federal Bureau of Prisons)

APPENDIX D

State-By-State Analysis of Laws Relating to Informed Consent for Minors

A C K N O W L E D G E M E N T S

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C H C P P R O J E C T S T A F F

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American Medical Association
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FOREWORD

The issues of adequacy, accessibility, and quality of health care service delivery in correctional institutions are increasingly receiving well-merited attention. Long plagued by neglect and paucity of resources, most correctional agencies throughout the country have recognized the need for clear direction in addressing these issues. The unique characteristics of prison populations and facilities pose a problem in applying directly the standards and policies which prevail in community health care settings. Once the basic ingredients common to good health care practice have been identified, the challenge remains of their adaptation without essential compromise to the correctional environment. Implementation of a system which meets statutory and professional standards is the responsibility of correctional health care administrators in the 1980's.

Through a grant from the Law Enforcement Assistance Administration, the Michigan Department of Corrections has provided technical assistance to ten states with a view to improving the health care system for residents of correctional institutions. This manual is one of a series published under auspices of the grant. Together, the manuals will support and extend the training sessions and technical assistance efforts of the past two years. Their purpose is to define concisely the major elements which must constitute a comprehensive health care program for a correctional agency.

There is no substitute for proper planning, adequate resources and good management. These manuals can assist in the planning effort to identify the kind of resources which will comprise an adequate program. In addition, they address the alternatives which must be considered, the integration of various components, and establish a foundation for the decisions which must be made by each agency.

The manuals have been compiled by persons who are experts in their professional field and by persons active in the delivery of health services to correctional residents. There are too many divergencies among correctional agencies to permit a single approach to be universally applicable. For this reason, the manuals are intentionally broad in scope and will require careful analysis and specification by each user.

A health care system does not stand alone and isolated from its environment. It can succeed only through a cooperative and carefully planned effort which involves health care personnel, staff of the correctional system, community health resources, and residents as interested consumers of the services. Where multiple institutions exist within a state correctional agency, appropriate central direction and coordination are essential for coherent and consistent form and quality of the services provided. It is at this level, in particular, that the overall planning, resource development and management of policy should occur.

This manual should not be construed as constituting legal advice. While this manual is designed to provide accurate information on the subject matter, the authors are not attorneys. Any formal policies or forms used to implement policies regarding informed consent should be submitted for review to attorneys that serve the agency.

The goal which has prompted development and issuance of this manual and of others in the series has been attainment of professional quality health care for residents of correctional institutions comparable to that available in the community. The sponsors will consider their efforts well rewarded if, as a result, changes are implemented which improve access and cost-efficient delivery of needed health services.

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INFORMED CONSENT

INTRODUCTION

> "Informed consent is the agreement by the patient to a treatment, examination or procedure after the patient receives the material facts regarding the nature, consequences, risks and alternatives concerning the proposed treatment, examination or procedure."[1]

Informed consent, as defined above by the American Medical Association (AMA), must be obtained from an adult patient before undergoing medical treatment in any health care facility. If treatment is given without consent, the patient can sue the health care personnel and/or the institution, depending on state law. That is, who may be sued will depend upon whether or not the principle of governmental immunity applies in that state. The legal action may charge assault and battery or, possibly, malpractice.

Malpractice is professional negligence, or the failure to adhere to legally imposed professional standards. In contrast, assault and battery is an intentional tort and it can occur even if all established professional standards have been followed. Both the torts of assault and battery and of malpractice may result from a failure to obtain proper consent. Any unauthorized touching of a person's body is legally wrong, even if the person is not harmed or even if the person benefits from the treatment.

Correctional health care facilities must comply with the growing body of law requiring patients' informed consent to medical treatment. The AMA has recently established standards for health services in prisons which include requirements for informed consent (See Appendix A). William Isele, Staff

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[1] American Medical Association Standards for Health Services in Prisons, Section 168, "Informed Consent"; July, 1979.

Attorney of the Office of General Counsel for the AMA, states that

> "In short, jail (and prison) physicians must observe the same principles of informed consent as apply when treating the civilian population."[2]

And a California court in "Runnels vs. Rosendale" (1974) comments

> "Because of a prisoner's peculiar dependence and vulnerability in respect to medical treatment, the right to be secure in one's person could be violated by the substantial threat to physical security necessarily involved in major surgery, when such surgery is neither consented to nor required for purposes of imprisonment or security."[3]

This manual, therefore, is intended to help administrators of correctional institutions understand their responsibilities to patient-inmates, to health care personnel within the prisons, and to cooperative health care facilities outside the prisons regarding informed consent laws and requirements. Through a series of questions and answers, this manual (1) explains a patient's right to consent to or refuse medical treatment, and (2) discusses informed consent issues relating specifically to correctional institutions.

The discussion of informed consent in this manual is limited in its application to medical care that can in no way be defined as "experimental" in nature. Rather, this manual is devoted to a general discussion of the appropriateness and necessity of obtaining informed consent in the delivery of "routine" health care services in the correctional setting. Furthermore, the authors are not attorneys and wish to emphasize the need for legal review by staff attorneys of all policies and forms associated with informed consent.

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[2]Isele, William Paul, "Jail Inmates' Right to Refuse Medical Treatment" for Health Care in Jails, American Medical Association, p. 25.

[3]Isele, Health Care in Jails, p. 19.

I. WHAT DOES "INFORMED CONSENT" REALLY MEAN?

A patient has the right to know and understand the medical procedures and treatment which health care personnel recommend that (s)he undergo. If the patient authorizes procedures or treatment without a full understanding of what (s)he is agreeing to, it is not informed consent.

To be truly "informed" consent, the patient must be given reasonably complete information about:

1. the nature and purpose of the proposed treatment,
2. the risks accompanying the proposed treatment,
3. alternative methods of treatment, and
4. the benefits of the proposed treatment.

Furthermore, this information must be relayed in language that the patient can understand and without overly technical terms which might confuse or intimidate the patient.[4] Particular care should also be taken to assure that non-English-speaking patients understand the treatment they are authorizing.[5]

It is not an "informed" consent if:

1. the physician withholds facts necessary for the patient to make an intelligent decision, or
2. the physician minimizes the risks or known dangers of a procedure to induce the patient's consent.

II. WHAT IS THE LEGAL BASIS FOR INFORMED CONSENT?

The legal basis for requiring informed consent is in Case Law, in other words, it has been established through precedent of judicial decisions.

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[4]Health Law Center, Hospital Law Manual, Volume II, Aspen Systems Corp., MD; 1979 Up-date.

[5]Health Law Center, Hospital Law Manual, 1979 Up-date.

Administrators should know the status of informed consent law in their states. Consult:

1. the attorney general's office, or
2. the state medical society for assistance and information on this issue.

Very few states have informed consent statutes relating to adults as part of general medical procedures and practice laws. However, several states have definitions of informed consent in the medical malpractice action statutes including Florida, Nebraska, Nevada, Rhode Island, Tenneessee, and Washington (see Appendix B for copies). Many of these definitions have been clarified quite recently in statutory law, perhaps due to concern over current increases in medical malpractice suits.

Legal proof that a physician has obtained a valid and "informed" consent from a patient differs from state to state. There are, however, two basic legal standards for judging informed consent. The first, more favorable to the medical profession,[6] is exemplified by the Nebraska statutory definition of informed consent:

> "Informed consent shall mean consent to a procedure based on information which would ordinarily be provided to the patient under like circumstances by health care providers engaged in a similar practice in the locality or in similar localities."[7]

The other standard of legal proof for informed consent is based on:

> "...whether the patient received enough information to enable him (or her) to make an intelligent decision as to whether... (to) undergo the proposed treatment."[8]

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[6]Health Law Center, Hospital Law Manual, pp. 3-8.

[7]Nebraska Revised Statutes § 44-2816, 1976.

[8]Health Law Center, Hospital Law Manual, p. 5.

Here, the physician must prove that the patient received proper and adequate information to meet the patient's needs in coming to an "informed" decision. Enacted in 1976, a Washington statute sets up this type of standard for legal proof of informed consent.[9]

III. WHY IS INFORMED CONSENT IMPORTANT?

Informed consent ensures the protection of the physician, the auxiliary health care personnel, and the institution in which the health care staff works. Informed consent increases patient-physician communication and promotes trust and confidence of patients in health care personnel.

Communication and trust are particularly important in correctional health care settings where inmate-patients may be suspicious of health care personnel. Providing inmate-patients with full knowledge and understanding of medical procedures can help assure them that correctional health care personnel are indeed working to improve the inmate's health and well-being.

Professor Arthur F. Southwick points out that informed consent is not just a legal formality and that in fact,

> "...from a physician's point of view, a fully informed patient is much less likely to be surprised, disappointed, or angry when unexpected, and perhaps unfortunate, results do follow medical treatment, diagnostic tests or surgery. There is every reason to think that a larger number of informed patients will mean a decrease in litigation."[10]

IV. DOES INFORMED CONSENT HAVE TO BE WRITTEN?

No. There are two types of informed consent -- express and implied. Express consent is a patient's agreement in words, oral or written, to the proposed medical procedures or treatment. Implied consent, or "voluntary submission", is a patient's demonstration of understanding and agreement

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[9]Washington Revised Code, Chap. 7.70 § 10 (1), 1976.

[10]Southwick, Arthur, Law of Hospital and Health Care Administration; Health Administration Press, Ann Arbor, MI, 1978, p. 228.

through that person's acts or through the circumstances surrounding medical treatment. An example of implied consent is a person voluntarily joining a line of people receiving vaccinations; another example would be a woman in labor appearing at a hospital maternity ward.

V. SHOULD WRITTEN CONSENT FORMS BE USED WHENEVER POSSIBLE?

Yes. Generally in hospitals and community clinics, written consent forms are signed by every incoming patient. In fact, it is strongly recommended that hospitals use two different written consent forms.[11] First, a general form should be used for consent to routine hospital procedures, nursing service, and diagnostic tests. Secondly, a special form should be signed consenting to specific recommended treatment or surgical procedures (see Appendix C for sample forms).

The special form should also cover consent for health care personnel to handle unexpected extensions of the original procedure. Sometimes a physician will not know exactly what the medical problem is until a surgical procedure has been started; at this point, a patient may not be able to give an informed consent to an extension. It is important to get prior consent, so that health care personnel can continue the surgery without threat of court action for assault and battery.

Furthermore, specific consent must be obtained if photographs will be taken during procedures. Also, if there will be any experimental drugs or procedures involved in a treatment, a lengthy consent is necessary which must meet Federal specifications as detailed in consent forms that are specifically designed for such instances.

In correctional health care facilities, special written consent forms

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[11] Southwick, Law of Hospital and Health Care Administration, p. 208 and Hospital Law Manual, p. 24.

are necessary for all specified on-site and off-site treatments and procedures, but are not necessary for routine medical care provided at sick call. Inmate-patients give their implied consent through presenting themselves at sick call.

If surgery or medical tests are performed within the correctional institution, a consent form must be signed by the inmate-patient. If surgery or medical tests are performed outside the institution, in a hospital or community clinic, then the hospital/clinic will provide their own consent form. The prison, however, is still responsible for obtaining an inmate-patient's informed consent to hospitalization in the community.

VI. WHAT HAPPENS IN MEDICAL EMERGENCIES, WHEN INFORMED CONSENT CANNOT BE OBTAINED?

A medical emergency is defined as a situation in which there is an immediate threat to life, or the threat of permanent impairment to health, and where the patient is unable to give or to refuse consent. Southwick warns:

> "The medical need for a prompt operation or treatment is not tantamount to an emergency."[12]

In emergencies, medical treatment may be given without threat of legal liability. However, it is critically important that detailed documentation be kept to demonstrate the urgent nature of the situation. Hospitals have been called upon to show:

> "...that under the circumstances, it was impossible to obtain the consent of the patient or someone legally authorized to consent for him (or her) without a delay that might increase the hazards to the patient..."[13]

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[12] Southwick, Law of Health and Health Care Administration, p. 210.

[13] Health Law Center, Hospital Law Manual, p. 64.

If time permits, consultation with other physicians and health care personnel should take place before emergency treatment.

Correctional health care administrators should be sure they have established procedures to handle medical emergencies, including arrangements with nearby hospitals for emergency treatment, if necessary. Administrators should also be aware of any special responsibilities that they may have to inmate-patients or to local hospitals in the event of an emergency in terms of consent.

An Illinois law, for example, specifically describes the action which should be taken by prison officials in medical emergencies --

> "(e) A person committed to the Department who becomes in need of medical or surgical treatment but is incapable of giving consent thereto shall receive such medical or surgical treatment by the chief administrative officer consenting on his behalf. Before the chief administrative officer consents, he shall obtain the advice of one or more physicians licensed to practice medicine in all its branches in this State. If such physician or physicians advise:
>
> > (1) that immediate medical or surgical treatment is required relative to a condition threatening to cause death, damage or impairment to bodily functions, or disfigurement; and
> >
> > (2) that the person is not capable of giving consent to such treatment;
>
> the chief administrative officer may give consent for such medical or surgical treatment, and such consent shall be deemed to be the consent of the person for all purposes, including, but not limited to, the authority of a physician to give such treatment."[14]

It is rare that such responsibility will be specified in statutory law. Contact the attorney general's office to find out the legal responsibility of correctional health care administrators pertaining to consent in medical emergencies.

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[14] Illinois Statutes Annotated (Smith-Hurd) 38 § 1003-6-2 (e), 1973.

VII. WHEN CAN A PERSON LEGALLY REFUSE MEDICAL TREATMENT?

The right to refuse medical treatment is a vital part of the informed consent procedure. A mentally competent adult can agree or refuse to undergo any medical treatment at any time. A patient's refusal to undergo treatment should be respected, no matter how seriously threatened his/her health may be as a result of the refusal.

The court, however, has defined a few special situations in which medical treatment may be given despite a person's refusal. For instance, in the case of contagious illnesses, or of venereal disease, health care personnel are required to treat the patient, whether (s)he consents or not, because such treatment is for the good of the community-at-large.

In general, refusal of treatment, like consent to treatment, must apply to correctional inmates in the same way it applies to competent adults in the community. AMA staff Attorney William Isele states that:

> "If there is to be any exception (to the right to refuse treatment) with respect to inmates, it must be due to some overriding interest of the state."[15]

The exceptions of contagious illness and venereal disease, or course, apply to the prison population.

Also, in the case of a suicidal patient, health care personnel may override a refusal of treatment. Isele comments:

> "Clearly, the suicidal inmate could be expected to reject medical treatment designed to save him. Nevertheless, this situation would be an exception to the general rule that a person has the right to refuse treatment in two respects. First, the right to refuse is limited to mentally competent individuals and it is not likely that the suicidal inmate would be considered competent. Secondly, the provision of medical treatment in such a case would seem sufficiently related to the security or correctional interests of the institution."[16]

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[15] Isele, Health Care in Jails, p. 17.

[16] Isele, Health Care in Jails, p. 22.

At least one state, North Carolina, has enacted a law to this effect.[17]

The other major exception, in correctional institutions, to respecting the inmate-patient's refusal of treatment is when such treatment is required "for purposes of imprisonment or security". Even Isele, however, is unclear as to when this type of situation might arise, or what types of treatment could actually be required.[18] For up-dated information on court cases which might clarify this medico-legal issue, contact the attorney general's office.

Many correctional institutions require a refusal of treatment form, similar to the consent form, which must be signed by the inmate-inpatient. Rikers Island Health Services (NY) has a policy requiring such a form. (See Appendix C for a copy of this policy.)

VIII. WHAT IS THE LEGAL STATUS OF MINORS REGARDING INFORMED CONSENT?

Commenting on the medical treatment of minors in correctional institutions, Isele states that:

> "The general common law rule with respect to minors is that a physician may not treat a minor patient without parental consent."[19]

Judicial decisions, however, regarding the medical treatment of minors in the community-at-large, more and more frequently have been recognizing maturity, not chronological age, as the determining factor for consent.

> "The ultraconservative policy of always insisting on parental consent regardless of the minor's maturity or status in life is accordingly justified."[20]

The doctrine of emancipation helps to clarify when maturity can be chosen, over actual age, as reason to allow medical treatment without parental consent. Married minors, and minors who themselves are parents

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[17] North Carolina General Statutes, Article 20A § 103-191.1, 1977 CS.

[18] Isele, Health Care in Jails, p. 21.

[19] Isele, Health Care in Jails, p. 24.

[20] Southwick, Law of Hospital and Health Care Administration, pp. 240-241.

are automatically emancipated in most states, although a minor can be declared emancipated, or free from parental custody, in a variety of circumstances.

Whether a minor is emancipated or not, many states have statutes that allow minors access to treatment for venereal disease or drug addiction without parental consent. Also, federal law, reinforced by numerous state court decisions, allows abortions for pregnant minors without parental consent.

Corrections officials and health care personnel should be aware of the doctrine of emancipation, and of the growing number of exceptions to the rule requiring parental consent for medical treatment for a minor. Isele explains that the responsibility of corrections officials to act "in loco parentis" is unclear, so that careful evaluation of each minor inmate's situation must be made before medical treatment.

> "When arrested or convicted, a minor is removed from his parents' custody for confinement purposes. Whether such removal would constitute emancipation for purposes of consent to medical treatment is unclear. The rule would seem to be that...those responsible for his care (i.e., Director of Corrections, Sheriff, warden, etc.) should be able to consent to such medical treatment as is needed to safeguard the minor's health."[21]

Correctional administrators should understand the specifics of their state's laws relating to informed consent to treatment for minors (see Appendix D). In addition, administrators should clarify who, in each state, has the ultimate power of consent for the treatment of minors.

IV. CONCLUSION

Health care programs in correctional institutions are being held to standards similar to those in the community. It would seem prudent that corrections departments avail themselves of safeguards similar to those

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[21] Isele, Health Care in Jails, p. 24.

used by health care programs in the community.

Correctional health care administrators should develop policies and procedures concerning informed consent and refusal of treatment that would provide health care personnel and corrections officials with the necessary legal safeguards. Such policies would also assure inmate-patients that their rights are not being denied; that all legal and ethical requirements for obtaining consent to (or refusal of) medical treatment are being fulfilled. The policy of the Federal Bureau of Prisons on informed consent is duplicated in Appendix C as a sample of such a policy in a correctional health care setting.

Concerns about informed consent will be raised by community providers who provide health care to the correctional population. Community providers tend to view inmates as a litigious population and will want assurances that all legal requirements concerning consent to treatment are being followed by the corrections department. If corrections programs have contracts with outside hospital and/or other community providers, both parties should be aware of the state and local laws, whether in statute, judicial decisions or administrative rules -- relating to informed consent, the right to refuse medical treatment and minor's rights.

References

American Medical Association, Standards for Health Services in Prisons, July 1979.

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Southwick, Arthur F., Law of Hospital and Health Care Administration; Health Administration Press, Ann Arbor, Michigan, 1978.

Nebraska Revised Code, Chap. 7.70 § 10(1), 1976.

North Carolina General Statutes, Article 20A § 130-101.1, 1977 CS.

Washington Revised Code, Chap. 7.70 § 10(1), 1976.

APPENDIX A

AMA Standards for Health Services in Prisons, July 1979

- Section 168 on Informed Consent

INFORMED CONSENT

168 All examinations, treatments and procedures governed by informed consent practices applicable in the jurisdiction are likewise observed for inmate care. In the case of minors, the informed consent of parent, guardian or legal custodian applies when required by law.

Discussion: Informed consent is the agreement by the patient to a treatment, examination or procedure after the patient receives the material facts regarding the nature, consequences, risks and alternatives concerning the proposed treatment, examination or procedure. Medical treatment of an inmate without his or her consent (or without the consent of parent, guardian or legal custodian when the inmate is a minor) could result in legal complications.

Obtaining informed consent may not be necessary in all cases. These exceptions to obtaining informed consent should be reviewed in light of each state's law as they vary considerably. Examples of such situations are:

a. An emergency which requires immediate medical intervention for the safety of the patient.
b. Emergency care involving patients who do not have the capacity to understand the information given.
c. Public health matters, such as communicable disease treatment.

Physicians must exercise their best medical judgment in all such cases. It is advisable that the physician document the medical record for all aspects of the patient's condition and the reasons for medical intervention. Such documentation facilitates review and provides a defense from charges of battery. In certain exceptional cases, a court order for treatment may be sought, just as it might in the general community.

The law regarding consent by juveniles to medical treatment, and their right to refuse treatment, varies greatly from state to state. Some states allow juveniles to consent to treatment without parental consent, as long as they are mature enough to comprehend the consequences of their decision; others require parental consent until majority, but the age of majority varies among the states. The law of the jurisdiction within which the facility is located should be reviewed by legal counsel, and based upon counsel's written opinion, a facility policy regarding informed consent should be developed. In all cases, however, consent of the person to be treated is of importance.

APPENDIX B

MEDICAL MALPRACTICE CITATIONS ON INFORMED CONSENT

I Florida Statutes Ann. § 768.46, 1978, Supp.

II Nebraska Revised Statutes § 44-2816

III Nevada Revised Statutes § 41A.110-41A.120

IV General Laws of Rhode Island § 9-19-32

V Tennessee Code Ann. § 23-3417

VI Revised Code of Washington, Chap. 7.70 § 10-11

I. Florida Statutes Annotated § 768.46, 1978 Supp.

768.46 Florida Medical Consent Law

(1) This section shall be known and cited as the "Florida Medical Consent Law."
(2) In any medical treatment activity not covered by § 768.13, entitled the "Good Samaritan Act," this act shall govern.
(3) No recovery shall be allowed in any court in this state against any physician licensed under chapter 458, osteopath licensed under chapter 459, chiropractor licensed under chapter 460, podiatrist licensed under chapter 461, or dentist licensed under chapter 466 in an action brought for treating, or operating on an patient without his informed consent when:

(a) 1. The action of the physician, osteopath, chiropractor, podiatrist, or dentist in obtaining the consent of the patient or another person authorized to give consent for the patient was in accordance with an accepted standard of medical practice among members of the medical profession with similar training and experience in the same or similar medical community; and

2. A reasonable individual, from the information provided by the physician, osteopath, chiropractor, podiatrist, or dentist, under the circumstances, would have a general understanding of the procedure, the medically acceptable alternative procedures or treatments, and the substantial risks and hazards inherent in the proposed treatment or procedures, which are recognized among other physicians, osteopaths, chiropractors, podiatrists, or dentists in the same or similar community who perform similar treatments or procedures; or

(b) The patient would reasonably, under all the surrounding circumstances, have undergone such treatment or procedure had he been advised by the physician, osteopath, chiropractor, podiatrist, or dentist in accordance with the provisions of paragraph (a).

(4) (a) A consent which is evidenced in writing and meets the requirements of subsection (3) shall, if validly signed by the patient or another authorized person, be conclusively presumed to be a valid consent. This presumption may be rebutted if there was a fraudulent misrepresentation of a material fact in obtaining the signature.

(b) A valid signature is one which is given by a person who under all the surrounding circumstances is mentally and physically competent to give consent.

II. Nebraska Revised Statutes § 44-2816

Insurance

44-2816. Informed consent, defined. Informed consent shall mean consent to a procedure based on information which would ordinarily be provided to the patient under like circumstances by health care providers engaged in a similar practice in the locality or in similar localities. Failure to obtain informed consent shall include failure to obtain any express or implied consent for any operation, treatment, or procedure in a case in which a reasonably prudent health care provider in the community or similar communities would have obtained an express or implied consent for such operation, treatment, or procedure under similar circumstances.

Source: Laws 1976, LB 434, § 16
Effective date July 10, 1976.

III. Nevada Revised Statutes § 41A.110 - 41A.120

Medical Malpractice Actions

41A.110 Consent of patient: When conclusively established. A physician licensed to practice medicine under the provisions of chapter 630 of NRS has conclusively obtained the consent of a patient for a medical or surgical procedure if he has done the following:

1. Explained to the patient in general terms without specific details, the procedure to be undertaken;
2. Explained to the patient alternative methods of treatment, if any, and their general nature;
3. Explained to the patient that there may be risks, together with the general nature and extent of the risks involved, without enumerating such risks; and
4. Obtained the signature of the patient to a statement containing an explanation of the procedure, alternative methods of treatment and risks involved, as provided in this section.

(Added to NRS by 1975, 408)

41A.120 Consent of patient: When implied. In addition to the provisions of chapter 129 of NRS and any other instances in which a consent is implied or excused by law, a consent to any medical or surgical procedure will be implied if:

1. In competent medical judgment the proposed medical or surgical procedure is reasonably necessary and any delay in performing such procedure could reasonably be expected to result in death, disfigurement, impairment of faculties, or serious bodily harm; and
2. A person authorized to consent is not readily available.

(Added to NRS by 1975, 408)

IV. General Laws of Rhode Island § 9-19-32

Civil Procedure

9-19-32. Informed consent. In actions against licensed physicians as defined in § 5-37.1-1, hospitals, clinics, health maintenance organizations or professional service corporations providing health

care services and organized under chapter 5.1 of title 7, for malpractice in providing treatment to patients, issues of informed consent or reasonable disclosure of all known material risks shall be initially considered by the court as preliminary questions of fact. Such issues shall be submitted to the jury by the court only in the event that it finds, after weighing the evidence and considering the credibility of the witnesses, that reasonable minds might fairly come to different conclusions in respect to such issues on the basis of the evidence presented and inferences to be drawn therefrom.

History of Section.
As enacted by P.L. 1976, ch. 244, § 7; P.L. 1977, ch. 77, § 1; P.L. 1978, ch. 149, § 3.

V. Tennessee Code Annotated § 23-3417

Medical Malpractice Claims

23-3417. Proving inadequacy of consent. In a malpractice action, the plaintiff shall prove by evidence as required by § 23-3414(b) that the defendant did not supply appropriate information to the patient in obtaining his informed consent (to the procedure out of which plaintiff's claim allegedly arose) in accordance with the recognized standard of acceptable professional practice in the profession and in the specialty, if any, that the defendant practices in the community in which he practices and in similar communities. [Acts 1975, ch. 299, § 17; 1976 (Adj. S.), ch. 759, § 18.]

Law Reviews. In Search of a Standard of Care for the Medical Profession -- The "Accepted Practice" Formula (Joseph H. King, Jr.), 28 Vand L. Rev. 1213.

Malpractice in Dealing with Medical Malpractice, 6 Mem. St. U.L. Rev. 437.

VI. Revised Code of Washington: Chapter 7.70

"Action for Injuries Resulting from Health Care"

NEW SECTION. Sec. 10. (1) The following shall be necessary elements of proof that injury resulted from health care in a civil negligence case or arbitration involving the issue of the alleged breach of the duty to secure an informed consent by a patient or his representatives against a health care provider:
(a) That the health care provider failed to inform the patient of a material fact or facts relating to the treatments;
(b) That the patient consented to the treatment without being aware of or fully informed of such material fact or facts;
(c) That a reasonably prudent patient under similar circumstances would not have consented to the treatment if informed of such material fact or facts;
(d) That the treatment in question proximately caused injury to the patient.
(2) Under the provisions of this section a fact is defined as or considered to be a material fact, if a reasonably prudent person in the

position of the patient or his representative would attach significance to it deciding whether or not to submit to the proposed treatment.
(3) Material facts under the provisions of this section which must be established by expert testimony shall be either:
(a) The nature and character of the treatment proposed and administered;
(b) The anticipated results of the treatment proposed and administered;
(c) The recognized possible alternative forms of treatment; or
(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment administered and in the recognized possible alternative forms of treatment, including non-treatment.
(4) If a recognized health care emergency exists and the patient is not legally competent to give an informed consent and/or a person legally authorized to consent on behalf of the patient is not readily available, his consent to required treatment will be implied.

NEW SECTION. Sec. 11. If a patient while legally competent, or his representative if he is not competent, signs a consent form which sets forth the following, the signed consent form shall constitute prima facie evidence that the patient gave his informed consent to the treatment administered and the patient has the burden of rebutting this by a preponderance of the evidence:
(1) A description, in language the patient could reasonably be expected to understand, of:
(a) The nature and character of the proposed treatment;
(b) The anticipated results of the proposed treatment;
(c) The recognized possible alternative forms of treatment; and
(d) The recongized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment, including nontreatment;
(2) Or as an alternative, a statement that the patient elects not to be informed of the elements set forth in subsection (1) of this section.
Failure to use a form shall not be admissible as evidence of failure to obtain informed consent.

APPENDIX C

I Sample General Consent Form (Hospital)

II Sample Specific Consent Form (Hospital)

III Consent to Surgery, Anesthetics and Medical Treatment Form
(Michigan Department of Corrections)

IV Consent to Treatment and Refusal of Treatment Policy
(Rikers Island Health Services, NY)

V Refusal of Treatment Form
(Michigan Department of Corrections)

VI Policy on Informed Consent
(Federal Bureau of Prisons)

I Consent to Medical or Surgical Procedures

CONSENT UPON ADMISSION TO HOSPITAL AND MEDICAL TREATMENT

PATIENT: .....

DATE: ..... TIME: ..... A.M. P.M.

1. I, (or ..... for .....)

knowing that I, (or .....) am (is) suffering from a condition requiring hospital care do hereby voluntarily consent to such hospital care encompassing routine diagnostic procedures and medical treatment by Dr. ..... his assistants or his designees as is necessary in his judgment.

2. I am aware that the practice of medicine and surgery is not an exact science and I acknowledge that no guarantees have been made to me as to the result of treatments or examination in the hospital.

3. Check one:

..... A. I hereby authorize the ..... Hospital to preserve for scientific or teaching purposes or for use in grafts upon living persons, or otherwise dispose of the dismembered tissue, parts or organs resulting from the procedure authorized above.

..... B. I will be fully responsible for making other disposition arrangements. Removal of that part from the hospital will be accomplished within 5 days after discharge; failure to remove before 5 days have passed will constitute approval of disposition by .... Hospital under (A).

4. This form has been fully explained to me and I certify that I understand its contents.

....

Witness Signature of Patient

(If patient is unable to consent or is a minor, complete the following):

Patient (is a minor ..... years of age) is unable to consent because

.....

.....

....

Witness Closest relative or legal guardian

From: Health Law Center, Hospital Law Manual, Aspen Systems Corp., MD., February 1973.

II Consent to Medical or Surgical Procedures
(Continued on following page)

SPECIAL CONSENT TO OPERATION OR OTHER PROCEDURE

Patient: ..... Date: .....

Time: ..... a.m. / p.m.

1. I hereby authorize Dr. ..... and/or such assistants as may be selected by him, to treat the condition or conditions which appear indicated by the diagnostic studies already performed.

.....

(Explain the nature of the condition and the need to trear such condition)

.....

.....

2. The procedure(s) necessary to treat my condition (has, have) been explained to me by Dr. ..... and I understand the nature of the procedure to be: .....

(A description of the procedure(s) in the language of laymen)

.....

.....

.....

3. It has been explained to me that during the course of the operation, unforeseen conditions may be revealed that necessitate an extension of the original procedure(s) or different procedure(s) than those set forth in Paragraph 2. I therefore authorize and request that the above named surgeon, his assistants, or his designees perform such surgical procedures as are necessary and desirable in the exercise of professional judgment. The authority granted under this Paragraph 3 shall extend to treating all conditions that require treatment and

From: Health Law Center, Hospital Law Manual, Aspen Systems Corp., MD., February 1973.

SPECIAL CONSENT TO OPERATION OR OTHER PROCEDURE

are not known to Dr. ..... at the time the operation is commenced.

4. I have been made aware of certain risk(s) and consequences that are associated with the procedure(s) described in Paragraph 2. These are: .....

(A description of the risks and consequences

.....

that are involved in this particular procedure)

.....

5. I have also been informed there are other risks such as severe loss of blood, infection, cardiac arrest, etc., that are attendant to the performance of any surgical procedure. I am aware that the practice of medicine and surgery is not an exact science and I acknowledge that no guarantees have been made to me concerning the results of the operation or procedure.

6. I consent to the administration of anesthesia to be applied by or under the direction and supervision of Dr. .....

....

Witness Signature of Patient

(If patient is unable to sign or is a minor, complete the following:)

Patient (is a minor ..... years of age) and is unable to sign because

.....

.....

....

Witness Closest relative or legal guardian

III. MICHIGAN DEPARTMENT OF CORRECTIONS

CONSENT TO SURGERY, ANESTHETICS AND MEDICAL TREATMENT CSO-291 4/75

I hereby authorize Dr. _____ and such associates or assistants as he may delegate to perform upon myself _____ (or name of patient) the following operation, treatment or procedure _____

_____

_____

(state nature of operation, treatment or procedure), and to do any additional or other or different procedure(s) that his professional judgment or that of his associates or assistants may dictate.

It has been explained to me that in preparation for, during, and following any contemplated surgery, conditions may be revealed that necessitate an extension of the originally contemplated procedure(s) and/or operation, and I, therefore, authorize and request the above-named surgeon, his associates or assistants, to perform such procedure(s) and/or operation as they, in the exercise of their professional judgement, deem necessary and advisable.

I consent to the administration of such anesthetics as may be considered necessary or advisable with the exception of _____ (state "none" if none).

I consent to the disposal by the Hospital authorities of any tissues or parts which may be removed.

I acknowledge that I _____ (or person authorized to sign for the patient) have been given the opportunity to discuss this procedure with the attending physicians. I acknowledge that I have been made aware that there are risks, complications and consequences known and unknown associated with all surgery, medical treatment and administration of anesthetic recommended. I acknowledge no quarantee or promise oral or written has been given by anyone, either as to the results that may be obtained or to the risks, consequences and complications that may follow surgery, medical treatment and/or administration of anesthetic.

I further acknowledge and understand that the operation, medical services, anesthesia, and postoperative care may be performed by those individuals selected and deemed qualified by the medical staff and under their supervision.

In consideration for the agreement to perform and provide facilities for the above specified operation, medical treatment and administration of anesthetic, I hereby agree that in the event that there is a failure to obtain the results intended, no claim for breach of contract, warranty or guarantee shall be made against the Michigan Department of Corrections, its agents or employees, or any of the physicians or assistants engaged in performing the above specified operation, medical treatment and/or administration anesthetics.

I have read (or have had read to me) the above "Consent to Surgery, Anesthetics and Medical Treatment" and I fully understand it.

WITNESS		DATE	TIME AM PM
PATIENT'S SIGNATURE	NO.	NEAREST KIN	
PERSON AUTHORIZED TO SIGN FOR PATIENT	RELATIONSHIP TO PATIENT		
ADDRESS		TELEPHONE	

I hereby certify that the person signing this Instrument has read the same and understands its contents. However, if the person is unable to read and has placed his mark on this Instrument, I certify that I have read to that person the Instrument and have explained its meaning to him or to the person so authorized to sign for the patient.

IV.

Subject: Consent to Treatment and Refusal of Treatment	Section: Appendix D

Consent to Treatment and Refusal of Treatment procedures are applicable to both adult and adolescent patients.

1. Special Procedures

   a. The Rikers Island Health Services Consent and Release Form (Form OD-1153 RIK) must be signed by a patient before he/she receives any type of invasive treatment beyond that of venipuncture.

   b. The most important aspect of obtaining the consent is that the patient be informed, i.e. the patient is given an explanation of the treatment and fully understands the necessity for the treatment.

2. Routine Treatments

A signed consent is not needed for routine treatments provided in the clinic.

3. Refusal of Treatment

   a. The Refusal of Treatment Form is found on the back of the Consent Form.

   b. A Refusal of Treatment Form should be completed upon a patient's refusal of any type of treatment beyond that routinely provided at "sick-call" or "follow-up".

   c. If a patient refuses to sign the refusal form, a member of the health staff should write "patient refuses to sign" and his/her own signature on the form. In addition, a second signature is required as witness of the refusal.

   d. In addition to placing the consent or refusal form in the chart, a full documentation should be made in the chronological progress notes.

Approved Barbara Starrett MD	Date Issued 6/20/77	Date Revised	Page 1 of 1

V. MICHIGAN DEPARTMENT OF CORRECTIONS
Office of Health Care

#_____ Name_____

RELEASE FROM RESPONSIBILITY
FOR MEDICAL TREATMENT

Date_____

This is to certify that I _____

decline medical treatment offered to me by this facility knowing that this is against the advice of the attending physician or P.A. and the medical director. I acknowledge that I have been informed of the risk involved and hereby release the attending physician or P.A., the facility, and all its employees from all responsibility for any ill effects which may result from my decision.

Type of treatment or medical care refused and reason for refusal:_____

_____

_____

Witness_____ Signed_____

Witness_____ _____
Relationship if a minor or
mentally incompetent

REMARKS:_____

_____

_____

Dist: Supt.
Dept. of Corrections
Medical Director
Medical File

5-78

VI. U.S. Department of Justice Federal Prison System
Health Manual of Policies and Procedures, p. 6, 38100, 8/18/76

Consent for Surgery

The general rule regarding consent for surgery is that, in the case of adults, a physician or surgeon may not operate upon a patient without the latter's consent. If the patient is not competent to authorize the operation the consent of someone who is legally authorized to give the consent is required. Ordinarily, most inmates are legally competent adults and their consent to proposed surgery is easily gained when the situation is properly presented to them. In the case of prisoners who have not achieved legal age, according to local state law the consent of the closest relative or guardian (Warden is considered as a guardian) is required in all cases of proposed surgery. In an emergency, however, where an immediate operation is imperative to save the life of the patient, consent is regarded as having been granted by implication.

Proper consent must be obtained in the case of many relatively simple diagnostic procedures, such as spinal puncture and proctoscopy. Probably in most cases outside of prisons performance of the spinal puncture would not warrant obtaining written consent, but in penal work the percentage of individuals seeking redress is higher than in civilian hospitals. Therefore, written consent should be obtained for spinal punctures unless the individual is psychotic, or the procedure is considered a life saving measure, or when it has to be done without delay in order to establish a diagnosis so that measures to prolong life can be instituted.

The experienced physician when confronted by difficulty in gaining consent for surgery, will seek the opinion of the appropriate medical consultant as to the necessity for surgical intervention. If such an opinion is not obtained, the wisdom of pressing matters to gain consent

for surgery would appear to be dubious. On the other hand, the concurring opinion of a medical consultant as to the imperativeness for surgery greatly strengthens the stand of the prison medical staff.

APPENDIX D

State-By-State Analysis of Laws Relating to Informed Consent for Minors

Health Law Center, Aspen Systems Corporation. "State-By-State Analysis: Minor's Consent." Hospital Law Manual, Administrator's Volume I (May 1978):77-97.

STATE-BY-STATE ANALYSIS

The following *State-by-State Analysis* provides an analysis of materials in each state pertaining to issues regarding the effectiveness of a minor's consent to treatment. In addition, it selectively addresses other consent issues, including problems of informed, implied and substituted consent. The two major items included are statutes and judicial decisions regarding majority status in each state, and legislation recognizing special situations in which the consent of the minor above is effective. The hospital attorney should consult the statutes in his own state to ascertain the actual statutory language of the provisions herein summarized.

Review of the discussion in this chapter of the many factors a court may consider in determining the effectiveness of a minor's consent to treatment, in conjunction with the specific provisions in a particular state, is recommended.

Alabama: Ala. Code Ann. tit. 34, §76 (Recomp. Vol. 1959); tit. 34, §76.1 (Cum. Supp. 1973); tit. 22, §§104(15) to 104(22); §270 (Cum. Supp. 1973); §26-1-1 (Cum. Supp. 1975).

Men and women attain majority at 19 years of age. A minor who is 14 years of age or older, or has graduated from high school, or is married, divorced, or pregnant, may consent to medical, dental, health or mental health services. A minor parent may consent to medical, dental, health or mental health services for his or her child. Any minor may consent to examination and treatment of venereal disease, pregnancy, drug dependency, alcohol toxicity, or any reportable disease. The consent of a parent or guardian is also not required for treatment where, in the judgment of the physician, a delay in providing such treatment would increase the risk to the minor's life, health or mental health. Section 270 was amended to permit a minor 12 years of age or older to consent to medical care relating to diagnosis and treatment of venereal disease and provides that the consent shall not be voidable nor subject to disaffirmance because of minority.

Alaska: Alaska Stat. §§25.20.010, 25.20.020 (1965), *as amended amended* (Cum. Supp. 1974); §§25.05.171a, 09.65.100 (Cum. Supp. 1974).

A person is considered to have arrived at legal majority at 18 years of age. A minor who is living apart from his or her parents or legal guardian and who is managing his or her own financial affairs, regardless of the source or extent of income, may give consent for medical and dental services. A minor may consent to medical or dental services if his or her parent or legal guardian cannot be contacted or is unwilling either to grant

or withhold consent. A minor parent may consent to medical and dental services for himself or herself or for his or her child. Any minor may consent to diagnosis, prevention or treatment of pregnancy or for diagnosis and treatment of venereal disease.

Arizona: Ariz. Rev. Stat. Ann. §1-215 (1974); §44-132 (1967); §§44-132.01, 44-133.01, 44-134, 44-135 (Cum. Supp. 1974).

Men and women attain majority for certain purposes at 18 years of age. Emancipated and married minors may consent to medical and surgical care. Any minor may consent to examination and treatment for venereal disease. A minor 12 years of age or older, found by a physician to be drug dependent, may consent to hospital and medical care related to his or her drug dependency. A person 18 years of age or older, who is otherwise competent, may consent to blood donation and penetration of tissue necessary to the donation at a federally-approved blood bank. A female minor, 12 years of age or older, who is alleged to be the victim of rape, may consent to necessary examination and care.

Arkansas: Ark. Stat. Ann. §57-103 (1971); §§82-363, 82-364, 82-629, 82-1606 (Cum. Supp. 1973); §57-103 (Cum. Supp. 1975).

Men and women attain majority at 18 years of age. A minor parent may consent to surgical or medical treatment or procedures for his or her child. A married minor may consent to such treatment or procedures for himself or herself. Any minor may consent to surgical or medical treatment or procedure in connection with pregnancy or childbirth, except abortions. An emancipated minor or an unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed treatment may consent for himself or herself. A minor may consent to examination and treatment relating to venereal disease. A person 18 years of age or older may donate or sell blood to any non-profit blood bank or licensed hospital without parental consent.

California: Cal. Civ. Code Ann. §25 (1954), *as amended amended Supp. 1974); §§25.6, 34.5, 34.6, 25.7, 34.7, 25.5 (Cum. Supp. 1974); 59 Ops. Atty. Gen. 393 (1976); Cal. Civ. Code Ann. §34.5, as added,* A.B. 460 (Laws 1977); §34.8, *as added,* A.B. 883 (Laws 1977); §34.9, *as added,* S.B. 807 (Laws 1977).

Men and women attain majority at 18 years of age. Married minors may consent to medical and surgical care. An unmarried pregnant minor may consent to medical and surgical care related to her pregnancy including a therapeutic abortion. *Ballard v. Anderson,* 95 Cal. Rptr. 1, 484 P.2d 1345

(1971). Any emancipated minor who is at least 15 years of age or a minor who is on active duty with the armed services may consent to hospital, dental, medical or surgical care. A minor who is at least 12 12 of age may consent to medical or surgical treatment of any infectious, contagious or communicable disease, which is required to be reported to the local health officer. Any minor 15 years of age or older may, with the consent of his or her parents, donate blood.

The California attorney general has ruled that the California Youth Authority may not administer dental, medical or surgical treatment to an adult without the adult's permission, unless such treatment is either necessary to prevent severe disability or death or to further a "compelling interest of Youth Authority detention." In the case of nonconsenting minors, treatment may be administered, but only under the following circumstances: (1) to prevent death or severe physical disability; (2) to further a "compelling interest of Youth Authority detention;" (3) to eliminate an unwarranted risk to the child if treatment was suspended pending review; and (4) to proceed with treatment after the minor's objections have been expressed and overruled in an administrative proceeding.

A 1975 amendment of Cal. Civ. Code Ann. §34.5 (1954), *as amended* (Cum. Supp. 1974) allows minors to consent to receiving contraceptives without the consent of a parent. This amendment does not apply to sterilization of a minor.

A.B. 460 permits a minor who is at least 12 years of age to consent to counseling or medical treatment for drug- or alcohol-related problems. Parents or guardians of minors treated pursuant to this act will incur no financial liability for care provided unless they participate in related counseling. Methadone treatment, however, is specifically excluded.

A.B. 883 authorizes minors 12 years of age or older to consent to medical care and hospitalization for treatment related to alleged rape. Such consent is not subject to disaffirmance based on minority or subject to parental acquiescence.

S.B. 807 authorizes all minors to consent to treatment related to alleged sexual assault. The medical professional providing such treatment shall attempt to contact the parents—noting the time, date and outcome of this attempt on the patient's medical record—unless he reasonably believes the sexual assault was committed by a parent.

Colorado: Colo. Rev. Stat. Ann. §§2-4-401, 25-4-402, 13-22-101 to 13-22-105, 27-10-103 (1974); §§13-20-301 to 13-20-305 (1976); §13-80-105.5 (1973); §§13-20-401 to 13-20-402 (Laws 1977); H.B. 1497 (Laws 1977).

Men and women attain majority at 18 years of age. A minor may consent to examination and treatment for venereal disease and drug addiction. A person 18 years of age or older may consent to medical, dental, and surgical care, and to blood donation and penetration of tissue necessary to the donation. An emancipated minor, 15 years of age or older, or a married minor may consent to medical, dental, and surgical care. A minor parent may consent to care for his or her child or ward. Birth control procedures, supplies and information may be furnished by a licensed physician to any minor who is pregnant, married or who is a parent parent or who has parental consent.

Colorado has adopted by statute the doctrine of "informed consent." The legislature defined informed consent as that consent which a reasonable and prudent person would give to a proposed procedure after receiving sufficient information about the procedure including its attendant risks to make an intelligent decision to undergo or refuse treatment. To satisfy the requirement of providing sufficient information, the physician must relate certain information to the patient, or if the patient is unable to communicate or is under the influence of drugs, the physician must relate the information to the patient's spouse, adult son or daughter, parent, adult brother or sister, or legal guardian. This information must include (1) the likely result if the patient does not receive the proposed procedure; (2) any accepted alternative procedures; (3) the likelihood that death may be a proximate result of the proposed procedure; (4) the likelihood that serious injuries could result from the procedure, as well as the likelihood of occurrence for each serious injury; and (5) the likelihood that the proposed procedure may not improve the patient's condition and may in fact worsen it. Likelihood has been defined by the legislature as an approximation of the percentage of risk involved within two percent. This approximation may be based on information contained in a recognized medical publication or on the personal experience of the physician who has had a substantial number of same or similar cases. All information which the physician provides to the patient must be based on that medical knowledge which is generally available to a reasonable and prudent physician at the time the information is required.

The physician is not required to provide this detailed information if the patient indicates he does not want to be informed, or if informed consent by the patient is not reasonably possible.

To recover in an action based on lack of informed consent the plaintiff must prove by a preponderance of the evidence all the following: (1) the physician failed to provide information sufficient for informed consent; (2) a reasonable and prudent person if adequately informed under similar medical circumstances would not have undergone the procedure; and (3) the procedure which was performed proximately caused the injury complained of. A written form containing sufficient information concerning the proposed procedure and signed by the patient is *prima facie* evidence of the physician's compliance.

§13-80-105.5 limits the time for instituting suit to two years after the injury is discovered, or in the exercise of reasonable diligence, should have been discovered. The only exception is for persons operating under a disability. Those persons may institute suit up to six years after the performance of the procedure.

H.B. No. 1497 (Laws 1977) directs physicians to provide their patients with sufficient information prior to the performance of electroconvulsive treatment to enable those patients to give informed consent to the treatment. Required information would include the potential benefits of the treatment as well as its possible physical, mental and emotional risks. The sufficiency of the information will be evaluated against medical knowledge generally available to a reasonable and prudent physician at the time the consent was needed.

Connecticut: Conn. Gen. Stat. Ann. §§1-1d, 19-89a, 19-496c, 19-139k, 19-142a (1973).

Men and women attain majority at age 18. A minor may consent to examination and treatment for venereal disease or for addiction to or the effects of a controlled drug, as defined in Conn. Gen. Stat. §19-443 (1968), provided by any public or private hospital or clinic, municipal health department, or state institution or facility. Any person 18 years of age or older may consent to medical, dental, health and hospital services, and to donating blood in a voluntary, noncompensatory blood program. A minor who has been married or has borne a child may consent to medical, dental, health and hospital services for his or her child.

In *Lady Jane v. Maher,* 420 F. Supp. 318 (D. Conn. 1976), a three-judge district court ruled that a Connecticut welfare regulation, which requires the written consent of the Commissioner of Children and Youth Services before minors committed to his care could undergo elective abortions, violated the First and Fourteenth Amendments to the U.S. Constitution. In enjoining the enforcement of this regulation as it dealt with

state wards during their first trimester of pregnancy, the court cited the U.S. Supreme Court's decision in *Planned Parenthood v. Danforth,* which stands for the principle that "an unmarried minor's right to an abortion is grounded in the Constitution as firmly as that of an adult woman and cannot be frustrated by her guardian's denial of consent." 420 F. Supp. at 321.

Delaware: Del. Code Ann. c.1, §701; c.13, §707 (1975); c.13, §708 (Supp. 1974); c.13, (1975).

Men and women attain majority at 18 years of age. Married minors may consent to medical and surgical care. A minor parent may consent to medical and surgical care for his or her child. A minor 12 years of age or over may give written consent to diagnosis and treatment of pregnancy, excluding abortion, or of contagious, infectious, or communicable diseases. Any person over 17 years of age may consent to blood donation and necessary tissue penetration in any voluntary and noncompensatory blood program.

District of Columbia: D.C. Code Ann. §§21-201 (1976), 9-199j-1 (1973); Regulation No. 74-22 (Aug. 30, 1974) D.C. Register (Sept. 16, 1974).

Majority is attained in the District of Columbia at 18 years of age. Any minor may consent to treatment of venereal disease. Parents are to be notified of a minor's receipt or refusal of treatment of venereal disease if they can be located.

For the purpose of the Minors Health Consent Regulation, a minor is defined as a person under the age of majority as defined by the D.C. Statute. The regulation permits any person over 18 to consent to the provision of health services for himself or herself or for his or her child or spouse. Any person over 18 years of age may consent to donate blood. Minor parents may consent to the provision of health services for their children. Any minor may consent to medical services for the prevention, diagnosis, and/or treatment of substance abuse, psychological disturbance or pregnancy, including its lawful termination.

Florida: Fla. Stat. Ann. §§1.01, 743.07, 743.01 (Cum. Supp. 1974); §§384.061, 381.382 (1973); §743.06 (Cum. Supp. 1974); H.B. 1356 (Laws 1976); S.B. 928 (Laws 1976).

Men and women attain majority at 18 years of age or upon marriage. A minor may consent to examination and treatment for venereal diseases. A minor who is married, a parent, or pregnant, or who has the consent of a

parent or guardian, or who may suffer probable health hazards if the services are not rendered, may receive maternal health and contraceptive information and services of a non-surgical nature. Application of a non-permanent internal contraceptive device is not deemed to be a surgical procedure. Any person 18 years of age or older may consent to a blood donation and the tissue penetration necessary for the donation in a noncompensatory blood program.

H.B. No. 1356 (Laws 1976) amends Fla. Stat. Ann. §743.06 (Cum. Supp. 1974) to lower the age of consent from 18 to 17 for the donation of blood to a noncompensatory program. This consent will be subject to disaffirmance only if the parents have objected in writing to the procedure.

S.B. No. 928 (Laws 1976) allows an unwed pregnant minor to consent to medical or surgical care or services relating to her pregnancy as if she were an adult. The unwed minor may also consent to medical or surgical care or services for her child.

Georgia: Ga. Code Ann. §74-104 (1973); §88.2904 (Cum. Supp. 1974); §88-2901 (1971); §§74-104.2, 74-104.3 (1973); §48-111 (1974); §§88-4, 88-5, 88-26 (1971), *as amended*, S.B. Nos. 280, 281, 282 (Laws 1977).

Men and women attain majority at 18 years of age, except in the case of certain non-resident students. If the state in which the parents of a student reside recognizes a higher age of majority, that age is controlling in Georgia with respect to that student. Any person who is 18 years of age or married may consent to medical and surgical care for himself or herself or for his or her spouse. Any female may consent to medical and surgical care relating to pregnancy or the prevention thereof, or childbirth. A minor parent may consent to treatment of his or her child. Any person 18 years of age or older may refuse to consent to medical or surgical treatment as to his or her own person. A minor may consent to medical and surgical care relating to venereal disease and drug abuse. A state resident 18 years of age or older may consent to being a blood donor. Non-residents may donate blood at age 18 or older only if the state in which they reside permits the donation of blood at that age.

The senate bills provide that the usual consent requirements need not be met when surgery or other intervention is necessary to prevent death or serious consequences to persons admitted to a treatment facility who are mentally retarded (S.B. No. 280), alcohol or drug dependent (S.B. No. 281) or mentally ill (S.B. No. 282). Before treatment can be administered, however, two physicians—one of whom is not a full-time employee at the facility where the proposed treatment is to be performed—must determine

that the delay caused by obtaining consent through normal channels would be dangerous to the patient. This determination must be noted on the patient's medical records. The law further provides that such substituted consent remains valid regardless of the manner of admission or the results of a previous adjudication on the competence of the patient. Finally, no criminal or civil liability will be imposed on persons acting in good faith pursuant to these amendments.

Hawaii: Hawaii Rev. Stat. §§577-1, 577A-1, 577A-2 (Supp. 1974).

Men and women attain majority at 18 years of age. Minors between the ages of 14 and 17 may consent to the diagnosis, examination and administration of medication in the treatment of venereal diseases and pregnancy. They may not consent to surgery.

Idaho: Idaho Code Ann. §§32-101, 39-3801, 37-3102, 39-3701, 39-3402 (Cum. Supp. 1974).

Men and women attain majority at 18 years of age. Married minors possess contractual capacity. A minor 14 years of age or older may consent to examination and treatment for any infectious, contagious or communicable disease. Any minor 16 years of age or older may consent to examination and treatment related to drug dependency. Any person 18 years of age or older may consent to donation of blood in a voluntary and noncompensatory blood program.

Illinois: Ill. Stat. Ann. tit. 3, §131; tit. 91, §§18.1 to 18.5, 18.7 18.7 (Supp. 1973).

Men and women attain majority at 18 years of age. A minor who is married or pregnant may consent to medical and surgical care. A minor parent may consent to treatment for his child. Anyone may consent to donating blood in a voluntary and noncompensatory blood program. A minor who is married, pregnant or a parent may consent to birth control services and information. The consent of any other minor will also be sufficient when failure to provide the services would create a serious health hazard or when the minor is referred for services by a physician, clergyman or planned parenthood agency. A minor 12 years of age or older may consent to examination and treatment for venereal disease.

Indiana: Ind. Ann. Stat. §34-1-67-1 (Cum. Supp. 1974); §§16-8-4-1, 16-8-4-2, 16-8-5-1 (Burns 1973); §§16-8-2-1, 16-13-6.1-23 (Cum. Supp. 1974).

Men and women attain majority at 18 years of age. A married minor living with his or her spouse and emancipated minors may consent to

medical and surgical care. A minor parent may consent to treatment for his child. A minor may consent to examination and treatment for venereal disease. A minor 17 years of age or older may consent to being a blood donor in a voluntary and noncompensatory blood program. Any person regardless of age may consent to treatment for alcohol or drug abuse.

Iowa: Iowa Code Ann. §599.1 (Cum. Supp. 1973); §140.9 (1972); §599.6 (Cum. Supp. 1973).

Men and women attain majority at 18 years of age or when married. Minors who are 16 years of age or older may consent to medical care related to venereal disease. Any person 18 years of age or older may donate blood to any voluntary and noncompensatory blood program.

Kansas: Kan. Stat. Ann. Ann. 38-123b, 38-122, 38-123a (1973); §§65-2892, 65-2892a (1972); §65-2891 (Supp. 1976), *as amended*, S.B. 251 (Law 1977).

Men and women attain majority at 18 years of age. Any minor 16 years of age or over, where no parent or guardian is immediately available, may consent to the performance and furnishing of hospital, medical or surgical procedures or treatment. A minor parent may consent to treatment for his or her child. An unmarried pregnant minor may consent to medical and surgical care related to her pregnancy where no parent or guardian is available. An individual must be at least 18 years of age to be eligible to donate blood voluntarily without parental consent. A minor may consent to examination and treatment for venereal disease and drug abuse.

In case of emergency, a health care provider may render care or treatment to a minor without the consent of his parent or guardian and will not be held liable for civil damages for any acts or omissions other than those based on gross negligence or willful or wanton acts or omissions.

Kentucky: Ky. Rev. Stat. §2.015 §2.015 §214.185 (1973).

Men and women attain majority at 18 years of age for most purposes. Pursuant to section 214.185, any emancipated minor or any minor who has contracted a lawful marriage or borne a child may give consent to the furnishing of hospital, medical, dental, or surgical care to his or her child or himself or herself; for purposes of this section only, an annulment of marriage or a divorce shall not deprive a minor of his adult status once obtained. Any minor may consent to examination and treatment of venereal disease, pregnancy, alcohol or other drug abuse or addiction.

Louisiana: 37 Civ. Code Ann. arts. 37,382 (West Supp. 1973); art. 379 (West 1952); La. Rev. Stat. Ann. §§40:1095 to 40:1097; 40:1065.1 (Cum. Supp. 1973).

Men and women attain majority at 18 years of age. Minors become emancipated for purposes of estate administration upon marriage, or, with parental consent, at age 15. Any minor who is or believes himself or herself to be afflicted with an illness or disease, including but not limited to venereal disease and drug addiction, may consent to medical or surgical care or services by a licensed physician, hospital or public clinic.

Maine: Me. Rev. Stat. Ann. tit. 1 §73 (Supp. 1973); tit. 22, §1823 (Cum. 1823 Supp. 1974), *as amended*, §186 (Laws 1977); tit. 32, §3292 (Supp. 1973).

Men and women attain majority at 18 years of age. A minor may consent to treatment of venereal disease and problems related to drug abuse. Hospitals providing treatment to minors for venereal disease or drug abuse need not notify or obtain the consent of the minor's parent or guardian, unless the minor is hospitalized for more than 16 hours.

Maryland: Md. Code Ann. Rules of Procedure rule 5, §r (Cum. Supp. 1974); art. 43, §135 (Cum. Supp. 1974); art. 43, §76A (1971); art. 43, §135A (Cum. Supp. 1974), *as amended*, H.B. 1168 (Laws 1977).

Men and women attain majority at 18 years of age. Anyone who is married or is a parent, may consent to medical treatment. Any minor may consent to treatment and advice for venereal disease, drug abuse, pregnancy, and contraception, excluding sterilization. A person 18 years of age or older may consent to being a blood donor, provided he receives no monetary compensation for the donation. A minor who has attained the age of 16 years may consent to treatment for emotional disorders. H.B. 1168 amends §135(A) of the Maryland code to allow minors to consent to treatment for alcoholism.

Massachusetts: Mass. Gen. Laws Ann. ch. 4, §7 (Cum. Supp. 1974); ch. 111, §184c (1971), §117 (Cum. Supp. 1974); ch. 112, §12e, §12f (Cum. Supp. 1975).

Men and women attain majority at age 18. Any person may consent to being a blood donor. Any minor 12 years of age or older, found by two physicians to be drug dependent, may consent to hospital and medical care related to his or her drug dependency. The physical examination or

treatment for venereal disease by a registered physician or surgeon upon a minor voluntarily submitting to the examination or treatment does not constitute assault or assault and battery.

A minor may consent to emergency medical or dental treatment when delay will endanger life, limb or mental well-being; to treatment if pregnant or a pregnancy is suspected; and to medical treatment for any public-health endangering disease. A minor may consent to routine treatment if married, widowed, divorced or if the minor is a parent or lives separately from his parents and is responsible for his own financial affairs.

In *Baird v. Bellotti,* 428 F. Supp. 854 (D. Mass. 1977), a case on remand from the U.S. Supreme Court, a three-judge federal district court suspended all enforcement of a Massachusetts law—Stat. 1974, ch. 706 §1 Mass. Gen. Laws Ann.—that required parental consent before a minor could obtain an abortion. The court cited the following reasons for its action: the statute fails to advise parents that they can only consider a minor's best interest in making their decision; the statute imposes a substantial burden on pregnant minors who opposed their parents' wishes by forcing them to go to court; the statute deprives the court of its right to decide that a minor's best interests are best served by not notifying her parents; and, finally, the statute denies a "mature minor," otherwise capable of giving informed medical consent, the right to consent to an abortion. The court refused to elaborate on whether this latter concern constitutes state interference with a minor's constitutional rights or whether it improperly discriminates between abortion and other medical procedures.

Michigan: Mich. Comp. Law Ann. §§722.1, 722.4, 722.52, 329.221, 701.19b, 335.231 (Cum. Supp. 1974).

Men and women attain majority at the age of 18 and are emancipated upon marriage, service in the armed forces, or by action of the parents. A court may also order emancipation. A minor may consent to examination and treatment for venereal disease. A minor 14 years of age or older may donate one kidney to a parent, sibling, or to his or her child, when authorized by order of the probate court having jurisdiction over his or her person. A minor may consent to care, treatment, or service by a hospital, public or private clinic, a physician, or a registered nurse for dependency or abuse of drugs or narcotics.

Minnesota: Minn. Stat. Ann. §§525.80, 645.45(14), 144.341 to 144.347 (Cum. Supp. 1974); §145.41 (1970); *as amended,* H.B. 1075 (Laws 1976).

Men and women attain majority at 18 years of age. An emancipated minor, or a minor who has been married or has borne a child, may consent

to medical, mental, dental and other health services for himself or herself or for his or her child. A minor may consent to medical, mental, dental and other health services to determine the presence of or to treat pregnancy, venereal disease, alcohol or drug abuse.

H.B. 1075 amends §145.41 to allow 17-year-olds to donate blood to voluntary or noncompensatory blood programs without parental consent.

In *Maley v. Planned Parenthood,* Civ. No. 37769, the Minnesota District Court, Olmstead County, December 30, 1975, dismissed a long standing lawsuit against Planned Parenthood of Minnesota brought by plaintiffs as representatives of all Minnesota parents with unemancipated minor children. The suit had sought to limit sharply Planned Parenthood's ability to provide family planning services to minors. The court's ruling permits Planned Parenthood to continue to provide contraceptive information and services to unemancipated minors, unless the child's parents have specifically notified Planned Parenthood not to provide such service to their child.

Mississippi: Miss. Code Ann. §1-3-27 (1972); §§41-41-3, 41-41-13 (1973); §41-41-15 (Cum. Supp. 1974).

Men and women attain majority at 21 years of age. Married and emancipated minors may consent to medical and surgical care. An unmarried pregnant minor may consent to medical and surgical care. An unemancipated minor of sufficient intelligence to understand the proposed medical or surgical treatment may give effective consent. A minor parent may consent to treatment for his or her child. A minor may consent to examination and treatment for venereal disease. Any person who is 18 years of age or older may consent to the donation of his or her blood and to necessary tissue penetration. The legal disabilities of any minor aged 18 years or over are removed for such blood donation purposes. Parental consent must be obtained prior to treatment for alcoholism or alcohol abuse.

Missouri: Mo. Ann. Stat. §431.055 (1974); §§431.061 to 431.065 (Cum. Supp. 1973).

The legal age at which a person becomes competent to contract is 18. A minor may consent to examination, treatment, hospitalization, and medical and surgical care for venereal disease, drug or substance abuse, and pregnancy. Any person 18 years of age or older may donate blood voluntarily, but may not receive compensation without the written authorization of a parent or guardian.

In *Planned Parenthood of Missouri v. Danforth,* 44 U.S. L.W. 5197 5197 (U.S. June 29, 1976), the Supreme Court struck down H.B. 1221, which allowed a spouse or parent (whichever applicable) to veto the pregnant woman's abortion decision. In the same decision, however, the court upheld the requirement for written informed consent on the part of the pregnant adult.

Montana: Mont. Rev. Codes Ann. §§75-8702(2) and (3), 64-101, 69-6101, 69-6106 (Cum. Supp. 1974).

A minor is a male or female who has not yet attained the age of 18 years. A minor's consent to medical or surgical care or services performed by a hospital, clinic, or a licensed physician is valid if the minor is or has been married or is a parent, a high school graduate, or emancipated. It is also valid if the minor is separated from his or her parents or guardian and is self-supporting. Any minor who is or claims to be pregnant, afflicted with a reportable communicable disease, or a drug or alcohol abuser may consent to the prevention, diagnosis, and treatment of those conditions. A minor parent may consent to health services for his or her child. A minor may consent to psychiatric or psychological counseling where the need is urgent and the consent of the spouse, parent, custodian or guardian of the minor cannot be obtained in time to offset danger to life or safety.

Nebraska: Neb. Rev. Stat. §38-101 (1974); §71-1121 §71-1121 Supp. 1974).

Men and women attain majority at 19 years of age or when married. A minor may consent to examination and treatment for venereal disease.

In *Doe v. Exon,* 416 F. Supp. 716 (D. Neb. 1975), a federal district court enjoined enforcement of a Nebraska abortion statute that required parental consent.

Nevada: Nev. Rev. Stat. §§129.010 to 129.070 (1973).

Men and women attain majority at age 18. Married and emancipated minors may consent to medical and surgical care. A minor may consent to examination and treatment for venereal disease and drug abuse. Any person 18 years of age or older may donate blood.

New Hampshire: N.H. Rev. Stat. Ann. §§21:44, 21-B:1, 318-B: 12-a (Supp. 1973); §571-C:1 (1974); §141:11-a (Supp. 1973).

Men and women attain majority at the age of 18. A minor 12 years of age or older may consent to treatment related to drug abuse. Any minor

who is married blood program. Any minor 14 years of age or older may consent to diagnosis and treatment of venereal disease.

New Jersey: N.J. Stat. §§9:17B-1, 9:17A-1, 9:17A-4, 9:17A-6 (Cum. Supp. 1975).

Men and women attain majority at 18 years of age. Married minors may consent to medical and surgical care. An unmarried minor may consent to care related to her pregnancy. A minor parent may consent to treatment for his or her child. A minor who is or professes to be afflicted with venereal disease may consent to medical or surgical care related to the disease. Any person 18 years of age or older may donate blood in any voluntary and noncompensatory blood program.

New Mexico: New Mex. Stat. §§13-13-1, 12-25-1, 12-34-9, 12-34-13 (Supp. 1973).

Men and women attain majority at 18 years of age. Married and emancipated minors may consent to medical and surgical care. A minor may consent to examination and treatment for venereal disease and pregnancy.

New York: N.Y. Dom. Rel. Law §2 (McKinney Supp. 1974); N.Y. Public Health Law §§2504, 3123 (McKinney Supp. 1974); N.Y. Public Health Law §2305(d) (McKinney 1971); N.Y. Mental Hygiene Law §81.13 (McKinney Supp. 1974).

Men and women attain majority at 18 years of age. Married minors or minor parents may give effective consent to medical, dental, health and hospital services for himself or herself or his or her child. Any person 17 years of age or older may consent to donate blood in a voluntary, non-compensatory blood program. Any minor may consent to the diagnosis and treatment of venereal disease. A minor seeking admittance to a drug rehabilitation facility must be accompanied by a parent or guardian.

In *Director, Harlem Valley Psychiatric Center v. Strauss,* 391 N.Y.S.2d 168 (1977), the appellate division of the New York Supreme Court ruled that a trial court is empowered to consent to surgery upon a mental patient, especially when the medical record shows clear necessity and when no close relative is in a position to give consent. In making its determination, the court recognized that persons committed to state institutions for the mentally ill are wards of the court; and, as such, the court is responsible for their protection. The informed consent provision of §2305-d of the Public Health Law, the court ruled, "was clearly not intended to prevent a court from authorizing necessary surgery upon mental patients in State institutions who are incapable of giving consent."

North Carolina: N.C. Gen. Stat. §48A-2 (Cum. Supp. 1974); §§90-21.5, 90-220.11 (1975); §90-21.1, *as amended*, H.B. 1166 (Laws 1977).

Men and women attain majority at 18 years of age. A minor who is emancipated may consent to medical treatment, dental and health care services for himself or herself or for his or her child. Any minor may consent to examination and treatment for venereal disease. Any person 18 years of age or older may consent to donation of blood to any individual, hospital, blood bank or blood collection center.

H.B. 1166 permits a physician to render emergency treatment to a minor notwithstanding parental objection and the absence of a court order, provided another state-licensed physician concurs with his determination that immediate care is needed to save the minor's life or to prevent serious deterioration of the minor's condition. A practitioner's refusal to treat a minor without obtaining parental consent shall not, however, constitute grounds for civil or criminal liability.

North Dakota: N.D. Cent. Code Ann. §§14-10-01, 14-10-17 (Cum. Supp. 1975), *as amended* and reenacted by H.B. No. 1053 (Laws 1977), 14-10-18 (1971).

Men and women attain majority at 18 years of age. A minor 14 years of age or older may consent to examination and treatment for venereal disease or drug abuse. Any person 18 years of age or older may donate blood.

H.B. No. 1053 amends the North Dakota code to allow minors to consent to treatment for alcoholism, including emergency examination, cure or treatment.

Ohio: Ohio Rev. Code Ann. §§3109.01, 3709.241, 3719.012 (Baldwin Supp. 1974); §2108.21 (Baldwin 1971); §2317.54, *as amended*, H.B. 213 (Laws 1977).

Men and women attain majority at 18 years of age. A minor may consent to diagnosis and treatment for venereal disease and drug abuse. Any person 18 years of age or older may consent to donation of blood in a voluntary blood program.

H.B. 213 grants immunity to hospitals for a physician's failure to obtain informed consent prior to the performance of medical or surgical procedures, unless that physician is an employee of the hospital. Informed consent is defined as general disclosure of the procedure's nature, the

anticipated results, the reasonably known risks and the names of practitioners performing any surgical procedures. In emergency situations, no disclosure of physician identity is required.

Oklahoma: Okla. Stat. Ann. tit. 15, §13 (1972); tit. 63, §2152.(Cum. Supp. 1974); tit. 63, §1-532.1 (1973); S.B. 591 (Laws 1976).

Men and women attain majority at the age of 18. Persons 18 years of age or older may donate blood. Any minor may consent to examination and treatment for venereal disease.

S.B. No. 591 allows persons under the age of 18 who are in the military service; married, emancipated, or have a dependent child; or who are separated and receive no support from their parents or legal guardian to consent to all health services except for abortion or sterilization, including examination, preventive and curative treatment, and surgical, hospital, and psychological services. This bill also allows a minor parent to consent to treatment of his/her child. A spouse may consent for a married minor who is unable to give consent for reason of physical or mental incapacity. If there is no one legally able to consent to treatment for the minor, treatment may still be given if two physicians agree that it is needed. Any minor in need of emergency services for a condition in which delay will endanger his health or life may consent to treatment. The health professional is, however, required to make a reasonable attempt to inform the appropriate person of the treatment. The act specifically provides that the prevention of pregnancy is not to be considered such an emergency service.

The statute makes special provision for minors who are pregnant, afflicted with a reportable communicable disease, or suffering from drug or alcohol abuse. These minors may consent to treatment and other health services, but only with reference to the above conditions. In addition, the health professionals who service these minors are obligated to provide counseling and, absent the minor's consent, are required to keep this information confidential, even from the minor's parents. A health professional operating in good faith under this act incurs no liability for providing care to a minor who falsely represents that he may give consent, absent negligence.

Finally, the act provides that information about the minor may not be given to any health professional, school, law enforcement agency or official, court authority, government agency or official employer without the consent of the minor, except when given in response to specific legal requirements.

Oregon: Ore. Rev. Stat. §§109.640, 109.610 (Repl. Part 1973), *as amended*, H.B. 2981 (Laws 1977); §475.742 (Repl. Part 1974).

Men and women attain majority at 18 years of age or when married. A physician may provide birth control information and services to any person without regard to age. A minor 15 years of age or older may consent to hospital care and medical or surgical and dental diagnosis or treatment. A minor 12 years of age or older may consent to treatment of venereal disease. Parental consent is not necessary when a minor voluntarily seeks care, diagnosis or treatment for drug abuse from a licensed physician or a community mental health program.

A minor, 12 years of age or older, may consent to hospital, medical or surgical care related to the treatment of venereal disease. Nonconsenting parents, however, are not liable for payment for care received.

Pennsylvania: Pa. Stat. Ann. tit. 35, §§10101 to 10105, 10001 (Cum. Supp. 1972).

A person who is 18 years of age, or has graduated from high school, or has been married or has been pregnant may consent to medical, dental and health services. A minor parent may consent to medical treatment for his or her child. Any minor may consent to examination or treatment of pregnancy, or venereal disease, or any other reportable disease. A physician acting in good faith may rely upon the consent of a minor who professes to be one whose consent alone is sufficient. A person 18 years of age or older may consent to donating blood in a voluntary and noncompensatory blood program.

In *Doe v. Zimmerman,* 405 F. Supp. 534 (D.P. 1975), the district court declared unconstitutional the provisions of the Pennsylvania Abortion Control Act, which required prior spousal or parental consent to the abortion procedure.

Rhode Island: R.I. Gen. Laws Ann. §§15-12-1, 23-50-1, 5-37-17, 23-51-1 (Cum. Supp. 1974); 23-11-11 (1968).

Men and women attain majority at 18 years of age. Any person 18 years of age or over can donate blood in any voluntary and noncompensatory blood program. A person 18 years of age or older may consent to examination and treatment for illness resulting from administration of drugs. A minor 16 years of age or older, or married, may consent to routine emergency medical or surgical care. A minor parent may consent to treatment of his child. Any minor may give legal consent for examination and treatment for venereal infection.

South Carolina: S.C. Code Ann. §§11-157, 32-565 to 32-568, 32-560 (Cum. Supp. 1974); S.C. Constitution, Art. 17, §14.

Men and women attain majority at 18 years of age. Married minors may consent to medical or surgical care and a minor who has been married or has borne a child may consent to health services for his or her child. A minor spouse may consent to medical or surgical care for his or her spouse. Any minor 16 years of age or older may consent to any health services, and the consent of no other person shall be necessary unless an operation is involved. Where an operation is involved, it shall be performed only if it is essential to the health or life of the minor in the opinion of the performing physician and a consultant physician, if available. Minors who have not attained 16 years of age may consent to health services of any kind without the consent of a parent or legal guardian if such services are deemed necessary by the person rendering the services. A person 18 years of age or older may consent to being a blood donor. The issue of the effectiveness of a minor's consent to treatment for venereal disease was decided in an Attorney General's Opinion. A minor may legally consent to treatment for venereal disease. 1959-1960 Op. Atty. Gen. 231.

South Dakota: S.D. Compiled Laws Ann. §§26-1-1, 26-2-7 (Supp. 1974); §32-23-16 (1972).

Both men and women attain majority at 18 years of age. A person 18 years of age or older may consent to being a blood donor. A minor may consent to diagnosis and treatment for venereal disease.

In *M.S. v Wermers,* 409 F.Supp. 312 (D.S.D. 1976), the court held that an action brought by a 15-year-old unmarried female challenging the county health department's policy of refusing to supply contraceptive services and supplies to unmarried minors without written parental consent could not proceed until a guardian *ad litem* had been appointed to represent and protect her interests. The court rejected the plaintiff's argument that her attorney was competent to protect her interests adequately in this matter. The court, noting some of the serious side effects of birth control pills, and the complex medical matters attendant upon the use of prescription contraceptives, found that the plaintiff's informed consent had not been satisfactorily demonstrated and that a guardian *ad litem* was necessary to protect her in pursuing this cause of action.

Tennessee: Tenn. Code Ann. §§1-313, 53-1104, 53-4607, 53-4401 (Cum. Supp. 1974).

Men and women attain majority at 18 years of age. A minor may consent to examination and treatment relating to venereal disease. A minor

who is married, pregnant, or a parent may consent to contraceptive supplies and information. The consent of any other minor who requests and is in need of such information, who has been referred for such services by a physician, clergyman, family planning clinic, school, or state agency, will also be sufficient. Any person 17 years of age may donate blood if he or she has had the disability of minority removed or if he or she has the written consent of a parent or guardian.

Texas: Tex. Fam. Code §§11.01, 35.03 (Vernon's 1975); Tex. Rev. Civ. Stat. Ann. arts. 4447j, 4447i (Vernon's Supp. 1974).

An individual attains majority at the age of 18 or upon marriage or upon removal of the disabilities of minority by emancipation. A minor may consent to the furnishing of hospital, medical, surgical and dental care if he or she is on active duty with the armed services or is 16 years of age or older, residing separately from parents or guardian and managing his or her own financial affairs. Any minor may consent to the diagnosis and treatment of a reportable communicable disease. An unmarried pregnant minor may consent to medical and surgical treatment, other than abortion, related to her pregnancy. Any adult between the ages of 18 and 21 may consent to donate blood under a non-compensatory program. An individual must be at least 13 years of age to effectively consent to examination and treatment for drug abuse.

Utah: Utah Code Ann. §15-2-5 (1973); §26-6-39.1 (Supp. 1973); §15-2-1 (Cum. Supp. 1975).

Men and women attain majority at 18 years of age or upon marriage. A person 18 years of age or older may consent to donate blood and to medical procedures necessary to donation. Any minor may consent to medical care or services for actual or suspected venereal disease.

In *Jones v. T.H.*, 96 S. Ct. 2195 (1976), the Supreme Court summarily affirmed the decision of a three-judge federal district court in Utah that Utah state regulations prohibiting the Planned Parenthood Association from providing family planning assistance to minors without parental consent conflicted with the Social Security Act and were therefore invalid. *T.H. v. Jones*, 425 F. Supp. 873 (D. Utah 1975).

The case arose because the state Planned Parenthood Association had refused to provide family planning information, counseling and supplies to a 15-year-old minor, whose family had qualified for Medicaid and AFDC, without the express consent of her parents. The plaintiff brought suit to enjoin the Utah regulations.

The district court noted that the Social Security Act requires states receiving federal assistance from Medicaid or AFDC funds to have HEW approved plans. The Supreme Court ruled, however, that since HEW's prior approval of the Utah plan was clearly inconsistent with AFDC and Medicaid regulations, that approval could not be used to buttress the legitimacy of the plan. AFDC and Medicaid regulations required state plans to include all persons eligible under federal guidelines. The only federal condition imposed on receipt of AFDC medical assistance is that sexually active minors voluntarily request family planning assistance. The Medicaid regulations imposed no additional requirements. The Court found that Utah was not free to impose any additional conditions for participation in a federally controlled program.

The Supreme Court did not comment on the district court's decision on the constitutional issue. The district court had found that the parental consent requirement violated the minor's right to privacy. The Court also noted that, since there was no prohibition in Utah against minors obtaining contraceptives from their personal physicians without parental consent, the Utah plan raised an equal protection problem; *i.e.,* only indigent minors who could not afford their own physicians were restrained.

Vermont: Vt. Stat. Ann. tit. 1, §173; tit. 18, §§4226, 9 (Cum. Supp. 1974), *as amended,* (1976).

Men and women attain majority at 18 years of age. A minor 12 years of age or older may consent to examination and treatment for venereal disease. Any person 17 years of age may donate blood to a blood bank without parental consent.

Section 4226 has been amended to provide that a minor 12 years of age or older may consent to medical treatment and hospitalization for alcoholism. In addition, drug dependent or alcoholic persons 12 years of age or older may consent to nonmedical inpatient or outpatient treatment at a program approved by the agency of human services if such treatment is deemed necessary by the examining physician.

Virginia: Va. Code Ann. §1-13.42 (1973); §32-137 (Cum. Supp. 1974).

Men and women attain majority at the age of 18. Any person who has been separated from the custody of his or her parents or guardian may consent to surgical care. Any minor may consent to examination and treatment for venereal or other reportable diseases, and to medical care required for drug addiction, birth control, pregnancy, and family planning. A minor who is at least 17 years old may donate blood without parental consent.

Washington: Wash. Rev. Code §§26.28.01, 70.24.110, 70.01.010 (1974).

All persons are deemed to be of full legal age for most purposes upon reaching 18. This includes capacity to make decisions in regard to their own bodies and the bodies of their lawful issue whether natural born or adopted including but not limited to consent to surgical operations. A minor is also deemed to be of full legal age if he or she is married to a person person of full legal age. A minor 14 years of age or older may consent to examination and treatment for venereal disease. Any person 18 years of age or older may consent to donate blood under a voluntary, non-compensatory program.

West Virginia: W. Va. Code Ann. §§2-2-10, 2-3-1 (Cum. Supp. 1974); §§16-4-10; 16-21-1 (1974); §60-6 (Repl. 1977), *as amended*, H.B. 1369 (Laws 1977).

Men and women attain majority at 18 years of age. A minor may consent to examination and treatment of venereal disease. A person 18 years of age or older may consent to being a blood donor. Any minor may consent to examination, diagnosis, and treatment of drug abuse.

Minors may consent to examination and treatment for "any addiction to or dependency upon the use of alcoholic liquor or nonintoxicating beer . . . without the knowledge or consent of the minor's parent or guardian." This provision supplements W.Va. Code Ann. §16-4-10 (1974) and extends the types of treatment to which a minor may consent.

Wisconsin: Wis. Stat. §990.01 (20), 49.10(6) (Cum. Supp. 1974).

Men and women attain majority at 18 years of age. Minors are deemed emancipated upon marriage.

Wyoming: Wyo. Stat. Ann. §14-1.1 (Cum. Supp. 1973).

For all purposes under Wyoming law, a person of the age of 19 is considered to have reached the age of majority. Any minor may consent to treatment for venereal disease.

Puerto Rico: No relevant statutes.

END