



GUIDE TO THE

TREATMENT OF MINORS

IN TENNESSEE



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

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Appendix A

I. DEFINITIONS

- A. Emancipated Minor: Any minor who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the minor's parents.¹
- B. Loco Parentis: In the place of a parent.
- C. Minor: Anyone under the age of 18.
- D. "May" or "Can" is discretionary.
- E. "Must" or "Shall" is mandatory.
- F. PHI: Protected Health Information.
- G. "Qualified mental health professional" means:
 - 1. A person who is licensed in the state, if required for the profession, and who is a:
 - a. psychiatrist;
 - b. physician with expertise in psychiatry as determined by training, education, or experience;
 - c. psychologist with health service provider designation;
 - d. psychological examiner or senior psychological examiner;
 - e. licensed master's social worker with two (2) years of mental health experience or licensed clinical social worker;
 - f. marital and family therapist;
 - g. nurse with a master's degree in nursing who functions as a psychiatric nurse;
 - h. professional counselor; or
 - i. if the person is providing service to service recipients who are children, any of the above educational credentials plus mental health experience with children.²
- H. TCA: The law of Tennessee codified, Tennessee Code Annotated

II. CONSENT AND TREATMENT OF A MINOR PATIENT

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

- A. General Rule: A health care provider must obtain parental or legal guardian consent before treating a minor patient. Otherwise, informed consent is not established.
 - 1. If informed consent is not established, treatment of the minor may be considered a battery and subject the treating provider to possible criminal and civil liability.

¹ T.C.A. § 37-10-302

² T.C.A. § 33-1-101

B. HIPAA Uses and Disclosures of PHI³

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

C. Emancipated Minors

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

D. Unemancipated Minors

1. When the law allows a parent, guardian, or other person acting in loco parentis to make decisions related to consent to treatment of an unemancipated minor, a covered entity must treat this person as a personal representative of the minor with respect to PHI access and the treatment of the minor unless an exception applies. These exceptions are discussed below.
2. The individual may *not* be a personal representative of an unemancipated minor and access the minor's PHI or consent to the minor's treatment if:
 - a. If a court order or another person authorized by law consents to the treatment; OR
 - b. A parent, guardian, person acting in loco parentis assents to an agreement of confidentiality between the treating physician and the minor with respect to such health care service.

E. 2024 Families' Rights and Responsibilities Act

1. Public Chapter 1061, the 2024 Families' Rights and Responsibilities Act, effective July 1, 2024, amends several sections of the State Code. With regard to health care, it adds a new section to Title 63, Chapter 1, Part 1. Broadly speaking, the Act provides that, except as otherwise provided by statutory law, case law, or court order, a government entity, a healthcare provider, or any other person cannot take actions to treat, diagnose, prescribe, dispense, or render mental health services to an unemancipated minor without first obtaining the consent of a parent of the minor.
2. Definitions
 - a. "Government entity" means the state, any branch, department, agency, commission, or instrumentality of state government, any official or other person acting under color of state law, or any political subdivision of the state;

³ 45 CFR § 064.502(g)(3)

- b. "Healthcare provider" means a healthcare professional, healthcare establishment, or healthcare facility licensed, registered, certified, or permitted pursuant to this title, title 33, or title 68 or regulated under the authority of either the department of health or an agency, board, council, or committee attached to the department of health or by the department of mental health and substance abuse services, and that is authorized to provide health or medical care or mental health services in this state;
- c. "Medical decision-making authority" means the power granted by the state to a nonparent to make important decisions regarding a child's health care;
- d. "Minor":
 - i. Means an individual who has not attained 18 years of age; and
 - ii. Does not include an individual who:
 - (A) Is emancipated pursuant to Tennessee law;
 - (B) Needs emergency treatment pursuant to Tennessee law at § 63-6-222⁴;
 - (C) Is or was previously a member of the armed forces of the United States or a member of a reserve or national guard unit; or
 - (D) Is the parent of a minor child and has full custody of that minor child;
- e. "Parent" means a biological, legal, or adoptive parent or an individual who has been granted medical decision-making authority over the child under state law; and
- f. "Person" means an individual, corporation, or any other legal or commercial entity, whether or not a citizen or domiciliary of this state and whether or not organized under the laws of this state.
- 3. Specifically, it states that a healthcare provider, or any other person shall not knowingly take any of the following actions with regard to a minor without first obtaining the consent of a parent of the minor UNLESS the action falls under a Tennessee law, court case (i.e., Mature Minor Doctrine), or court order allowing for such treatment of an unemancipated minor without parental consent (such as those listed in Section II.J. of this Guide):
 - a. Treat, profess to diagnose, operate on, or prescribe for any physical ailment, physical injury, or deformity;
 - b. Prescribe, dispense, deliver, or administer any drug or medication;
 - c. Render psychological services specified in Tennessee laws: §§ 63-11-202 and 63-11-203; or
 - i. Practice of a psychological examiner⁵; and
 - ii. Practice of counseling and rendering of counseling services.⁶

⁴ See footnote 7 below.

⁵ T.C.A. § 63-11-202

⁶ T.C.A. § 63-22-122

4. Consent is **not** required when:
- a. A parent of the minor has given blanket consent authorizing the person or entity to perform an activity listed above;
 - b. A government entity, healthcare provider, or any other person reasonably relies in good faith on an individual's representations that the individual is the parent of a minor or has otherwise been granted authority to make decisions regarding a minor's health care under state law;
 - c. A licensed physician performs emergency medical or surgical treatment pursuant to Tennessee law;⁷
 - d. Licensed personnel render appropriate emergency medical care and provide emergency medical services pursuant to Tennessee law;⁸
 - e. A person, including a law enforcement officer, participates or assists in rendering emergency care pursuant to the Good Samaritan Law;⁹ or
 - f. An employee of a local education agency acts to control bleeding using a bleeding control kit pursuant to Tennessee law.¹⁰
5. Violation
- a. Violation of this Act by a healthcare provider can lead to disciplinary action by the provider's professional licensing board and/or a civil lawsuit by the parent for damages.
 - b. A violation of this law is considered an unlawful practice and the provider's professional license may be suspended, revoked, not reviewed, or other action taken against it.
 - c. When a licensing board receives information of a violation or potential violation, it must conduct an immediate investigation and take appropriate disciplinary action.
 - d. A parent may bring a civil action for compensatory damages, attorney's fees, court costs, expenses and other relief against a provider for violating this law.
 - i. A civil action must be brought within one-year from the date of discovery and no more than three years after the date of the violation.¹¹

⁷ (a) Any licensed physician may perform emergency medical or surgical treatment on a minor, despite the absence of parental consent or court order, where such physician has a good faith belief that delay in rendering emergency care would, to a reasonable degree of medical certainty, result in a serious threat to the life of the minor or a serious worsening of such minor's medical condition and that such emergency treatment is necessary to save the minor's life or prevent further deterioration of the minor's condition.

(b) Such treatment shall be commenced only after a reasonable effort is made to notify the minor's parents or guardian, if known or readily ascertainable.

(c) Any physician rendering emergency care to a minor pursuant to this section shall not be liable for civil damages, except such damages as may result from the negligence of the physician in rendering such care.

⁸ T.C.A. § 68-140-309

⁹ See our Law Guide topic Good Samaritan at www.tnmed.org/lawguide

¹⁰ T.C.A. § 49-2-137

¹¹ T.C.A. § 29-26-116

- e. If a court finds that a provider knowingly violated this law, it must notify the provider's licensing board and the Tennessee Attorney General (AG). The law does not state any specific action that the AG may or is required to take upon receipt of a report.

F. Transfer the Power to Consent to Treatment of a Minor

1. Power of Attorney (POA) for Care of a Minor Child¹²
 - a. A POA for care of a minor child allows a parent to designate another adult residing in Tennessee temporary care-giving authority for a minor child if a hardship arises that prevents the parent from caring for the child.
 - b. The POA document must be signed by the parent, notarized with the signature of two witnesses.¹³
 - i. If both parents have legal custody of the minor child, the document must be signed by both parents.
 - ii. If only one parent has legal custody of the minor child, then that parent must sign it.
2. The document must describe the hardship as to why the parent cannot take care of the child. The other parent must consent in writing to the appointment of the person to make health care decisions for the child or must explain why the consent cannot be obtained.¹⁴
3. The POA may authorize the caregiver to obtain medical, dental, and mental health treatment for the child.¹⁵
4. While the POA is in effect, the decision of a caregiver to consent to or refuse any medical, dental, or mental health care for the minor child takes precedence over any decision of the parent having legal custody of the minor child.
 - a. If the parent disagrees with the decision of the caregiver or chooses to make any healthcare decisions for the minor child, then the parent must revoke the POA and provide the treating physician with documentation of the revocation.¹⁶
 - b. The POA may be terminated in writing signed by either parent with legal custody or by a court order.¹⁷
5. A physician who relies on the POA has no obligation to make any further inquiry or investigation.¹⁸
6. Anyone who acts in good faith reliance on a POA, without actual knowledge of facts contrary, is not subject to criminal liability, to civil liability, or be subject to professional disciplinary action.

¹² T.C.A. § 34-6-301 et seq.

¹³ T.C.A. § 34-6-302

¹⁴ T.C.A. § 34-6-303

¹⁵ T.C.A. § 34-6-304

¹⁶ T.C.A. § 34-6-307

¹⁷ T.C.A. § 34-6-306

¹⁸ T.C.A. § 34-6-310

- a. This applies even if the care is provided in contravention of the wishes of the parent with legal custody as long as the physician has been provided a copy of an appropriately executed POA for care of the minor child and has not been provided written documentation of revocation of the POA.¹⁹

7. A template POA is available in Appendix A.

G. Durable Power of Attorney²⁰

1. A durable power of attorney (POA) is a means by which a parent (called “principal” in the statute) can designate another person to act for him/her in the event the principal becomes disabled or incapacitated.²¹
2. A durable POA, unless it says otherwise, authorizes the person to provide for the support and protection of the principal, the principal’s spouse, or of any minor child of the principal dependent upon the principal. This includes, without limitation, provision for food, lodging, housing, medical services, recreation, and travel.²²

H. Durable Power of Attorney for Health Care²³

1. A durable power of attorney for health care (POA-HC) is where a person (called a “principal” in the statute) designates another (called “attorney in fact” in the statute) to make health decisions for the principal.²⁴
2. The durable POA-HC must be in writing and signed by the principal and either attested by a notary or two witnesses. There are several legal requirements as to who can sign as a witness.²⁵
3. Neither the treating health care provider nor an employee of a treating health care provider can be designated as an attorney in fact in most cases.²⁶
4. If a provision of a valid durable POA-HC designates a person other than a child’s parent to consent to treatments or procedures, the provisions of the POA shall control.²⁷

I. Legal Custodian of a Minor²⁸

1. A custodian to whom legal custody has been given by the juvenile court has the right to do the following, subject to the conditions and limitation of the court’s order and to the remaining rights and duties of the child’s parents or guardian:
 - a. The physical custody of the child;

¹⁹ T.C.A. § 34-6-308

²⁰ T.C.A. § 34-6-101 et. seq

²¹ T.C.A. § 34-6-102

²² T.C.A. § 34-6-109

²³ T.C.A. § 34-6-201 et. seq.

²⁴ T.C.A. § 34-6-201

²⁵ T.C.A. § 34-6-203

²⁶ T.C.A. § 34-6-204

²⁷ T.C.A. § 34-6-216

²⁸ T.C.A. § 37-1-140

- b. The right to determine the nature of the care and treatment of the child, including medical care; and
- c. The right and duty to provide for the care, protection, training and education, and the physical, mental and moral welfare of the child.

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

J. Exceptions – When parental or guardian consent is NOT required and the minor patient CAN consent to his/her own treatment

1. Statutory Exceptions

- a. Minors who are parents may consent to the treatment of their own children.²⁹
- b. Contraceptives³⁰
 - i. Medically contraceptive procedures, supplies, and information shall be available to each person regardless of age.
 - ii. A physician can refuse to provide them for medical reasons or religious or conscientious objection.
- c. Sterilization³¹
 - i. A minor can consent to a sterilization procedure if the minor is married.
- d. Juvenile Drug Users³²
 - i. A physician may treat a juvenile drug user without parental consent.
 - ii. A physician may use his/her own discretion in determining whether to notify the juvenile's parents of such treatment.
- e. Emergency³³
 - i. If a physician has a reasonable medical belief that emergency treatment should not be delayed, the physician can treat the minor without parental consent if treatment is necessary to save the minor's life or prevent further deterioration of the condition.
 - ii. The physician should try to notify the minor's parents or guardians if know or readily ascertainable.

²⁹ T.C.A. § 63-6-229

³⁰ T.C.A. § 68-34-104

³¹ T.C.A. § 68-34-108

³² T.C.A. § 63-6-220

³³ T.C.A. § 63-6-222

f. Prenatal Care³⁴

- i. A physician may provide prenatal care to a minor without parental consent.

g. Sexually Transmitted Diseases³⁵

- i. A physician may examine, diagnose, and treat a minor with an STD without the consent or knowledge of the parent.

2. Case Law Exception – The Mature Minor Doctrine or Rule of Sevens

- a. If a statutory exception does not exist, then the Mature Minor Doctrine should be considered regarding a minor's ability to consent to treatment.
- b. In the absent of appropriate parental consent, Tennessee courts will look:
 - i. To "the age, ability, experience, education, training, and degree of maturity or judgment obtained by the minor; and
 - ii. The conduct and demeanor of the minor at the time."³⁶
- c. "The Rule of Sevens"
 - i. Under age 7 – no capacity for minor to consent to care.
 - ii. Ages 7-14 – rebuttable presumption of no capacity to consent to care.
 - iii. Ages 14+ - rebuttable presumption minor has capacity to consent.
- d. In 2021, the General Assembly passed a law³⁷ related to this doctrine and the COVID vaccine for minors. The law prohibits the administration of the COVID vaccine to a minor without the permission of the minor's parent/guardian.
- e. Under the Mature Minor Doctrine Clarification Act ³⁸, a healthcare provider may *NOT* provide a vaccination to a minor without the informed consent of a parent/legal guardian. The provider must document the receipt of and proof of the informed consent and include it in the minor's medical record.
 - i. If the minor is in state custody, the child may only be vaccinated if:
 - (A) There is an order from the appropriate court;
 - (B) The parent/legal guardian of the minor has provided prior written informed consent; or
 - (C) If all parental rights have been terminated by a court and all appeals have been exhausted, then an employee/agent of the state may request/facilitate vaccination of a minor.

³⁴ T.C.A. § 63-6-223

³⁵ T.C.A. § 68-10-104

³⁶ Cardwell v. Bechtol, 724 S.S.2d 739, 748 (Tenn 1987)

³⁷ T.C.A. § 14-4-103

³⁸ 2023 Public Chapter [477](#). New TCA § 63-1-165

- ii. A violation of this law by a physician is unlawful practice and grounds for the Board of Medical Examiners (BME) or Board of Osteopathic Examination (BOE) to:
 - (A) Suspend, revoke, or refuse to renew a license; or
 - (B) Take other disciplinary action allowed by law.
 - iii. If the BME or BOE receives information of a violation or potential violation of this law, then it shall conduct an immediate investigation and take appropriate disciplinary action.
 - iv. A minor means:
 - (A) An individual who has not attained eighteen (18) years of age; and
 - (B) Does not include an individual who:
 - (1) Is emancipated pursuant to Tennessee law³⁹;
 - (2) Is in need of emergency treatment pursuant to § 63-6-222;
 - (3) Is or was previously a member of the armed forces of the United States, or a member of a reserve or national guard unit; or
 - (4) Is the parent of a minor child and has full custody of that minor child;
 - v. "Vaccine" means a substance intended for use in humans to stimulate the body's immune response against an infectious disease or pathogen.
- K. A parent CANNOT consent to the treatment of a minor child in the following circumstances:
- 1. When a court order has taken away the parent's right to consent.
 - 2. A non-custodial parent cannot consent to treatment absent a court order or other legal instrument. *TMA Note: Always require the non-custodial parent to provide the practice with the court order before treating the minor, unless it is an emergency. Make a copy of the order and keep it in the minor's medical record.*
 - 3. When a parent has transferred his/her right to make health care decisions for a minor child under a power of attorney.
 - 4. The minor patient is emancipated.
 - a. Under Tennessee law, this is a minor who is married or who has received a court order freeing the minor from the care, custody, and control of the minor's parents or guardian.⁴⁰
 - b. Definitive proof of emancipation is a court order or valid proof of the minor's marriage.
 - 5. The minor patient is determined to be a "mature minor" for purposes of consenting to treatment. See the discussion of the Mature Minor Doctrine/Rule of Sevens above.
 - 6. Tennessee law specifically provides that the minor patient has the right to consent. See the Tennessee laws above.

³⁹ Title 29, chapter 31

⁴⁰ T.C.A. § 37-10-302

L. AMA Ethics Opinion 5.055 – Confidentiality in the Treatment of Minors

1. This opinion provides guidance when a minor requests that the treatment or procedure be treated confidentially and one of the state laws that allows a minor to consent is not applicable to the treatment or procedure.
2. Generally, a physician who treats a minor has an ethical duty to promote the autonomy of the minor patient by involving such minor patient in the medical decision-making process to the degree commensurate with their decision-making abilities.
 - a. See the discussion of the Rule of Sevens above.
3. When minors request confidential services, physicians should encourage them to involve their parents. This includes making efforts to obtain the minor’s reasons for not involving their parents and correcting any misconceptions that may be motivating their objections.

M. Treatment of a Minor for Gender Identity Related Issues⁴¹

1. The 2021 General Assembly passed a law stating that standard medical practice does *not* involve prescribing hormone treatment for gender dysphoric or gender incongruent prepubertal unless an exception applies. This law was repealed in 2023 by [Public Chapter 1, Acts of 2023](#).
2. A law passed in 2023 prohibits a healthcare provider from knowingly performing or offering to perform, or administering or offering to administer, a medical procedure to a minor for the purpose of:
 - a. Enabling a minor to identify with, or live as, a purported identity inconsistent with the minor’s sex; or
 - b. Treating purported discomfort or distress from a discordance between the minor’s sex and asserted identity.
3. The prohibition applies to medical procedures performed or administered on a minor located in Tennessee in person or via telehealth.
4. The following are not violations of this law:
 - a. The performance or administration of the medical procedure is to treat a minor’s congenital defect, precocious puberty, disease, or physical injury; or
 - i. “Disease” does not include gender dysphoria, gender identity disorder, gender incongruence, or any mental condition, disorder, disability, or abnormality.
 - b. The performance or administration of the medical procedure on the minor began prior to the effective date of this act and concludes on or before March 31, 2024.
 - i. For this exception to apply, the minor’s treating physician must certify in writing that, in the physician’s good-faith medical judgment, based upon the facts known to the physician at the time, ending the medical procedure would be harmful to the minor. The certification must

⁴¹ T.C.A. § 68-33-101 through 109

include the findings supporting the certification and must be made a part of the minor's medical record.

- ii. For this exception to apply, the healthcare provider cannot perform or administer a medical procedure that is different from the medical procedure performed prior to the effective date of this act when the sole purpose of the subsequent medical procedure is to:
 - (A) Enable the minor to identify with, or live as, a purported identity inconsistent with the minor's sex; or
 - (B) Treat purported discomfort or distress from a discordance between the minor's sex and asserted identity.
5. It is not a defense to any legal liability incurred as the result of a violation of this section that the minor, or a parent of the minor, consented to the conduct that constituted the violation. The common law "Mature Minor Doctrine" does not apply to this law and is not a defense for the healthcare provider.
6. Penalties to healthcare providers for violation of this law are severe. The provider can be sued for compensatory damages, punitive damages, and attorneys' fees for up to thirty (30) years from the date the minor reaches eighteen (18) years old or within ten (10) years of the minor's death if the minor dies. Additionally, licensure summary suspension can be taken by the provider's licensing board and the Attorney General can sue for up to twenty (20) years for civil penalties of twenty-five thousand dollars (\$25,000) for each violation.
7. *TMA Note: TMA does not interpret this law to prevent any type of gender identity-related counseling of a minor patient; the violation is the administration of medical procedures.*
8. Definitions in the act are very important. Any physician or other healthcare provider contemplating any type of surgical, hormone, puberty blocker, or drug administration to a minor related to a gender identity purpose should read the act carefully and consult legal counsel from a health care lawyer.

N. Treatment of Obesity with Fenfluramine

1. Treatment of obesity with fenfluramine on a minor patient requires a physician to obtain the consent of the minor's parent or guardian.
2. *TMA Note: Consent should be obtained even if the patient is an emancipated minor. The law⁴² states:*

Notwithstanding any provision of this chapter or chapter 9 of this title, or any rule or regulation promulgated thereto to the contrary, whenever a physician is treating obesity in a child who is under eighteen (18) years of age with Schedule IV drugs Fenfluramine, its salts and isomers, and salts of isomers and phentermine, the physician shall:

Obtain the consent of the child's parent or guardian; and

Determine that the child's body mass index (BMI) is at least twenty-seven (27), or is at least twenty-five (25) with co-morbidities, including, but not limited to:

Diabetes;

Hypertension;

⁴² T.C.A. 63-6-214 (n)

*Dyslipidemia;
Cardiovascular diseases; and
Sleep apnea.*

III. Mental Health Treatment – Qualified Mental Health Professional (QMPH) & Duty to Warn

A. Current law in Tennessee regarding threats voiced by a patient to a QMPH:

1. If a patient communicates to a QMPH or behavior analyst⁴³ an actual threat of bodily harm against a clearly identified victim or a group of people (students at daycare or school, place of worship, members of the patient's family), AND
2. The professional using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, determines or reasonably should determine that the patient has the apparent ability to commit the act and is likely to carry out the threat unless prevented from doing so, THEN
3. The professional shall take reasonable care to predict, warn of, or take precautions to protect the identified victim or group of people from the patient's violent behavior, AND
4. Report the threat to:
 - a. The local law enforcement agency with jurisdiction over the municipality or county of residence of the service recipient, OR
 - b. IF the threat is general and not imminent or clearly identified, 988 or local crisis response service.
5. A QMPH who acts or makes a reasonable attempt to act under this law, is not liable for damages in a civil action, subject to prosecution in a criminal proceeding, or subject to disciplinary action by a regulatory board for such act or reasonable attempt to act.
6. Inpatient hospitalization of the service recipient discharges the duty to warn imposed on a qualified mental health professional or behavior analyst by this section.⁴⁴

B. The duty to warn may be discharged by⁴⁵:

1. If a patient is an unemancipated minor, the duty to warn⁴⁶ may be discharged by the professional notifying the unemancipated minor's parent, legal guardian, or legal custodian **and** satisfying the requirements of 2. directly below.
2. Completing one of the following actions:
 - a. Informing the clearly identified victim of the threat;

⁴³ An individual who is certified as a board-certified behavior analyst (BCBA) or board certified behavior analyst-doctoral (BCBA-D) and is licensed in this state to practice applied behavior analysis as an independent practitioner. T.C.A. § 63-11-302(8).

⁴⁴ T.C.A. § 33-6-206

⁴⁵ T.C.A. § 33-3- 207

⁴⁶ imposed by T.C.A. § 33-3- 206 (summarized in III. A.)

- b. Having the service recipient admitted on a voluntary basis to a hospital;
 - c. Taking steps to seek admission of the service recipient to a hospital or treatment resource on an involuntary basis pursuant to chapter 6 of this title; or
 - d. Pursuing a course of action consistent with current professional standards that will discharge the duty.
3. If a professional reports to law enforcement regarding a threat of bodily harm communicated by a patient who is an unemancipated minor, pursuant to § 33-3-206⁴⁷, then the professional shall also report information about the threat to the unemancipated minor's parent, legal guardian, or legal custodian.

IV. ACCESS TO A MINOR PATIENT'S MEDICAL RECORDS

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

A. HIPAA⁴⁸

- 1. The general rule is that parents of minors are recognized as personal representatives of emancipated minors and have access to the minor's protected health information (PHI), including medical records and the ability to discuss the minor's medical issues with the treating physician unless an exception applies.

B. Domestic Relations and Custody

- 1. A court can award control and custody of a minor to one parent or award joint custody. The parent (s) with custody can access their minor child's PHI.
- 2. A parent who does not have legal custody of the minor is considered the non-custodial parent. Unless otherwise prohibited by law, the non-custodial parent has fewer rights with regard to access to the minor's PHI.
 - a. The non-custodial parent has a right to receive a copy of the child's medical record directly from the physician who provided treatment.
 - b. A written request with a current mailing address and payment of reasonable duplication costs may be required of the party requesting the record. The physician is not required to share the address of the requesting parent with the other parent or a third person.⁴⁹

⁴⁷ T.C.A. § 33-3- 206 (summarized in III. A.)

⁴⁸ 45 CFR 164.502(g)

⁴⁹ TCA § 36-6-101

3. Parents awarded joint custody have equal rights to the companionship of the child and the right to make decisions as to the child's care, education, health, and religion.⁵⁰
4.
 - a. A copy of a child's medical record shall be furnished by the treating physician or treating hospital upon a written request with the requesting party's current address by any of the following:
 - i. The non-custodial parent;
 - ii. In the case of parents with joint custody of the child, the parent with whom the child is not residing; or
 - iii. In the case of a child in the custody of a legal guardian, either parent.⁵¹
 - b. The records shall be provided to the requesting party unless furnished with a court order closing the records. Any judge having jurisdiction over the custody of the child may close the medical records to the requesting parent upon a showing that the best interests of the child will be harmed if the records are released.
 - c. The expenses for copying the record shall be paid by the requesting party.⁵²

C. Exceptions: Access of the Minor's Medical Record

1. Parental or legal guardian consent to access a minor's medical record is not required when state law or other law does not require their consent for the minor to receive the treatment.
2. If the minor can consent to treatment, the parent or guardian is not the personal representative and cannot have access to the minor's medical record. In these instances, the minor must provide consent before the parent or guardian can access the medical record. See section II. Subsection I. above.
3. When a court authorizes someone other than the parent to make treatment decisions for the minor, then the parent is not the personal representative of the minor and has no right to access the minor's medical record.
4. When the parent agrees to the confidential relationship between a physician and the minor.

D. Prescription Records

1. Tennessee law for mental health and substance treatment states⁵³:
 - a. A minor 16 years or older with a serious emotional disturbance has the same rights as an adult with respect to:

⁵⁰ Damron v. Damron, 212 Tenn. 14, 367 S.W.2d 476, 479 (1963)

⁵¹ TCA § 36-6-101

⁵² T.C.A. § 63-2-101 and 102

⁵³ T.C. A. § 33-8-202

- i. outpatient and inpatient mental health treatment;
 - ii. medication decisions;
 - iii. confidential information; and
 - iv. participation in conflict resolution procedures.
- b. An outpatient facility or professional may treat the minor without the consent of the parent, guardian, or legal custodian.
- c. In spite of the law allowing the minor to consent that is summarized in 1. directly above and to extent allowed by federal law a minor's parent, legal guardian, or legal custodian may access any prescription records resulting from treatment provided to an unemancipated minor pursuant to this law.⁵⁴
 - i. If the treating professional is required to report abuse of the minor under Tennessee law and believes that access to the records is reasonably likely to endanger the life or physical safety of the minor then the access does not have to be provided.
 - d. If a minor communicates suicidal ideations to the professional and the professional, using the reasonable skill, knowledge, and care ordinarily possessed and exercised by the professional's specialty under similar circumstances, has determined or reasonably should have determined that the unemancipated minor has the apparent ability to attempt suicide and is likely to attempt suicide unless prevented from doing so, then the treating professional shall, in addition to any other duties required by law, report such suicidal ideations to the unemancipated minor's parent, legal guardian, or legal custodian.
- 2. If a minor consents to treatment in a hospital, even if a law allows the minor to consent, the minor's parent, legal guardian, legal custodian, or other person with medical decision-making authority for the unemancipated minor may access, and a healthcare provider or healthcare facility shall provide access to, any prescription records resulting from medical treatment of the minor.
 - a. If the treating professional is required to report abuse of the minor under Tennessee law and believes that access to the records is reasonably likely to endanger the life or physical safety of the minor then the access does not have to be provided.

E. Physician's Orders for Scope of Treatment (POST Form)

- 1. A POST form may be issued by a physician for a patient with whom the physician has a bona fide physician-patient relationship:
 - a. Only where the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order; and
 - b. The agent, surrogate, or other person authorized to consent on the patient's behalf under the Tennessee Health Care Decisions Act is not reasonably available; and
 - c. If the physician determines that the provision of CPR would be contrary to accepted medical standards.

⁵⁴ T.C.A. § 68-11-304

V. TENNESSEE CHILD VACCINE LAWS

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

A. Tennessee Law Prohibits Vaccination Coercion⁵⁵

1. The Tennessee General Assembly passed a law in 2024 related to vaccination coercion. It was effective 7/1/24.
2. Definitions
 - a. "Coerce" means to compel a person to act by force, intimidation, or threat;
 - b. "Healthcare provider" means a healthcare professional, healthcare establishment, or healthcare facility licensed, registered, certified, or permitted pursuant to this title or title 68 or regulated under the authority of either the department of health or an agency, board, council, or committee attached to the department of health, and that is authorized to administer vaccinations in this state;
 - c. "Vaccination" means the act of introducing a vaccine into the body; and
 - d. "Vaccine" means a substance intended for use in humans to stimulate the body's immune response against an infectious disease or pathogen.
3. A healthcare provider shall not:
 - a. Coerce a person, including a person who has legal authority to make healthcare decisions for a child, to consent to a vaccination;
 - b. Mislead or misrepresent that a vaccination is required by state law, when state law provides an exemption; or
 - c. Mislead or misrepresent that a newborn screening test is required by state law, when state law does not require such screening without providing an exemption to such requirement.
4. A violation of this law is an unlawful practice and is grounds for the offending healthcare provider's licensing authority to suspend, revoke, or refuse to renew the healthcare provider's license or take other disciplinary action allowed by law.
 - a. If the licensing authority of a healthcare provider receives information of a violation or potential violation of this section by the healthcare provider, then the licensing authority shall conduct an immediate investigation and take appropriate disciplinary action.

⁵⁵ New law in Title 63; Chapter 1, Part 1

B. Childhood Immunization Law

1. Immunizations that parents and legal guardians are encouraged, but not required, to get the children under their care before age 2:⁵⁶
 - a. Diphtheria-tetanus-pertussis (DTP)
 - b. Polio: oral polio vaccine (OPV) or inactivated polio vaccine (IPV)
 - c. Measles-mumps-rubella (MMR)
 - d. Hepatitis B vaccine (Hep B)
 - e. Haemophilus influenza type B conjugate vaccines (Hib)
 - f. Pneumococcal, when indicated
 - g. Influenza vaccine, when indicated
 - h. Varicella, when available

C. The following vaccines are required prior to school attendance unless an exception applies.

1. This applies to public, private, and church-related schools – grades K – 12, pre-school, day care, and Head Start Centers.⁵⁷
 - a. Diphtheria
 - b. Measles (rubella)
 - c. Pertussis (whooping cough)
 - d. Polio
 - e. Rubella
 - f. Mumps
 - g. Hepatitis B
 - h. Tetanus
2. Exceptions to the vaccine requirement⁵⁸
 - a. Conflicts with the parent or guardian's "religious tenets and practices" and this must be in a signed statement provided to the school; or
 - b. A written statement from the child's physician excusing the child from immunization is provided; or
 - c. The child is homeless.

D. Meningococcal Disease Vaccination⁵⁹

1. Required for new students in higher learning (college, university, community college, etc.) who live in on-campus student housing.

⁵⁶ T.C.A. § 37-10-401

⁵⁷ Rule 1200-14-01-.29

⁵⁸ TCA § 49-6-5001

⁵⁹ T.C.A. § 49-7-124

2. Exceptions:

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

VI. REPORTS AND DISCLOSURES

- A. There is a lot of misinformation about the laws regarding mandatory and discretionary reporting to the state or to law enforcement. This section attempts to demystify reporting requirements. It addresses under what circumstances reports must be made, to what entity the reports must be made, and how the reports can be submitted.
- B. Sudden Infant Death Syndrome⁶⁰
 1. An attending physician must report any sudden unexplained death of an infant under one year of age to the county medical examiner.
- C. Injury Reporting⁶¹
 1. Health care providers must report:
 - a. Knife wounds;
 - b. Pistol or gun wounds;
 - c. Other deadly weapon wounds;
 - d. Other means of violence wounds;
 - e. Wounds believed to be from meth lab exposure; or
 - f. Female genital mutilation.
 2. Any report should be made to local law enforcement and the local district attorney.

⁶⁰ T.C.A. § 38-1-101

⁶¹ T.C.A. § 38-1-101

D. Child Abuse⁶²

1. A report must be made immediately if there is knowledge of or aid is rendered to any child:
 - a. Who is suffering from or has sustained any wound, injury, disability, or physical or mental condition that was caused by brutality, abuse or neglect or reasonably appears to have been caused by brutality, abuse, or neglect.
2. The report shall be made by phone or otherwise to:
 - a. Judge having jurisdiction over the child;
 - b. Department of Children's Services as specified by the Department;
 - c. Sheriff of the county where the child resides; or
 - d. Chief law enforcement official of the municipality where the child resides.
3. The report must include, to the extent known:
 - a. Name, address, telephone number, and age of the child;
 - b. Name, address, and telephone number of the person responsible for the care of the child; and
 - c. The facts requiring the report.
4. Reports may be made by calling 877-237-0004 or online <https://apps.tn.gov/carat/>. If it is an emergency or a life-threatening situation, call 911.

E. Child Sexual Abuse⁶³

1. A report of known or suspected child sexual abuse must be made immediately to:
 - a. The local office of DCS;
 - b. The judge having juvenile jurisdiction; or
 - c. The office of sheriff or the chief law enforcement official of the municipality where the child resides.
2. If the abuse occurs in a facility licensed by the Department of Mental Health and Substance services or a hospital, a report shall also be made to local law enforcement in the jurisdiction where the offense occurs.
3. Information in a report to DCS may not be disclosed.⁶⁴

⁶² T.C.A. § 37-1-403

⁶³ T.C.A. § 37-1-605

⁶⁴ T.C.A. § 37-1-612

F. Overdose – Student in Grades K – 12⁶⁵

1. If a physician diagnoses or treats an individual in grades K-12 for a drug overdose, the physician shall report the case to public school officials.
2. The report shall contain:
 - a. The type of drug;
 - b. The school in which the student was enrolled; and
 - c. The name and address of the reporter.
3. The data must be reported on a form provided by the Department of Health to the local school superintendent within seven calendar days of the overdose.⁶⁶
4. Anyone that fails to report is guilty of professional misconduct and subject to discipline by his/her licensing board or employment disciplinary action by an employer.

⁶⁵ T.C.A. § 68-24-301

⁶⁶ Rule 0940-06-03-.02

Appendix A

POWER OF ATTORNEY FOR CARE OF A MINOR CHILD

Use of this form is authorized by T.C.A. § 34-6-301 et seq. Completion of this form, along with the proper signatures, is sufficient to authorize enrollment of a minor in school and to authorize medical treatment. However, a school district may require additional documentation/information as permitted by this section of Tennessee law before enrolling a child in school or any extracurricular activities.

Part I: To be filled out and/or initialed by parent(s). *Please print clearly.*

Minor Child's Name

Mother/Legal Guardian's Name & Address

Father/Legal Guardian's Name & Address

Caregiver's Name & Address

() Both parents are living, have legal custody of the minor child and have signed this document;

OR

() One parent is deceased;

OR

() One parent has legal custody of the minor child and both parents have signed this document and consent to the appointment of the caregiver;

OR

() One parent has legal custody of the minor child, and has sent by Certified Mail, Return Receipt requested, to the other parent at the last known address, a copy of this document and a notice of the provisions in T.C.A. § 34-6-305;

OR

() The non-custodial parent has not consented to the appointment and consent cannot be obtained because

_____.

Temporary care-giving authority regarding the minor child is being given to the caregiver because of the following type of hardship (check at least one):

- ☐ the serious illness or incarceration of a parent or legal guardian;
- ☐ the physical or mental condition of the parent or legal guardian or the child is such that care and supervision of the child cannot be provided;
- ☐ the loss or uninhabitability of the child's home as a result of a natural disaster;
- ☐ the need for medical or mental health treatment (including substance abuse treatment) by the parent or legal guardian; or,
- ☐ other (please describe).

I/We the undersigned, authorize the named caregiver to do one or more of the following:

- ☐ Enroll the child in school and extracurricular activities (including but not limited to Boy Scouts, Boys & Girls Club);
- ☐ Obtain medical, dental, and mental health treatment for the child; and
- ☐ provide for the child's food, lodging, housing, recreation and travel.

I/We grant the following additional power to the named caregiver:

☐ I/We understand that this document does not provide legal custody to the caregiver. If at any time I/we disagree with a decision of the named caregiver or choose to make any healthcare or educational decisions for my/our child, I/we must revoke the power of attorney, in writing, and provide written documentation to the health care provider and the local education agency (i.e., school).

☐ I/We understand that this document may be terminated in another written document signed by either parent with legal custody or by any order of a court with competent jurisdiction.

Part II: To be filled out caregiver.

☐ I understand that this document, properly executed, gives me the right to enroll the minor child in the local education agency serving the area where I reside.

☐ I understand that this document does not provide me with legal custody.

☐ I understand that, prior to enrollment, the local education agency may require documentation of the minor child's residence with a caregiver and/or documentation or other verification of the validity of the stated hardship.

☐ I understand that, except where limited by federal law, I shall be assigned the rights, duties, and responsibilities that would otherwise be assigned to the parent, legal guardian or legal custodian

pursuant to Tennessee Code Annotated Title 49.

() I understand that, if the minor child ceases to reside with me, I am required by law to notify any person, school or health care provider to whom I have given this document.

Part III: To be initialed by parent(s) and caregiver.

() () We understand that, by accepting the power of attorney, if we enroll a student in a school system while fraudulently representing the child's current residence or the parents' hardship or circumstances for using the power of attorney, either or both of us is liable for restitution to the school district for an amount equal to the per pupil expenditure for the district in which the student is fraudulently enrolled. Restitution shall be cumulative for each year the child has been fraudulently enrolled in the system and may include costs and fees related to litigation.

I/We declare under penalty of perjury under the laws of the State of Tennessee that the foregoing is true and correct.

The Mother/Legal Guardian, _____, personally appeared before me this _____ day
of _____, 20____.

NOTARY PUBLIC
My commission expires:
STATE OF COUNTY OF

Mother/Legal Guardian _____ Date _____

The Father/Legal Guardian, _____, personally appeared before me this _____ day
of _____, 20____.

NOTARY PUBLIC
My commission expires:
STATE OF COUNTY OF

Caregiver _____ Date _____

The Caregiver, _____, personally appeared before me this _____ day
of _____, 20____.

NOTARY PUBLIC
My commission expires:
STATE OF COUNTY OF

Caregiver _____ Date _____