

Age of Majority and Exceptions in North Carolina

TO: Office of Human Research Ethics
FROM: Office of University Counsel
DATE: October 11, 2002 (rev. September 28, 2016)
RE: North Carolina Age of Majority and Exceptions

I. INTRODUCTION

Various research studies and clinical trials may involve participants who are minors. The purpose of this memo is to define the age of majority in North Carolina and to provide a general overview of the contexts in which a minor may consent to treatment or participation in research under North Carolina law.¹

II. AGE OF MAJORITY AND INFORMED CONSENT

Under North Carolina law, a *minor* is “any person who has not reached the age of 18 years.”² Minors are “subject to the supervision and control” of their parents³ and, by definition, do not have the ability to enter into contracts or to consent to medical care for themselves.⁴ Since parents are responsible for their children’s medical care, “they usually have the legal right to control the care – arranging for it, consenting to it or not,

¹ Federal regulations are beyond the scope of this memo; however, it is important to note that the Department of Health and Human Services has issued regulations protecting human subjects (including children) who participate in the type of research discussed here. The federal regulations are codified at 45 CFR Part 46. Under 45 CFR §46.116(d), the IRB may waive informed consent in certain circumstances. Additionally, 45 CFR §46.408(c) allows the IRB to waive consent for minors when requiring parental or guardian permission is not reasonable given the research protocol (e.g., research involving neglected or abused children).

² N.C. Gen. Stats. Ann. § 48A-2.

³ N.C. Gen. Stats. Ann. § 7B-3400.

⁴ *Compare* N.C. Gen. Stats. Ann. § 7B-3400 (providing that “any juvenile under 18 years of age...shall be subject to the supervision and control of the juvenile’s parents”) *with* N.C. Gen. Stats. Ann. § 7B-3507 (providing that an emancipated minor has the legal capacity “to make contracts and conveyances, to sue and be sued, and to transact business as if [he or she] were an adult”). In certain emergency situations, North Carolina law does permit a physician to treat an endangered minor without consent from a parent or guardian. See N.C. Gen. Stats. Ann. §§ 7B-3600, 90-21.1. However, a detailed discussion of such treatment is outside the scope of this memorandum. If you have questions about emergency treatment, please contact the Office of University Counsel.

and paying for it.”⁵ It is our understanding that a minor who is a parent has the same rights to control the medical care received by his or her child as a parent who has reached the age of majority.⁶

We are not aware of any North Carolina cases or statutes that specify whether minors can give consent to participate in research. Notably, however, regulations governing research often require investigators to obtain the consent of a minor’s parent(s) or guardian before enrolling the minor in a research study.⁷ This requirement applies even if the minor’s parent is a minor. In some cases, therefore, a parent could give consent for his or her child to participate in a research study but could not participate in the same study without permission from his or her parents.

III. EXCEPTIONS

A. Certain Medical Conditions

Under certain, limited circumstances, a minor can give effective consent to receive non-emergency medical care from a physician licensed to practice in North Carolina.⁸ More specifically, any minor can consent to receive a licensed physician’s services for the “prevention, diagnosis and treatment of (i) venereal disease and other diseases reportable under N.C. Gen. Stat. § 130A-135, (ii) pregnancy, (iii) abuse of controlled substances or alcohol, and (iv) emotional disturbance.”⁹

B. Emancipation

Emancipation alters the legal status of a minor, rendering the minor an adult for most purposes and relieving his or her parents of their legal rights and duties with respect to him or her.¹⁰ In order to petition for emancipation, a minor must be at least 16

⁵ Health Care for Pregnant Adolescents: A Legal Guide for Healthcare Providers, Anne Dellinger and Arlene M. Davis, UNC-Chapel Hill Institute of Government at 1 (Sept. 14, 2001).

⁶ See, e.g., *id.* at 9-10.

⁷ As an example, state regulations governing the use of radiation in human subjects research require that the researchers obtain informed consent even if the research is not subject to a federal informed consent requirement. 10A N.C. Admin. Code 15 .0305(b), (c). Also worth noting is a state regulation providing that a minor who resides in a state mental health facility may *refuse* to participate in any research project even if he or she could not have given his or her *consent* to participate. 10A N.C. Admin. Code 28A .0306(b). See also, e.g., 45 CFR Part 46.

⁸ As noted above, consent for emergency medical care is beyond the scope of this memo.

⁹ N.C. Gen. Stats. Ann. § 90-21.5(a), (b).

¹⁰ N.C. Gen. Stats. Ann. § 7B-3507. An emancipated minor remains subject to laws that impose restrictions based on age, such as laws prohibiting the sale of tobacco products to minors and the sale of alcohol to persons under the age of 21. See Sarah DePasquale, *Juvenile Emancipations*, ON THE CIVIL SIDE: A UNC SCHOOL OF GOVERNMENT BLOG (December 16, 2015, 11:12 AM), <http://civil.sog.unc.edu/juvenile-emancipations/>.

years of age and must have resided in the same county or on federal territory in North Carolina for six months before filing his or her petition with the court.¹¹ The effect of a final decree of emancipation is that the child “has the same right to make contracts and conveyances, to sue and to be sued, and to transact business as if [he or she] were an adult.”¹²

An emancipated minor “may consent to any medical treatment, dental or health services for himself [or herself].”¹³ An emancipated minor also may consent to any medical treatment, dental and health services for his or her child.¹⁴ However, solely becoming a parent is not enough for a minor to establish his or her emancipated status.¹⁵ As noted above, this might create a situation in which an unemancipated minor could give consent for his or her child to participate in a research study but could not participate in the same study without obtaining consent from his or her parent(s) or guardian.

C. Marriage or Military Service

Apart from the formal emancipation process, there are two other methods by which a minor may alter his or her legal status. First, a minor who is legally married will be treated as an adult.¹⁶ Second, a minor who is serving in the armed forces of the United States will be treated as an adult.¹⁷

* * * * *

We hope that this memo will be useful in your discussions with principal investigators and other researchers on this topic. Please feel free to contact the Office of University Counsel if you have any additional questions.

¹¹ N.C. Gen. Stats. Ann. § 7B-3500.

¹² N.C. Gen. Stats. Ann. § 7B-3507.

¹³ N.C. Gen. Stats. Ann. § 90-21.5(b).

¹⁴ N.C. Gen. Stats. Ann. § 90-21.5(b).

¹⁵ See, e.g., Health Care for Pregnant Adolescents: A Legal Guide for Healthcare Providers, Anne Dellinger and Arlene M. Davis, UNC-Chapel Hill Institute of Government at 11 (Sept. 14, 2001); cf. N.C. Gen. Stats. Ann. § 7B-3402 (providing that (only) three groups of minors are no longer subject to the supervision and control of their parents: (1) minors who are legally married, (2) minors who serve in the Armed Forces of the United States, and (3) emancipated minors).

¹⁶ N.C. Gen. Stats. Ann. § 7B-3402.

¹⁷ N.C. Gen. Stats. Ann. § 7B-3402.