CONSENT FOR NONEMERGENCY MEDICAL CARE OF A MINOR IN A DISASTER

Prepared by: Office of General Counsel, Texas Department of State Health Services
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ISSUE: May a health care professional provide nonemergency medical care to a minor during a natural or man-made disaster without first obtaining the consent of the minor’s parent, guardian, or managing conservator?

ANSWER: Yes, in several specific circumstances.

DISCUSSION: A “minor” is a person under 18 years of age who is not and has not been married or who has not been declared an adult by a court for general purposes. Family Code, §101.003(a). If the minor’s parent, guardian, or managing conservator cannot be contacted, and has not specifically refused consent for the treatment, adults in several other categories may consent, including (1) grandparents; (2) adult brothers or sisters; (3) adult aunts or uncles; (4) a representative of the minor’s school, if the school has previously received written authorization; (5) an adult who has actual care, control, and possession of the minor and has written authorization to consent from the minor’s parent, guardian, or managing conservator; (6) a court in which a suit affecting the minor’s legal relationship with his or her parents has been filed; (7) an adult responsible for the actual care and control of the minor under the jurisdiction of a juvenile court; or (8) a peace officer who has taken custody of the minor and reasonably believes the minor needs immediate treatment. Family Code, §32.001(a). Nonparent adults in these categories may not consent to the immunization of a minor. Family Code, §32.001(c).

A minor may consent to his or her own medical, dental, psychological, and surgical treatment if the minor (1) is on active duty with the U.S. armed services; (2) is at least 16 years old and lives separate from his or her parent, managing conservative, or guardian and manages his or her own financial affairs; (3) consents to diagnosis and treatment of an infectious, contagious, or communicable disease that must be reported by law; (4) is unmarried and pregnant and consents to treatment related to the pregnancy, other than abortion; (5) consents to examination and treatment for drug or chemical addiction or dependency; or (6) is unmarried, has actual custody of his or her own child, and has consented, as the child’s parent, to medical, dental, psychological, or surgical treatment for the child. Family Code, §32.003(a).

A minor 16 years of age or older may request voluntary admission to an inpatient mental health facility or to a facility for chemical dependency treatment without parental consent. Health & Safety Code, §572.001 and §462.022.

A minor may consent to, and a physician, psychologist, counselor, or social worker having reasonable grounds to believe the minor has been (1) sexually, physically, or emotionally abused; (2) is contemplating suicide; or (3) is suffering from chemical or drug addiction or dependency may counsel the minor without parental consent. Family Code, §32.004(b).

WAIVER OF LAW OR RULES: None.

CONTACT: Michael G. Young, Assistant General Counsel, 458-7111, extension 3809, Room M-540.