



MINORS AS OB/GYN PATIENTS

FLAME LECTURE: 16

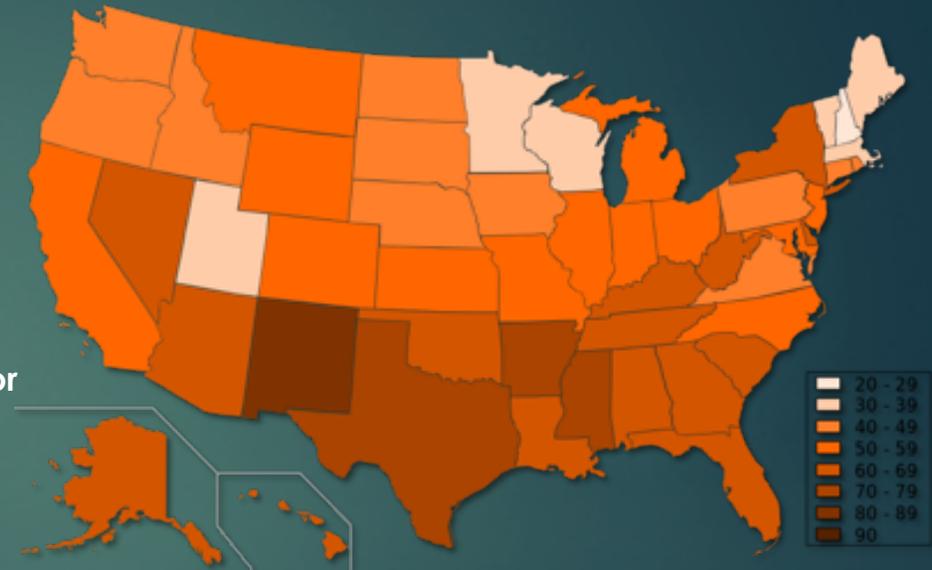
BURNS 3.7.17

LEARNING OBJECTIVES

- ▶ Discuss the legal and ethical issues in the care of minors
- ▶ Recognize his/her role as a leader and advocate for women
- ▶ Explain ethical dilemmas in OB/GYN
- ▶ Prerequisites: NONE
- ▶ See also:
 - ▶ FLAME 13 – PRINCIPLES OF ETHICS IN OB/GYN
 - ▶ FLAME 14 – ADVANCE DIRECTIVES FOR HEALTHCARE IN OB/GYN
 - ▶ FLAME 15 – PHYSICIAN REPORTING REQUIREMENTS
- ▶ NOTE: MANY PARTS OF THIS LECTURE PERTAIN LARGELY TO CALIFORNIA LAW

DEFINING A MINOR - BRIEF

- ▶ Not all minors are the same...
- ▶ **Minor:**
 - ▶ Age under 18 (most states) – some consider 19
- ▶ **Emancipated:**
 - ▶ Minor may achieve “legal adulthood”
 - ▶ Requires court approval
- ▶ **Medically-emancipated: Allowed to consent for medical care**
 - ▶ Marriage (prior or current)
 - ▶ Being a parent / Sexual-health services
 - ▶ Homeless/runaways
- ▶ **Mature minors:**
 - ▶ At least 14
 - ▶ Able to understand risks/benefits
 - ▶ Able to provide comparable level of consent to adult



EMANCIPATED MINOR

- ▶ An emancipated minor essentially achieves “legal adulthood”
- ▶ Most states: marriage, military service, living separately from parents with financial independence
- ▶ In California:
 - ▶ In a valid marriage
 - ▶ On active duty with US armed forces
 - ▶ “declaration of emancipation” from court (Cal Fam Code 7002)
 - ▶ At least 14
 - ▶ Lives separate from parents/guardians with their consent/agreement
 - ▶ Manages own financial affairs with non-criminal source of income
 - ▶ Emancipation is not contrary to best interest of the minor
- ▶ Consent to medical, psychiatric or dental care without parents
- ▶ Does NOT change voting, drinking, or driving age!
- ▶ *Pregnancy does NOT establish emancipated minor status!*

MINOR LIVING SEPARATE

▶ **Minor Living Separate and Apart from Parents**

- ▶ A minor may consent for his or her medical or dental care if he or she meets the following three requirements:
 - ▶ 15 years of age or older
 - ▶ Living separate and apart from parents/guardian (with or without consent/agreement)
 - ▶ Duration of separation doesn't matter
 - ▶ Managing own financial affairs, regardless of source of income Cal.Family Code § 6922(a)
- ▶ Parents/guardians not liable for care

CONSENT

- ▶ Parent/guardian must consent to medical care EXCEPT FOR:
 - ▶ Prevention/treatment of **pregnancy**
 - ▶ Testing/treatment **STIs, HIV** (reportable, communicable diseases)
 - ▶ **Drug/alcohol abuse** diagnosis/treatment
 - ▶ Outpatient **mental health services**
 - ▶ **Rape and sexual assault** related services
 - ▶ *Emergency medical care = No consent needed!*

CONSENT

▶ CONTRACEPTION

- ▶ 1977 SCOTUS ruled that right to privacy *protects a minor's access to non-prescriptive contraceptives*
- ▶ Two states (**Texas and Utah**) still prohibit the use of state funds for contraception without parental notification
- ▶ 26 states and D.C. allow all minors ≥ 12 yo to consent to contraceptive services

▶ SEXUALLY TRANSMITTED INFECTIONS

- ▶ All states allow minors to consent for diagnosis and treatment of STIs
- ▶ However, some states require that a *minor be at least 12 or 14 years* old before being allowed to consent
- ▶ **Title X** is the only federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services
- ▶ 18 states allow (but don't require) an M.D. to inform parents when deemed in best interest of minor
- ▶ Minor's parents/guardians NOT liable for payment of care

CONSENT

▶ PREGNANCY

- ▶ A minor of any age may consent to medical care related to the prevention or treatment of pregnancy
 - ▶ *It does not allow a minor to consent to sterilization (Cal.Family Code § 6925)*
- ▶ **Adoption:** 28 states and D.C. allow all minor parents to place child for adoption
- ▶ **Medical care for a child:** 30 states and D.C. allow all minor parents to consent

▶ ABORTION

- ▶ 2 states and D.C. explicitly allow all minors to consent
- ▶ 21 states require at least 1 parent to consent
- ▶ 13 states require “prior notification” of at least 1 parent
- ▶ 5 states require both notification and consent
- ▶ 6 states have parental involvement laws temporarily or permanently enjoined (under review, not enforceable at present) including California
- ▶ 5 states have no relevant policy/case law

CONSENT

▶ RAPE / SEXUAL ASSAULT

- ▶ “A **minor who is 12 years of age or older** and who is **alleged to have been raped** may **consent to medical care** related to the diagnosis or treatment of the condition and the collection of medical evidence with regard to the alleged rape.” Cal.Family Code § 6927.
- ▶ “A **minor** who is **alleged to have been sexually assaulted** may **consent to medical care** related to the diagnosis and treatment of the condition, and the collection of medical evidence with regard to the alleged sexual assault.” Cal.Family Code § 6928(b).
- ▶ Treating professional should **attempt to contact parent/guardian**
 - ▶ Document attempted contact and whether it is successful or unsuccessful
 - ▶ **UNLESS** *parent is the suspect or patient is over 12 and alleged act is rape*

CONSENTUAL INTERCOURSE



If a minor has consensual sexual intercourse with an older partner, is a report mandated?

AGE OF PARTNER ►	12	13	14	15	16	17	18	19	20	21	21+
AGE OF PATIENT ▼											
11	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
12	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
13	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
14	Y	Y	N	N	N	N	N	N	N	Y	Y
15	Y	Y	N	N	N	N	N	N	N	Y	Y
16	Y	Y	N	N	N	N	N	N	N	N	N
17	Y	Y	N	N	N	N	N	N	N	N	N
18	Y	Y	N	N	N	N	N	N	N	N	N

Note: Providers have no legal obligation to ask about partner's age.

SUSPECTED CHILD ABUSE

- ▶ A physician may take x-rays of child without parental consent for the purposes of diagnosing possible child abuse/neglect or determining extent of child abuse/neglect Cal.Penal Code § 11171.2(a).
- ▶ **YOU ARE A MANDATED REPORTER!**
 - ▶ A **physician, surgeon, psychiatrist**, psychologist, dentist, **resident, intern**, podiatrist, chiropractor, licensed nurse, dental hygienist, optometrist, marriage, family and child counselor, clinical social worker
 - Medical students included!*
 - ▶ The California Child Abuse and Neglect Reporting Act created a set of state statutes that establish the “whys, whens, and wheres” of reporting child abuse in California
 - ▶ “Mandated reporters” are required to make a child abuse report anytime, in the scope of performing their professional duties, they discover facts that lead them to know or **reasonably suspect** a child is a victim of abuse

SPEAKING TO A MINOR ALONE

- ▶ Layout course of visit (ex: speak to family together, then parents alone, then minor alone)
- ▶ Generalize practice
 - ▶ “All children of this age are given time by themselves” “Increased need for privacy at this age”
 - ▶ Prepping for adulthood and speaking about medical issues with provider
- ▶ Remember to remind the adolescent of confidentiality once parent out of room (with exceptions!)
- ▶ Start introducing the fact that the parent will leave the room by 12 years old early
- ▶ Parent asks: Can I look at my child's chart?
 - ▶ Parents and guardians *have the right to inspect their children's records*, as long as the records do not pertain to care for which the minor consented or could have consented Cal.Civil Code § 56.10(b)(7); Cal.Health & Safety Code §§ 123110(a), 123115(a)(1).
 - ▶ Under state law, *providers may refuse* to provide parents or guardians access to a minor's medical records when “the health care provider determines that access to the patient records requested by the [parent or guardian] *would have detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety*”

OVERVIEW

CALIFORNIA MINOR CONSENT LAWS

SERVICES YOUTH CAN RECEIVE WITHOUT PERMISSION FROM THEIR PARENT/GUARDIAN		CAN PROVIDER TELL YOUTH'S PARENT/GUARDIAN?
Birth Control <i>Except Sterilization</i>	Minors of any age	No Parental notification allowed only with consent of minor
Pregnancy (Prev, Dx, Tx) <i>Including inpatient care</i>	Minors of any age	
Abortion	Minors of any age	
STIs, Contagious and Reportable Diseases (Dx & Tx)	Minors 12 yrs or older	
HIV Testing	Minors 12 yrs or older and assessed as competent to give informed consent	
Sexual Assault Care	Minors of any age	Yes In most cases, an attempt to notify parent/guardian must be made. ^{1,2}
Alcohol/Drug Counseling by Federally Assisted Treatment Program <i>Including inpatient care</i>	Minors 12 yrs or older ^{3,4}	No Parental notification allowed only with consent of minor
Alcohol/Drug Counseling by Non-Federally Assisted Treatment Program	Minors 12 yrs or older ^{3,4}	Yes An attempt to notify parent/guardian must be made, except when provider believes it is inappropriate ⁵
Outpatient Mental Health Treatment	Minors 12 yrs or older ¹	

REFERENCES

- ▶ Up-to-date: Consent in adolescent health care
- ▶ M. Simmons, J. Shalwitz, S. Pollock (2002). *Understanding Confidentiality and Minor Consent in California: An Adolescent Provider Toolkit*. San Francisco, CA: Adolescent Health Working Group, San Francisco Health Plan.
http://lapublichealth.org/std/docs/Adolescent_Confidentiality_Toolkit.pdf