

Consent to Treatment

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Objectives

- Explain and distinguish between:
 - Legal authority to consent
 - Decisional capacity to consent
- Identify who may consent to treatment of a minor child
- Describe the “public health exception” to informed consent requirements

Why obtain informed consent?

- Legal reasons – a health care provider who fails to obtain informed consent could be found liable:
 - For battery, if no consent at all
 - For malpractice (negligence), even if there is consent, if the consent is not adequately informed

Who can give informed consent?

- A person who has both:
- ***Legal authority*** to consent to medical treatment, and
- ***Decisional capacity*** to make health care decisions.
 - This is sometimes called “competence” or “clinical capacity.”

Who has legal authority?

- A person has legal authority to consent if the law recognizes him or her as a person authorized to make health care decisions for the patient in question.
- In general,
 - The person who has legal authority to consent for an adult patient is the patient himself.
 - The person who has legal authority to consent for a minor patient is the minor's parent.

Example

- Two teenagers need sports physicals

Beckham	Jordan
High school senior	High school senior
Soccer	Basketball
17 years old	18 years old

- Beckham needs parental consent, Jordan does not

Who has decisional capacity?

- Decisional capacity to make health care decisions is the ability to understand your health condition and needs and make decisions about what to do in light of that understanding.
- Presumptions:
 - Adults and emancipated minors presumed to have decisional capacity.
 - Unemancipated minors presumed to lack decisional capacity.

Consent to treatment for minors

- General rule: Unemancipated minors need parental* consent.
 - They do not have **legal authority** to consent.
 - They are presumed to lack **decisional capacity**, but at the same time, the law recognizes that most minors do acquire decisional capacity before their 18th birthdays.

* Parent, guardian, legal custodian, person acting in loco parentis

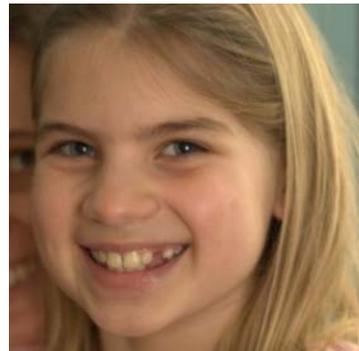
Treating without parental consent

- An unemancipated minor may be treated without parental consent when:
 - Parent authorizes another adult to consent
 - Emergencies/urgent circumstances
 - Another adult gives consent for immunization pursuant to special law that applies only to immunizations
 - Minor's consent law

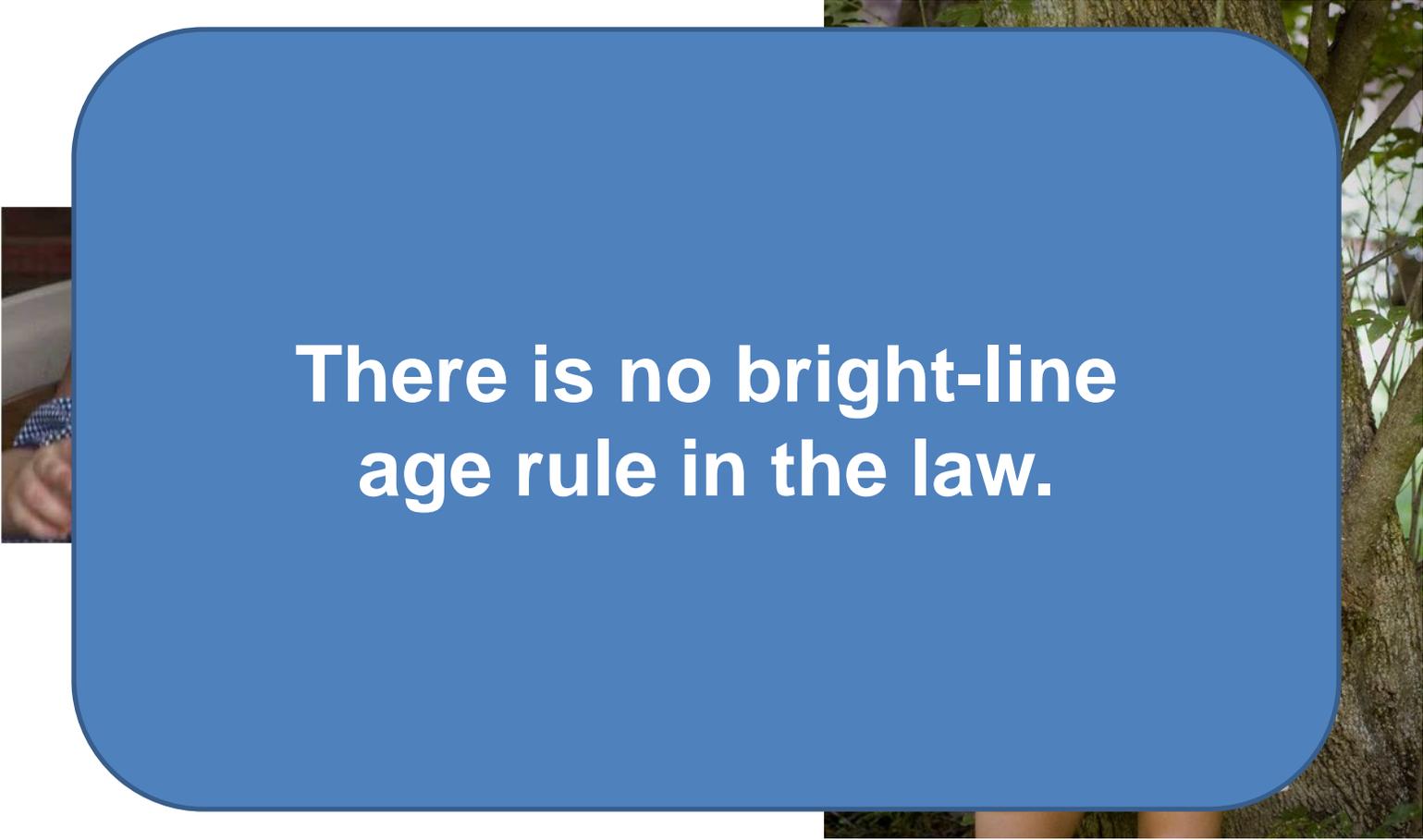
Minor's consent law (GS 90-21.5)

- Gives unemancipated minors **legal authority** to consent to medical services for the prevention, diagnosis, or treatment of:
 - Venereal diseases and reportable communicable diseases
 - Pregnancy
 - Abuse of controlled substances or alcohol
 - Emotional disturbance

Who has decisional capacity?



Who has decisional capacity?



There is no bright-line age rule in the law.

Consent to Treatment for Adults

- General rule: Adults consent for themselves.
- Exceptions:
 - Adults without decisional capacity
 - Need a substitute decision-maker, law defines who this may be (GS 90-21.13)
 - Emergencies
 - Treatment is required by law

Elements of a valid consent

- Consent must be:
 - Voluntary
 - Informed
 - Given by a person who is able to consent

Treatment required by law

- Patient does not have legal right to refuse the treatment.
- “Consent” is coerced, not voluntary.
- Patient does not weigh options and make an informed choice.