



MINORS' RIGHTS TO MAKE HEALTH CARE DECISIONS UNDER THE U.S. CONSTITUTION AND PENNSYLVANIA COMMON LAW

Megan R. Browne, Esq.

*Director and Senior Counsel
Lancaster General Health*

Editor's Note: *In the previous issue of the Journal, LGH Director and Senior Counsel Megan R. Browne, Esq., discussed the rights of minors to give consent for care and to seek certain specific types of care.¹ The following article completes the discussion by focusing on issues of a minor's rights to liberty and privacy under the U.S. Constitution and Pennsylvania Common Law, and by providing specific cases and court decisions that illustrate these principles.*

MINORS' CONSTITUTIONAL RIGHTS RELATING TO HEALTH CARE DECISIONS:

Minors, like adults, have a constitutional liberty interest under the Fourteenth Amendment of the United States Constitution, which states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."² The liberty interest has been used to challenge the provisions of the Pennsylvania Drug and Alcohol Abuse Control Act (cited in my previous article¹) that give parents the right to petition for a minor to receive involuntary drug and alcohol treatment.³ The basis of the challenge was the argument that the statute deprives minors of due-process protections. The Supreme Court of Pennsylvania disagreed, holding that the statute is constitutional.⁴

In addition to the liberty interest which prevents them from being confined unnecessarily, minors—like adults—enjoy a constitutional right to privacy, which includes the right to obtain contraception.⁵ This interest sometimes comes into conflict with parents' well-established fundamental liberty interest in protecting and caring for their children, including the right to make related decisions. However, that right is not absolute, and although minors, as a general rule, cannot make their own health care decisions, they still have legal rights even when a parent is the health care decision maker.⁶

In a 2007 federal appellate decision,⁷ a 16-year-old

unemancipated minor, fearing that she might be pregnant, took a "morning after pill" that she had obtained from a health clinic operated by the local Department of Public Health. She had requested the pill only after being told that pregnancy tests were not being administered that day, and a social worker had then talked with her about STDs, birth control, and emergency contraception. The minor was informed that she could be given a pill that would prevent her from getting pregnant, and she requested the pill. At that point, a registered nurse checked her temperature and blood pressure, then gave her four tablets of Nordette, telling the minor to take them right away and four more 12 hours after that. After taking the second dose, she began vomiting, and her father found her lying on the floor and learned that she had taken the pills. She and her parents subsequently filed the federal lawsuit. The parents alleged that their rights of parental guidance, also described as their due process right of freedom from state interference with family relations, were violated because their daughter was given medication without their consent. The daughter alleged that "her constitutional right to bodily integrity and parental guidance" were violated. All of the plaintiffs also argued that their First Amendment rights to freedom of religion were violated because the process created by the pills was tantamount, in their view, to an abortion.⁸

The court denied the claims, finding no constitutional violations and explaining that parents only have a "parental liberty interest" if a state actor "compels interference in the parent-child relationship." It found no coercion by the clinic; therefore, the Due Process Clause of the Fourteenth Amendment was not implicated. Furthermore, there was no interference with parental liberty interests because "parental sensibilities," such as a moral or religious opposition to emergency contraception, are not constitutionally protected. The court went on to hold that "there is no constitutional right to parental notification of a minor child's exercise of reproductive privacy rights."

In so holding, it explained that parents' rights can be limited by a minor-child's privacy rights and by "the state's legitimate interest in the reproductive health of minors."⁹ Furthermore, it explained that, even if the parents had a basis for a parental-notification claim, it would fail because the "Minors' Consent Act specifically permits minors to 'give effective consent for medical and health services to determine the presence of or treat pregnancy . . . and the consent of no other person shall be necessary.'"¹⁰

The court also rejected the argument that judicial bypass of parental notification should be required for emergency contraception in order for the distribution of emergency contraception to be constitutional. The basis for the distinction between the case at issue and abortion cases was that abortion cases "concern the constitutional limitations on a state to interfere with a minor's right to abortion, rather than a parent's affirmative right to be apprised of a minor's reproductive decisions generally." Finally, with reference to a minor's right to privacy for contraception decisions, the court explained that the "Constitution does not require governmental involvement" in the minor's decision about whether to consult with her parents before deciding to take emergency contraception. It also stated the following: "While parental notification has been permitted in limited circumstances in the context of abortion, it has never been affirmatively required, nor extended to include other reproductive health services, such as access to contraception."¹¹

Similarly, condom distribution in a public high school has been held to be constitutional under case-specific facts. Considering parental constitutional rights at odds with minors' constitutional rights, a federal district court explained that "[s]tudents' privacy rights . . . prohibit the imposition of a state statutory or common-law prior-parental consent requirement for condom distribution."¹² The reason is that minors have the constitutional right to make their own decisions about their reproductive health care, which the court considered to be as important for minors as for adults because "pregnancy and sexually transmitted diseases impact as heavily, if not more heavily, upon minors." The court held that the condom distribution did not impede upon parents' liberty interests because the condom program was not coercive upon the students or the parents. Instead, it was voluntary for students, and it required parental notification with an opt-out form to return if parents did not want their children to have access to condoms. Because of

the opt-out provision, parents remained free to exercise their right of care, custody, and control of their unemancipated children.¹³

MATURE-MINOR DOCTRINE UNDER PENNSYLVANIA COMMON LAW

The mature-minor doctrine arises out of common law. Some states' courts have adopted it; some have not. Under the doctrine, if a minor has sufficient maturity to understand and appreciate the nature of treatment and its risk and consequences, the minor can have the capacity to consent.¹⁴ *Pennsylvania courts have not expressly adopted the doctrine.*¹⁵

In 2000, the Supreme Court of Pennsylvania issued a decision in which the doctrine was at issue, involving the parents of a 16-year-old who were convicted of involuntary manslaughter and of endangering the welfare of a child after their daughter died from diabetes acidosis, which could have been treated but not cured.¹⁶ Instead of seeking medical treatment for her, they prayed for her and had her "anointed" at their place of worship. On appeal, they argued that Pennsylvania should adopt the mature-minor doctrine and allow them to assert the doctrine as an affirmative defense. Their position was that their daughter was sufficiently mature to make her own health care decisions, thus absolving them from their responsibility to do so as her parents. If the appellate court accepted their position, they could not be convicted for the crime of child endangerment, which occurs when a "parent, guardian, or other person supervising the welfare of a child under 18 years of age . . . knowingly endangers the welfare of the child by violating the duty of care, protection or support."¹⁷

The court specifically declined, stating "we choose not to adopt a 'mature minor doctrine' as a criminal defense . . ." After observing that other states have adopted the doctrine in the health care context, the Court observed that, in Pennsylvania, the Minors' Consent Act and other statutory declarations of minors' rights, which are described in the previous article,¹ amount to the state legislature's identification of "those minors who are deemed sufficiently mature to give consent to medical treatment." Although the Court agreed that the statutory provisions "create specific exceptions to the general rule of incapacity" it declared they do not "show a legislative intent that any minor, upon the slightest showing, has capacity either to consent to or to refuse medical treatment in a life and death situation." In refusing to adopt the

mature-minor doctrine as a defense to the parents' criminal charges, the court noted that the Superior Court of Pennsylvania "has held that 'even if [the minor victims] were considered mature enough to freely exercise their religious beliefs, it does not dispel [the parents'] duty while the children are in their care, custody, and control to provide them with parental care, direction and sustenance.'"¹⁸ That comment indicates that, even if the Commonwealth's top Court had recognized the mature-minor doctrine as a defense, the parents still would have had a legal duty to their child.

CONCLUSION

One can argue that this decision is the death-knell for the mature-minor doctrine as a matter of Pennsylvania's common law. In fact, the concurring Justice in the case interpreted the majority's decision in that manner.¹⁹ Indeed, the decision arguably indicates that, although the specific holding of the case was limited to the question presented to the Court regarding the doctrine as a criminal defense to specific charges, it is for the legislature to create any exceptions to the general rule that minors are incompetent to consent to medical treatment.

REFERENCES

1. Browne, MR. Parents' rights vs. children's rights to make health care decisions. *J Lanc Gen Hosp.* 2016; 11: 116-121.
2. U.S. Const. amend. XIV § 1 (emphasis added).
3. See generally *In re F.C. III*, 2 A.3d 1201 (Pa. 2010).
4. *Id.* at 1204.
5. See e.g., *Anspach v. City of Phila.*, 503 F.3d 256, 263 (3d Cir. 2007).
6. *Id.* at 261.
7. *Anspach*, *supra*.
8. *Id.* at 259-61; see also U.S. Const. amend. I ("Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .").
9. 503 F.3d at 262, 265, 268-69.
10. *Id.* at 269 (quoting 35 P.S. § 10103).
11. *Id.* at 269-71.
12. *Parents United for Better Schools, Inc. v. Sch. Dist. of Phila.*, 978 F. Supp. 197, 209 (E.D. Pa. 1997), *aff'd* 148 F.3d 260 (3d Cir. 1998).
13. *Id.* at 199, 209, 211.
14. See *Commonwealth of Pa. v. Nixon*, 761 A.2d 1151, 1153 (Pa. 2000).
15. In a 1972 decision, the Supreme Court of Pennsylvania acknowledged specific instances in which older minors of sufficient maturity have been allowed to exercise certain rights or involvement in proceedings. See *In re Green*, 292 A.2d 387, 349-50 (Pa. 1972). However, those instances do not reflect a broad adoption of the mature-minor doctrine. In addition, in a more recent decision, the same court seemed to indicate a preference for the legislature to define minors' rights instead of adopting the mature-minor doctrine as a matter of common law, as other states had done. See *Nixon*, 761 A.2d at 1153-55.
16. See *id.* at 1152.
17. *Id.* at 1152-53 (quoting 18 Pa. C.S.A. § 4304).
18. *Id.* at 1152, 1155; *id.* 1155 n.4 (quoting *Commonwealth of Pa. v. Cottam*, 616 A.2d 988 (Pa. Super. Ct. 1992)).
19. See *id.* at 1157 n. 1 (Cappy, J., concurring) ("It was after some deliberation of the majority's discussion of the statutory exceptions to the general rule of minor incapacity . . . [] that I concluded that the majority has evaluated the doctrine and determined that it will not be part of our common law under any circumstances.").

Megan R. Browne, Esq.
 Director & Senior Counsel
 Lancaster General Health
 555 N. Duke St.
 Lancaster, PA 17604
 717-544-1390
 mbrowne2@lghealth.org