



Adolescent Health Care
Legal Rights of Teens

Fourth Edition

Center for Children's Advocacy
Medical-Legal Partnership Project

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Definitions

Asylee

An alien already in the U.S. or at a U.S. port of entry who is unable to return because of a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. (Asylees differ from Refugees in that Refugees have not yet entered the U.S. when their status is determined, while Asylees have.)

Bullying

“Any overt acts by a student or a group of students directed against another student with the intent to ridicule, harass, humiliate or intimidate the other student while on school grounds, at a school-sponsored activity or on a school bus.” See Conn. Gen. Stat. § 10-222d. The United States Department of Health & Human Services defines bullying as “aggressive behavior that is intentional, repeated over time, and involves an imbalance of power or strength.” See www.stopbullyingnow.hrsa.gov/adults/all-about-bullying.aspx.

Consent

Consent is defined in the context of privileged communications as “written consent” by the patient or his/her authorized representative. See e.g., Conn. Gen. Stat. § 52-146d(3) (psychiatrist-patient privilege).

Emancipated Minor

One who is 16 or 17 years of age and has been declared “emancipated” by the court because 1) the minor is married; 2) the minor actively serves in the U.S. Armed Forces; 3) the minor willingly lives away from home and manages his or her own finances with or without parental consent; or 4) the court determines “for good cause” that emancipation is in the “best interest” of the minor. See Conn. Gen. Stat. § 46b-150.

HIPAA

The Health Insurance Portability and Accountability Act, first passed by Congress in 1996. While HIPAA was originally intended to simplify rules regarding the portability of insurance coverage for employees leaving their places of employment, it has transformed into a complicated statutory and regulatory structure that dictates much of how health information is protected due to privacy and confidentiality concerns. See www.hhs.gov/ocr/hipaa.

HUSKY Health Insurance

(Healthcare for Uninsured Kids & Youth)

Connecticut’s health insurance package for children and teenagers up to the age of nineteen, with eligibility based on a family’s or youth’s income. Parents of children insured under the state’s HUSKY Plan, Part A may be covered if the family’s income is equal to or below 185% of the federal poverty level.

HUSKY Part A

Connecticut’s Medicaid program for children, authorized by Title XIX of the Social Security Act.

HUSKY Part B

Insurance program for children in higher-income families. Children’s Health Insurance Program (CHIP) in national lexicon, authorized by Title XXI of the Social Security Act.

HUSKY Plus

For children with special physical and behavioral health needs.

Informed Consent

The medical doctrine whereby medical providers (physicians, hospitals, etc) inform patients of the risks and benefits of alternative approaches to treatment and the risks and possible consequences resulting from those approaches. After such an explanation, the medical provider obtains a signed consent from the patient who acknowledges receipt of the information and an understanding of the risks and benefits of the procedure or treatment. The root premise in the doctrine of informed consent is that “every human being of adult years and sound mind has a right to determine what shall be done with his own body ...”¹

Lawful Permanent Residents (LPR)

Sometimes referred to as “green card” holders, LPR are residents or citizens of other countries who are legally permitted to remain in the United States indefinitely and generally have the same rights as citizens, except that they cannot vote or hold elected office.

Living Will

A legal document that states a person’s wishes regarding any aspect of health care, including withholding or withdrawal of life-support systems. It is a sub-category of “advanced directives,” which are written instructions, such as a living will or durable power of attorney, which are recognized under Connecticut law to express a person’s wishes as to health care if the person is unable to communicate treatment decisions. It is a process regulated by statute in Connecticut. See Conn. Gen. Stats. §§19a-575 *et seq.*

Mandated Reporter

A health care professional/provider (e.g. physician, surgeon, registered nurse practitioner, registered nurse, etc.) who, in his/her professional capacity, has reasonable cause to suspect or believe that a child has been abused/neglected or is at imminent risk of serious harm, shall report such abuse/neglect or risk of imminent serious harm to the Department of Children and Families or the police. See Conn. Gen. Stat. §§ 17a-101,

¹ *Scholoendorff v. The Society of New York Hospital*, 211 N.Y. 125, 129-30 (1914) (Cardozo, J.)

Definitions

17a-101a. A mandatory reporter must report suspected abuse, neglect or risk of imminent serious harm if it is discovered in the ordinary course of such person's employment or profession.

Minor

Defined for these purposes as anyone under 18 years of age, except as otherwise noted. See Conn. Gen. Stat. § 1-1d.

Parental Consent

Defined for these purposes as the consent of a parent or legal guardian. See Conn. Gen. Stat. § 45a-604. Only one parent need give "parental consent."

Privileged Communication

Any confidential oral or written communication and record relating to the diagnosis and treatment of a person, between such person and a treatment provider, or between a member of such person's family and a treatment provider.

Refugee

An immigrant who is unable to return to his/her country of origin because of a well-founded fear of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion. (Refugees differ from Asylees in that Refugees have entered the United States with their status already determined by the U.S. Department of State, while Asylees have not).

Sexual Assault in the Second Degree

An actor engages in sexual intercourse with another person and the other person is thirteen years of age or older but under sixteen years of age, and the actor is more than **three** years older than such person. See Conn. Gen. Stat. § 53a-71.

Sexual Assault in the Fourth Degree

A person (a) intentionally subjects a person under thirteen years old and more than two years younger to sexual contact, or (b) intentionally subjects a person who is older than thirteen years old but younger than fifteen years old, to sexual contact and the person is more than three years older. Previously, sexual assault in the fourth degree only required that the person subjected to sexual contact be less than fifteen years old, regardless of the age difference. See Conn. Gen. Stat. § 53-73a.

Sexually Transmitted Disease

(Sexually Transmitted Infection)

A venereal disease. See Conn. Gen. Stat. § 19a-216. A venereal disease is traditionally defined as any of several contagious diseases, such as syphilis, gonorrhea, chlamydial infections,

chancroid, or genital warts, that is contracted through sexual intercourse.

Statutory Rape

Defined by statute in Connecticut, and consists of various separate criminal offenses classified under the "sexual assault" category. The offenses are:

Sexual Assault in the First Degree

When a person engages in sexual intercourse with another person and the person is under thirteen years of age and the "actor" is more than *two* years older than the person. See Conn. Gen. Stat. § 53a-70. See also Conn. Gen. Stat. § 53a-65 for definitions of "sexual intercourse" and "actor";

Sexual Assault in the Second Degree

When an actor engages in sexual intercourse with another person and the other person is thirteen years of age or older but under sixteen years of age, and the actor is more than *three* years older than such person. See Conn. Gen. Stat. § 53a-71.

Sexual Assault in the Fourth Degree

When a person (a) intentionally subjects a person under thirteen years old and more than two years younger to sexual contact, or (b) intentionally subjects a person who is older than thirteen years old but younger than fifteen years old, to sexual contact and the person is more than *three* years older. Previously, sexual assault in the fourth degree only required that the person subjected to sexual contact be less than fifteen years old, regardless of the age difference. In addition, a school employee or coach may be charged with this offense regardless of the student's age or capacity to consent. See Conn. Gen. Stat. § 53-73a.

Supplemental Security Income (SSI)

A federal income supplement program that helps aged, blind and disabled people (including children) who have little or no income, and provides cash to meet basic needs for food, clothing and shelter. A minor (under the age of eighteen) is eligible for SSI benefits (through a parent or other representative payee) if the child's household income and resources are low, and the child's disability meets the Social Security Administration's criteria regarding disability.

Undocumented Immigrants

Sometimes referred to as "illegal immigrants" or "illegal aliens", they are non-citizens who are present in the United States but do not have legal permission to be present. This includes people who arrived legally on tourist or student visas but stayed beyond the time allowed on their visas, people who arrived legally and then were ordered to leave voluntarily by an immigration court, and people who came into the country illegally, usually by crossing the border undetected.

Medical or Surgical Treatment

Must a hospital/health care provider obtain the informed consent of a parent/legal guardian before performing a medical or surgical procedure/treatment?

Although there is no statute directly governing this question, traditionally, under common law, parental consent is necessary for medical or surgical treatment that requires informed consent, except in cases where an explicit statutory exception exists, such as abortion, HIV/AIDS, STD testing and treatment, treatment of drug or alcohol abuse, hospitalization for mental disorder, outpatient mental health treatment (six visits), or if the minor is emancipated. The only other exception to this rule is during an emergency when it is either impractical to obtain parental consent or any delay would unduly endanger the patient's life. In these situations, permission by the parents/legal guardian for medical or surgical care is implied by law, since, assuming that the parents had known of the situation, they would have authorized the medical or surgical care. However, the AMA Code of Ethics (AMA Code) indicates that physicians should permit a "competent minor" to consent to medical care without parental notification or consent.²

This creates a tension in the law. By definition, a minor does not have the legal capacity to provide consent for treatments/procedures that require informed consent. The AMA Code implies that a "competent minor" may give such consent. This remains an unresolved issue under Connecticut law. The general rule, however, is that anyone under the age of majority (eighteen in Connecticut) does not possess the legal capacity to consent to a procedure that requires informed consent.

Is informed consent from a parent/legal guardian required prior to routine or non-emergent examination of a minor?

Connecticut law does not require informed consent for non-emergent or routine medical care for minors other than to mandate informed consent in general for "any procedure or treatment which ... is appropriate."³ Note that the AMA Code recommends that physicians should encourage minors to consult with their parents and involve them in the decision-making process. It further indicates that where the law permits, a "competent minor" may consent to medical care without parental notification and consent.⁴ As noted above, minors in Connecticut do not have the legal capacity to provide informed consent for procedures that ordinarily require informed consent. In addition, the AMA Code provides that physicians are charged with the responsibility of evaluating the "competence" of minors when dealing with these self-determination issues.⁵ The AMA Code further provides, however, that a physician is ethically justified in disclosing a confidence when the physician believes that, without parental involvement, the minor will face serious health consequences, and the parents will be helpful and understanding. In the event of such a disclosure, the physician must discuss the breach of confidentiality with the minor prior to the disclosure.⁶

The American Academy of Pediatrics (AAP), in policy statements issued in 1989 and 1995, echoed the AMA's Code in that it recommended that adolescents should be provided with confidential examinations and counseling apart from their parents.

² See <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion505.shtml>

³ *Public Health Code*, § 19-13-03(d)(8). The requirement is that each hospital must assure that the bylaws or rules or regulations of the medical staff include the requirement that, except in emergency situations, responsible physicians shall obtain proper informed consent as a prerequisite to any procedure or treatment for which it is appropriate and provide evidence of a form signed by the patient in the hospital record.

⁴ See <http://www.ama-assn.org/ama/pub/physician-resources/medical-ethics/code-medical-ethics/opinion505.shtml>

⁵ *Id.*

⁶ *Id.*