

I. Minor Consent to Emergency Treatment and Emancipated minors

Mass. Gen. L. ch. 112 §12F relates to emergency treatment of minors, and states in relevant part that:

“Any minor may give consent to his medical or dental care at the time such care is sought if:

- (i) he is married, widowed, divorced; or
- (ii) he is the parent of a child, in which case he may also give consent to medical or dental care of the child; or
- (iii) he is a member of any of the armed forces; or
- (iv) **she is pregnant or believes herself to be pregnant; or**
- (v) he is living separate and apart from his parent or legal guardian, and is managing his own financial affairs; or
- (vi) **he reasonably believes himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the diagnosis or treatment of such disease.”**

The qualifying factors are the conditions relating to a child’s status (emancipated or not) or treatment for which the statute does not provide the ability of a minor to consent such as abortion procedures.

In most cases, presumably, the patient is still living at home with their parents and is not married, divorced, a member of the armed forces or a parent of a minor child. Therefore, exceptions i, ii, iii, v would not be applicable in majority of cases. However, the statute clearly grants the minor patient in these circumstances the legal right to consent to medical treatment.

In addition, the above statute provides any minor who is pregnant or believes herself to be pregnant and any minor seeking treatment for emergent care of a dangerous disease may consent to medical treatment. *See* Mass. Gen. Laws ch. 112, § 12F (iv) and (vi).

Please note that under this provision **consent shall not be granted under subparagraphs (ii) through (vi), inclusive, for abortion or sterilization.**” Mass. Gen. Laws ch. 112, § 12F.

II. Minor Consent and Abortion Procedures

In Massachusetts there are several statutory exceptions to the general rule that a minor is incompetent to consent to medical treatment. As noted above a minor may give consent to care, diagnosis or treatment if “she is pregnant or believes herself to be pregnant.” M.G.L. c. 112, § 12F(iii). However this statute does not give the minor the right to consent to abortion or sterilization. M.G.L. c. 112, § 12F (Para. 3). See also, § 27:10. The pregnant minor child, parental consent and abortion, 2 Mass. Prac., Family Law and Practice § 27:10 (4th ed.)

The present Massachusetts statute governing performance of abortions on minors is M.G.L. c. 112 § 12s. In Planned Parenthood League of Massachusetts, Inc. v. Attorney General, 424 Mass. 586, 677 N.E.2d 101 (1997) the Supreme Judicial Court struck down as unconstitutional part of M.G.L.A. c. 112, § 12S that required consent of both parents for an abortion. The court held, in an unanimous decision, that state's traditional concern for the welfare of minors justified a requirement that a minor seeking an abortion obtain either the consent of one parent or the authorization of the court to obtain an abortion. Id. See also,

§ 27:10. The pregnant minor child, parental consent and abortion, 2 Mass. Prac., Family Law and Practice § 27:10 (4th ed.)

III. “Mature Minors” Rule

In addition to the above, Massachusetts is a “Mature Minor” rule jurisdiction. The Mature Minor Rule was adopted by the Supreme Judicial Court in 1977. *See Baird v. Attorney Gen.*, 371 Mass. 741 (1977). The *Baird* court said, “We conclude that, apart from statutory limitations which are constitutional, **where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to the treatment, the mature minor rule applies in this Commonwealth.**” The court further observed that, “The mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to understand fully what the medical procedure involves.” *See generally*, 22 Mass. Prac., Probate Law and Practice § 50.11 (2d ed.) “Judicial intervention is not required.” *Baird*, 371 Mass. at 752.

As further guidance, 110 CMR 2.00, relative to the Department of Social Services, defines “Mature Child” as “a child who is able to understand the circumstances and implications of the situation in which he/she is involved and is able to participate in the decision-making process without excessive anxiety or fear. A child who is 14 years of age or older is presumed to be a mature child. Other relevant sources of law concerning a “mature child” include:

- (a) M.G.L. c. 119, § 21 (CHINS);
 - (b) M.G.L. c. 210, § 2 (adoptions);
 - (c) M.G.L. c. 112, § 12F (certain medical treatment);
 - (d) M.G.L. c. 4, § 7 (general age of majority).
- See* 110 Mass. Code Regs. 2.00

IV. Summary of Legal Authority pertaining to Minor Patient Consent for Medical Treatment.

The provisions of M.G.L. c. 112, § 12F in congruence with the scope of the case law pertaining to the “mature minor” rule and several related statutes listed below, grant minors the capacity to consent to medical treatment concerning a broad range of health issues. There is only one notable exception concerning abortion procedures (as codified in M.G.L. c. 112, § 12S limiting the above authorities). A summary of the scope of the applicable statutory authorities concerning these medical treatments and consent by minors is delineated below.

- 18 is the age of majority in Massachusetts for all purposes, including consent to medical treatment. Children under 18 are minors and the permission of their parents or guardians is required before they receive many kinds of medical treatment. M.G.L. c. 231, § 85P
- Parents or guardians do not have to consent for minors to receive emergency medical treatment. M.G.L. c. 112, § 12F
- Massachusetts recognizes the mature-minor rule, which allows a minor to consent to medical treatment- **except for abortion**- if the doctor believes the minor can give informed consent to the treatment and it is in the minor’s best interest not to notify her parents. *Baird v. Attorney Gen.*, 371 Mass. 741 (1977).
- Minors who are sexually active, of childbearing age, may access family planning services offered through the department of health under M.G.L. c. 111, § 24E. *See Baird v. Attorney Gen.*, 371 Mass. 741 (1977).

- Minors may consent to treatment for HIV and STD's. M.G.L. c. 112, § 12F; M.G.L. c. 111, § 117 (treatment at public health clinics); 105 CMR 300.100 (for disease listings).
- Minors 12 or older, who have been found drug dependent by at least two doctors may consent to substance abuse treatment. M.G.L. c. 112, § 12E.
- Minors 16 or older may consent to admission to mental health treatment facilities and a provider may choose to provide mental health without notifying the minor's parents pursuant to the mature minor rule. M.G.L. c. 123, § 10; 104 CMR 27.05; 104 CMR 25.04
- Minor women who are or have been married may consent to any treatment, including abortion. M.G.L. c. 112, § 12F.
- Minors who are living separate and apart from their parents or guardians; who are parents of a child; and/or who are pregnant or believe themselves to be pregnant may consent to any treatment, except abortion. M.G.L. c. 112, § 12F.
 - The above minors must obtain consent of one parent or guardian to obtain an abortion. M.G.L. c. 112, § 12F.
 - If unable to obtain consent from a parent/guardian she may petition a judge of the Superior Court to obtain consent. M.G.L. c. 112, § 12S; *Bellotti v. Baird*, 443 U.S. 622 (1979); *Planned Parenthood League v. AG*, 424 Mass. 586 (1997)
 - Massachusetts does not have a formal procedure for granting emancipation, but minors may petition for this status in the appropriate court. *Id. Baird v. Attorney General*, 371 Mass. 741, 360 N.E.2d 288 (1977). See also, § 27:10. The pregnant minor child, parental consent and abortion, 2 Mass. Prac., Family Law and Practice § 27:10 (4th ed.)