

## Not So Gray Anymore: A Mature Minor's Capacity to Consent to Medical Treatment

Dalizza D. Marques-Lopez, J.D., LL.M. candidate

One of driving forces behind the physician-patient relationship is the patient's autonomy to make the "ultimate informed decision regarding the course of treatment to which he knowledgeably consents to be subjected."<sup>1</sup> In order to be an informed decision, the physician has the duty to disclose to the patient the available choices with respect to the proposed treatments, the benefits associated with each of the proposed treatments, the risks involved with each of said treatments, and the risks involved in the patient's refusal to receive any treatment at all.<sup>2</sup> The patient then evaluates all the information divulged by the physician, determines which course of action he believes to be in his best interest and then gives his informed consent to undergo a particular treatment or his decision not to undergo any treatment at all.

However, in order to engage in medical decision-making and exercise his medical autonomy, the patient has to have the legal capacity to do so. That is, the patient has to be a competent adult.<sup>3</sup> If the patient is a minor, the law deems him to be incompetent by virtue of his age. Therefore, the common law presumes that only the parents or guardians of the minor patient have the authority to consent to the particular course of treatment to be followed. This presumption of parental authority to consent to, or even refuse, a child's medical treatment stems from a general notion that every parent will act in the best interest of his child as well as from parent's constitutional right to privacy in family matters.<sup>4</sup>

Since there is "no magic line that defines the attainment of majority for any individual"<sup>5</sup> and the age of majority "is not an impenetrable barrier that magically precludes a minor from possessing and exercising certain rights normally associated with adulthood"<sup>6</sup> the Courts and the States have recognized a "mature minor" exception to the common law rule of parental consent to the medical treatment of a minor.<sup>7</sup> Under the "mature minor" doctrine, a minor is allowed to consent or refuse to consent to his medical treatment if it is established that the minor is sufficiently mature to understand, discern and appreciate the benefits and risks of the proposed medical treatment.<sup>8</sup>

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<sup>1</sup> Cobbs v. Grant, 502 P.2d. 1, 10 (Cal.1972).

<sup>2</sup> See generally Arato v. Avedon, 858 P.2d. 598 (Cal. 1993); Truman v. Thomas, 611 P.2d. 902 (Cal. 1980); Cobbs, 502 P.2d. 1; Canterbury vs. Spence, 464 F.2d. 772 (D.C. Cir. 1972); Salgo v. Leland Stanford etc. Bd. Trustees, 317 P.2d. 170 (Cal. 1957).

<sup>3</sup> "Every human being of *adult years and sound mind* has a right to determine what shall be done with its own body". Scholendorff v. Society of New York Hospital, 211 N.Y. 125, 129 (1914).

<sup>4</sup> Parham v. J.R., 442 U.S. 584, 602-603 (1979).

<sup>5</sup> Planned Parenthood of Cent. Missouri v. Danforth, 428 U.S. 52, 74 (1976).

<sup>6</sup> In re E.G., 549 N.E. 2d 322, 325 (Ill. 1989).

<sup>7</sup> Belcher v. Charleston Area Medical Ctr., 188 W.Va. 105 (1992); In re E.G., 549 N.E. 2d 322; Cardwell v. Bechtol, 724 S.W. 2d 739 (Tenn. 1987).

<sup>8</sup> Melinda T. Derish and Kathleen Vanden Heuvel, *Mature Minors Should Have the Right to Refuse Life-Sustaining Medical Treatment*, 28 J.L. MED. & ETHICS 109, 115 (2000).

In order for a minor to be considered mature, and therefore to have the capacity to consent to or refuse his medical treatment, there must be clear and convincing evidence that the minor fully understands the consequences of his actions.<sup>9</sup> Courts make that determination by weighing several factors such as the age, ability, experience, education, training, and degree of maturity or judgment of the minor, as well as the conduct and demeanor of the minor at the time of the incident involved.<sup>10</sup> However, the courts have also warned that the “mature minor” exception is not “a general license to treat minors without parental consent,” and that its application will depend upon the particular facts and circumstances of each case.<sup>11</sup>

Although the parental authority to consent or refuse to consent to the medical treatment of a child is deeply embedded in the law, it also follows that if parents refuse to consent to the necessary treatment to preserve a minor’s life, a court may nevertheless authorize the treatment after weighing the child’s best interests, the parent’s interests, and the State’s interest in the protection of a child’s welfare and the preservation of a child’s life.<sup>12</sup> And that is exactly what the State of Virginia did in the case of Starchild Abraham Cherrix.

Abraham, as he prefers to be called, is a sixteen year-old minor that lives with his four siblings and parents in Chincoteague, Virginia. When he was fifteen years old, Abraham was diagnosed with Hodgkin’s disease.<sup>13</sup> As part of his medical treatment, Abraham underwent three months of chemotherapy with many side effects that left him extremely weak, feeble and unable to pursue his daily activities. When the treatment was over, Abraham thought that he was in good health. However, this February Abraham was informed that his cancer had returned and that he needed additional rounds of chemotherapy. Instead of undergoing through another round of chemotherapy, Abraham decided to forego the traditional medical treatment and opted to treat his cancer with a herbal diet known as the Hoxsey<sup>14</sup> method under the guidance of a Clinic in Mexico.

When alerted of the situation, the Accomack County Department of Social Services stepped in and accused Abraham’s parents medical neglect in allowing Abraham to

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<sup>9</sup> In re E.G., 549 N.E. 2d at 327-328.

<sup>10</sup> Cardwell, 724 S.W. 2d at 748; Belcher, 188 W.Va. at 114; Commonwealth v. Nixon, 761 A.2d 1151, 1153-1154 (Penn. 2000).

<sup>11</sup> Cardwell, 724 S.W. 2d at 748; Belcher, 188 W.Va. at 114.

<sup>12</sup> In re Rena, 705 N.E.2d 1155, 1156-1157 (Mass. 1999).

<sup>13</sup> As defined by the National Cancer Institute, Hodgkin’s disease, also known as Hodgkin’s lymphoma, is a cancer of the immune system that is marked by the presence of a type of cell called the Reed Sternberg cell. Its symptoms include the painless enlarged lymph nodes, spleen, or other immune tissue, as well as fever, weight loss, fatigue or night sweats.

<sup>14</sup> According to the Cancer Agency of British Columbia, the Hoxsey herbal treatment includes a paste of antimony, zinc and bloodroot, arsenic, sulfur, and talc as external treatments and a liquid mixture of licorice, red clover, burdock root, *Stillingia* root, barberry, *Cascara*, prickly ash bark, buckhorn bark, and potassium iodide for internal consumption. It also involves the patient’s refraining from the consumption of tomatoes, vinegar, pork, alcohol, salt, sugar and white flour products. However, the American Cancer Society strongly urges individuals with cancer not to seek treatment with the Hoxsey method because there is no evidence that it results in objective benefit in the treatment of cancer in human beings.

refuse to the proposed medical treatment. After a court hearing, in July 2006 a Juvenile and Domestic Relations District Judge ruled that Abraham's parents were medically neglectful, ordered Abraham to report to the hospital to begin his second round of chemotherapy and ruled that Abraham's custody was to be shared between his parents and the Department of Social Services.

Abraham appealed the court's decision and on the morning he was supposed to report to the hospital, a Circuit Judge suspended the order and order a new trial. Abraham contended that although he was a minor (he was sixteen years-old at the time) his decision to forego the conventional medical treatment was an informed one, that he had studied and researched the available treatments for his condition and that he had come to the conclusion that "chemotherapy was not the route I wanted to take."<sup>15</sup>

On August 16, 2006, the same day the new trial was scheduled to begin, the parties reached a settlement in connection with Abraham's medical treatment. Abraham's decision was honored and he was allowed to forego a second round of chemotherapy and to treat his cancer with the Hoxsey method. However, Abraham will also be treated by a board-certified radiation oncologist from the North Central Mississippi Cancer Center that will not use chemotherapy but rather immunotherapy and low-intensity radiation. Furthermore, every three months Abraham's parents will have to report to the court and to the Department of Social Services the status of Abraham's health and treatment until either the cancer is gone or until he attains majority, which will be on June 6, 2008.<sup>16</sup>

As Abraham's case shows, the law regarding a minor's capacity to consent or refuse to consent to a proposed medical treatment is evolving. From presuming minors to be incompetent to make medical treatment decisions until reaching the legal age of majority, courts will gradually shift towards allowing a "mature minor" to make informed decisions in connection with a proposed medical treatment. Nonetheless, the courts' allowance will not necessarily be in terms of the minor's sole desire but rather than in terms of a midway compromise between the minor's autonomy and the state's interest in the protection of the welfare of the child, such as in Abraham's case. This might not happen in an expedited way, but courts will steadily acknowledge the dividing line between a "mature minor" and an adult is not so gray after all.

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<sup>15</sup> Martha T. Moore, *Virginia Teen Fights for Right to Pick Hodgkin's Treatment*, USA TODAY, July 12, 2006, at A9.

<sup>16</sup> Although the settlement's text was sealed by the District Judge, Abraham's attorneys disclosed the contents of its essential parts through press conferences. Shaun Bishop, *Court Lets Teen Forego Chemotherapy*, RICHMOND TIMES DISPATCH, August 17, 2006, at A1 and A10.