

Medicine, Minors, and Parents

Diminishing Parental Rights in Medicine

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IMAGINE THESE SCENARIOS: JANE IS 15 YEARS OLD. SHE HAS HAD SEXUAL RELATIONS WITH HER BOYFRIEND AND HAS CONTRACTED THE DEADLY AIDS VIRUS. SHE IS BEING TREATED FOR THE DISEASE, ALTHOUGH THERE IS NO CURE. HER PARENTS WERE NOT NOTIFIED AND WERE NOT ASKED FOR CONSENT. THEY HAVE NO LEGAL RIGHT TO KNOW. SUSAN IS 12 YEARS OLD AND HAS ASKED FOR AND RECEIVED THE GARDASIL VACCINATION WITHOUT HER PARENTS' KNOWLEDGE OR CONSENT. SHE EXPERIENCES SEIZURES FROM THE VACCINE, BUT HER PARENTS ARE UNABLE TO ADEQUATELY HELP HER BECAUSE THEY DO NOT KNOW THE CAUSE OF THE SEIZURES. THEY ARE NOT ALLOWED TO ACCESS TO SUSAN'S MEDICAL RECORDS.

Nationwide, 31 states, including North Carolina, explicitly allow children to be tested and treated for the deadly AIDS virus without the knowledge or consent of their parents.¹

In California, a law, which went into effect January 1, 2012, authorizes girls as young as 12 years old to obtain the HPV vaccine without their parents' knowledge or consent,² despite a report revealing that nationwide, between September 1, 2010 and September 15, 2011, 26 girls died from the vaccine.³

Proponents of these laws argue that it is in the child's "best interest" to take this authority away from parents and give it to "professionals" to guide children in such life and death decisions.

That is simply nonsense. These laws are the latest assault on the family in a battle that has been waged

against it for the latter half of the 20th Century and into the 21st. By stealing the rights of fit parents to care for their own children, the brick and mortar that sustains the wall protecting families from government intrusion is being destroyed. Once that wall falls, government control of children is not far behind.

Those who are really interested in the well-being of children and freedom should demand that parents be returned their God-given fundamental right to care for their own children.

Foundational Parental Rights

God, as the creator of all things, is the author of legitimate authority. Parents are the stewards of that authority with the God-given right to make decisions on behalf of their children. John Locke,

the 17th Century English philosopher, understood parental rights to include the right to rule over one's children and to rear them as parents deem appropriate. This right cannot be usurped by society or a parent's own child.⁴

This right, as adopted into English common law, includes the right to custody, the right to raise a child in a particular faith, the right to make education and health care choices, and the right to access a child's medical and educational records. This right, according to the English jurist, William Blackstone, emanates from a parent's duty to provide for the maintenance of his children and is considered a fundamental right.⁵

Protecting Parental Rights

Legally, minors lack the competence to make decisions regarding their upbringing, education, and medical care. Traditionally, in education, the U.S. Supreme Court has respected and protected parental rights, reinforcing the legal presumption that parents act in their children's best interest. In 1923,⁶ in 1925,⁷ and in 1972,⁸ the Court upheld the right and responsibility of parents to educate their own children without the meddling hand of government. Similarly, the Court has upheld the fundamental right of parents to control the custody and visitation of their children. In 2000, the Court struck down a Washington State statute that authorized the court to grant visitation rights "to any person" if the judge believed it was in the "best interest of the child."⁹

In 1979, the Court upheld the rights of parents to admit their child into a mental health facility. In *Parham v. J.R.*, the Court recognized that the parent's natural bond with his or her child leads the parent to act in that child's best interest,¹⁰ and absent neglect or abuse, a parent should "retain a substantial—if not dominant role in the decision."

A parent's authority is not absolute, according to the Court, but the belief that government authority should supersede parental authority for all parents simply because of bad parenting by the few is "repugnant to the American tradition."¹¹

In contrast, in the area of reproductive "rights," the Court has stolen from fit parents the absolute right to control the behavior of their children. While the Court has upheld state laws requiring parental consent or parental notice for abortions, the minor can petition the court to bypass the parents. In effect, the state, not fit parents, have the ultimate authority to decide whether a minor can obtain an abortion.¹²

Lower courts, beginning in the late 1990s, started abandoning parental rights:

- In 1995 the First U.S. Circuit Court of Appeals denied to parents the right to be notified or remove their children from a sexually explicit presentation in a public school assembly.¹³
- In 1998, a federal appeals court refused to hear a case involving parents objecting to the distribution of condoms on school property without parental consent. The court sided with the school district claiming that it was "promoting public health."¹⁴
- In 2005, the Ninth U.S. Circuit Court of Appeals upheld the right of schools to distribute intrusive values surveys. In refusing to hear a case brought by parents challenging the school district, the court stated that parental rights "do not extend beyond the threshold of the school door."¹⁵
- In 2008, a federal appeals court found that parents who object on moral grounds to a particular portion of a school curriculum do not have the right to remove their child from the program or even know about it in advance.¹⁶

Government Seizes Parental Authority

In most states, after reaching 18, a child is considered legally independent from their parents, and is legally responsible for his own actions and care. Many states have emancipated minors based on the "status" of the minor, including marriage, military service, or court order.¹⁷ In recent years, states have expanded "status" emancipation to include pregnancy, living with a child, living apart from their parents and financially independent, or a victim of sexual assault or abuse.¹⁸

In recent years, creating a child's right to privacy, the U.S. Supreme Court has allowed minors to consent to various "services," namely, abortion and contraceptives. Following suit, states have allowed minor consent to these "services," plus testing and treatment for venereal disease (including HIV), prenatal care, mental health, and alcohol and drug abuse. Specifically:



- 46 states have specific laws allowing minors to consent to contraceptives.
- 21 states and the District of Columbia allow all minors to receive contraceptives without parental consent or notification.
- 25 states allow minors to consent to contraceptive services under certain circumstances.¹⁹

According to the Guttmacher Institute, as of December 2012, North Dakota, Ohio, Rhode Island, and Wisconsin do not have specific statutory language authorizing minor consent for contraceptives.²⁰ All four states, however, provide contraceptives without parental consent in facilities funded by Medicaid or Title X of the Health Care Services Act, including many Planned Parenthood facilities. Although there have been several attempts in Congress to require parental consent for contraceptives provided by Title X funds, all attempts have failed. Medicaid's expansion under Obamacare will rob even more parents of their right to consent to contraceptives given to their children.²¹

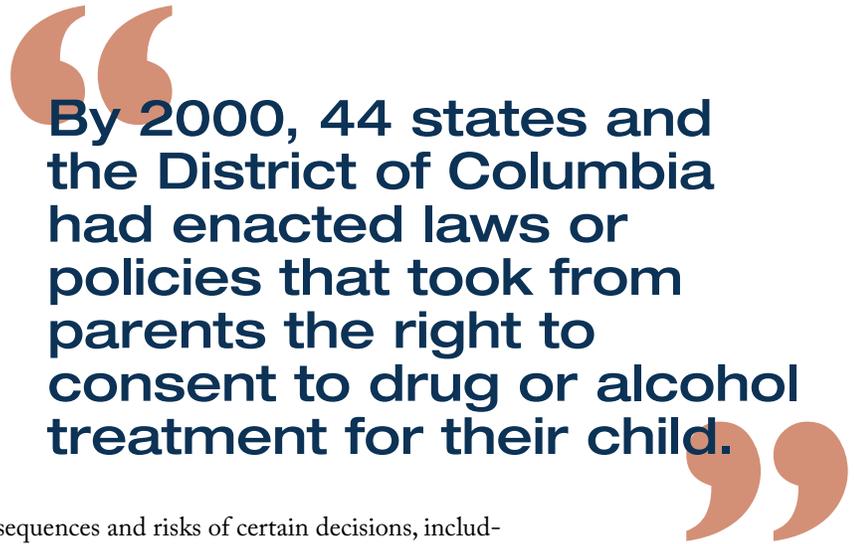
In 2011, in an attempt to circumvent parental authority, a new program, called CATCH, was launched in New York City public schools. Through this program, “morning-after pills” and DepoProvera (an injectable contraceptive) were dispensed to children without parental consent or knowledge. Reportedly, the school district’s actions prompted one school staffer to ask, “Why in the world should a school district, which can’t give out a Tylenol without parent consent, be allowed to dispense drugs with far more serious possible side effects, such as blood clots and hypertension?”²²

All 50 states and the District of Columbia allow minors to consent to services involving sexually transmitted infections, although 11 of these states require that a minor be of a certain age to consent. Thirty-one states, including North Carolina, include HIV in the list of sexually transmitted diseases for which a minor can consent to testing and/or treatment. Only 18 states allow physicians to notify parents that their child is seeking or receiving treatment. Only in Iowa are physicians required to notify a parent of a positive HIV result.²³

By 2000, 44 states and the District of Columbia had enacted laws or policies that took from parents the right to consent to drug or alcohol treatment for their child, and 20 states had taken that right from parents regarding outpatient mental health services.²⁴ At least one state allows minors to consent to sterilization. North Carolina allows children to consent to mental health, drug and alcohol treatment but, thankfully, does not allow minors to be sterilized without parental consent.²⁵

“Mature Minor” Laws

In recent years, a few states have turned parental authority over to the courts. “Mature minor” statutes give judges the authority to decide if a minor is “sufficiently” mature to understand the



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consequences and risks of certain decisions, including medical decisions. The minor’s age, capability of giving informed consent, whether the treatment is beneficial, the risk of the treatment, and whether the treatment is within established medical protocols are considered.²⁶ Using the “mature minor” doctrine, the U.S. Supreme Court has required a judicial bypass for state statutes authorizing parental notification or consent for abortion.²⁷

Parens Patriae and Gardasil

Parental rights are based on the belief that parents act in the best interest of their child. The right, however, is not absolute.²⁸ When a parent fails to provide shelter, food, clothing, certain medical care, or basic needs, the state can step in and provide those essentials for the child and, possibly, remove the child from the parent’s custody. This authority, based on the state’s obligation to protect life, is called the *Parens Patriae* Doctrine, and means “parent of the nation.”²⁹ Conceptually derived from English common law, the doctrine has been significantly expanded in American law in a number of legal areas, including medical care.

Parens Patriae has been used to impose health mandates on the public. As early as 1905, the Supreme Court upheld the right of municipalities to require vaccinations.³⁰ In the 20th Century, states used the *Parens Patriae* doctrine to require vaccinations for airborne diseases including diphtheria, rubella, polio, and measles.³¹

Considering the easy transmission of these illnesses through the air or by contact, and the seriousness of these illnesses, few argue that this application of the *Parens Patriae* doctrine is unjustified, especially when state statutes provide a religious, medical, or philosophical exemption. In recent years, however, two states and the District of Columbia have used the doctrine as their legal spear to require girls as young as 12 years old to receive Gardasil, a vaccination designed to protect against contracting the human papilloma virus (HPV), which is transmitted mainly by sexual activity, including skin to skin contact. In 2007, Texas Gov-

ernor Rick Perry issued an executive order requiring all 6th grade girls to obtain Gardasil. The public viewed Perry's actions as a power grab that trampled parental rights. Approximately 60 state legislators asked Perry to rescind his order. He refused, and within two months, the Texas Legislature nullified the order by an overwhelming vote in both houses of the State Legislature.³²

In Virginia, in 2007, the legislature enacted a law similar to Perry's executive order. A 2012 report by two Canadian researchers found that possible side effects of the drug include:

death, convulsions, paraesthesia, paralysis, Guillain-Barre syndrome, transverse myelitis, facial palsy, chronic fatigue syndrome, anaphylaxis, autoimmune disorders, deep vein thrombosis, pulmonary embolisms and cervical cancers.

Responding to this report, in February 2012, the Virginia House of Delegates voted to repeal the Gardasil law.³³ Later that month, the Virginia Senate returned the bill to committee where it will sit until the 2013 legislative session.³⁴ To date, only Virginia and the District of Columbia mandate the Gardasil vaccination as a prerequisite for school admission for 6th grade girls.

In 2008, the federal government announced, effective July 2008, that it would require all immigrants to obtain the Gardasil vaccination as a condition of immigration. Immigrant, health and women's advocacy groups protested the rule, and the Alliance Defending Freedom (formerly the Alliance Defense Fund) filed a lawsuit. In response, in November of that year, the CDC reversed course and announced that the HPV vaccine should not be required for immigration.³⁵

The Government's Reversal

Consistent with the state's obligation to protect life, in previous years, the *Parens Patriae* doctrine was used to require parents to consent to life-sustaining medical treatment, such as life-saving antibiotics or blood transfusions, for their child,

“Arguing that parents inflict “suffering” and “torture” on their sick children, the authors conclude that doctors, not parents, should make health care decisions for ill children.”

despite objections based on religious or non-religious grounds.³⁶ In 1984, Congress enacted a law to prohibit facilities receiving monies under the Child Abuse Protection and Treatment Act from denying care to a disabled infant simply because of that disability, regardless of the parents' desires.³⁷

With the growing strength of the euthanasia movement in the U.S. however, it should surprise no one that many doctors have abandoned parents who were attempting to keep their sick children alive. Sadly, many courts and state legislatures have abandoned them as well.

In 1994, Baby Ryan Nguyen was born six weeks premature in Spokane, Washington. The doctors, believing that the baby's life was not worth saving, refused to treat the child, despite pleas from Baby Ryan's mother. The mother sued. The court sided with the doctors, and Mrs. Nguyen found another hospital to treat Baby Ryan. He lived for several more years.

In 2004, in Houston, Texas, Wanda Hudson's son was born with a form of dwarfism that impaired his lung and chest cavity development. In November of that year, arguing that the care was futile, the doctors decided to shut off his ventilator. The mother sued. The courts, citing a futile care law in Texas, sided with the hospital. The hospital shut off the ventilator and the child died. Reportedly, this is the first case of its kind in the U.S. where a child's ventilator has been shut off over the objection of a parent.³⁸

A recent article in the *Journal of Medical Ethics* should cause further alarm. Arguing that parents inflict “suffering” and “torture” on their sick children, the authors conclude that doctors, not parents, should make health care decisions for ill children.³⁹ Although penned by two pediatricians practicing in London, the disdain these authors have for parental authority in health care is eerily similar to the attitude of Baby Ryan's doctors. In that case, because Mrs. Nguyen refused to follow the doctors' advice and leave her child to die, the doctors at the hospital reported her to protective services for abuse and neglect.⁴⁰

Minors' Health Care Records

Parents' rights to access the health care records of their child, under many state laws, hinge on whether they have the right to consent to the services. In states, such as North Carolina, that allow minors to consent to sexually transmitted disease testing and treatment, pregnancy treatment, contraceptives, mental health treatment, alcohol treatment, and drug treatment, parents are not allowed access to those medical records unless the child gives consent.⁴¹

Under the overarching federal privacy laws affecting medical records, commonly known as HIPPA, parents are not allowed access to records regarding treatments for which a minor can consent.⁴² Furthermore, according to the regulations, even if the parent has the right to consent to the minor's ser-

vice, the parent may not have access to the records if the hospital or facility personnel “in the exercise of professional judgment” decides that it is not in the “best interest” of the child to release the information, the hospital or facility can refuse to do so.”⁴³

Protecting Children

The research is indisputable. The family—a mother and father, married and committed to a lifelong relationship—is the best environment for the rearing of children. Former U.S. Secretary of Education William Bennett once called the family the “original Department of Health, Education and Welfare.”⁴⁴ It is within the family that children learn ethics, love, discipline, and good citizenship.

Happenstance does not dictate this result. Fit parents produce healthy, happy, productive children because parents have the authority to mold their children, unfettered by government interference. Crippling this authority will only hurt children.

Children’s rights advocates retort that children have fundamental rights to make medical decisions themselves without parental consent or interference. Interestingly, most of the medical “treatments” for which parents are being denied the right to consent—alcohol and drug treatment, pregnancy and STD treatment, and abortion—are not “procedures,” but the consequences of behavior that most parents would consider egregious. All of these situations, including mental health treatment, are ones that require the guiding hand of a parent who loves and protects their child. Excluding parents denies them the fundamental right to care for their own children, and undermines the familial bond, which, as one legal scholar has written, “is vital to a child’s sense of becoming and being an adult in his own right.”⁴⁵

An often-cited reason for minor consent is that parents will mistreat or abuse their children if they find out their child is engaging in sexual activity, pregnant, or using drugs. The statistics do not support this conclusion. In “Parental Involvement in Minors’ Abortion Decision,” most parents suffered emotional distress in finding out their child had an abortion. Only one percent of those children surveyed suffered physical violence at home. Less than 0.5 percent of the respondents were beaten. While these acts are shameful, they are the exception and not the norm, and the actions of parents in a few extreme cases should not be used to rob all parents of their God-given authority to raise their children as they see fit.⁴⁶

Crippling Parents and Freedom

A free society depends on a moral citizenry. That moral citizenry depends on the family, where a child learns love, forgiveness, charity, ethics, discipline, and as U.S. Supreme Court Justice Clarence Thomas stated in a 2011 dissenting opinion, “a capacity for self-government that would prepare



a child for the outside world.”⁴⁷ The family is the heartbeat of freedom.

History has proven that strong families are the enemy of tyrannical governments. Communists, such as Karl Marx, believed that the family must be dismantled because it impedes economic equality and oppresses women.⁴⁸

Government can destroy the family in two ways: 1) By legally destroying the institution of marriage, which is the vessel from which healthy children grow; or 2) by destroying parental rights, leaving the family as nothing more than a hollow shell which can be crushed by the heel of the state.

No Retreat

T.S. Eliot once wrote:

If we take the widest and wisest view of a Cause, there is no such thing as a Lost Cause, because there is no such thing as a Gained Cause. We fight for lost causes because we know that our defeat and dismay may be the preface to our successors’ victory, though that victory itself will be temporary; we fight rather to keep something alive than in the expectation that it will triumph.

The cause to protect the rights of parents to make critical decisions in the raising and care of their own children seems insurmountable, but is not a battle that is won or lost overnight. The first step in restoring to parents the right to care for their own children must be taken now. North Carolinians should demand that the law be changed to return to parents the right to provide written, notarized consent before their child receives an abortion, contraceptives, or testing and treatment for STDs, mental health, drugs and alcohol.

For the sake of this nation’s beloved children and posterity, retreat is not an option. ❖

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