

# **Adolescent Consent and Confidentiality: Legal and Ethical Considerations in Caring for Adolescents in Arizona**

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# • Objectives

- Discuss the importance of consent and confidentiality protections for adolescents
- List specific clinical and preventive services with consent and confidentiality protections for adolescents in Arizona
- Discuss barriers and challenges to delivery of confidential health services to adolescents in Arizona



# • **Adolescent Psychosocial Development: Tasks of Adolescence**

- Adopting peer codes and lifestyles
- Assigning increased importance to body image and acceptance of one's body
- Establishing sexual, ego, vocational and moral identities
- Achieving independence from parents

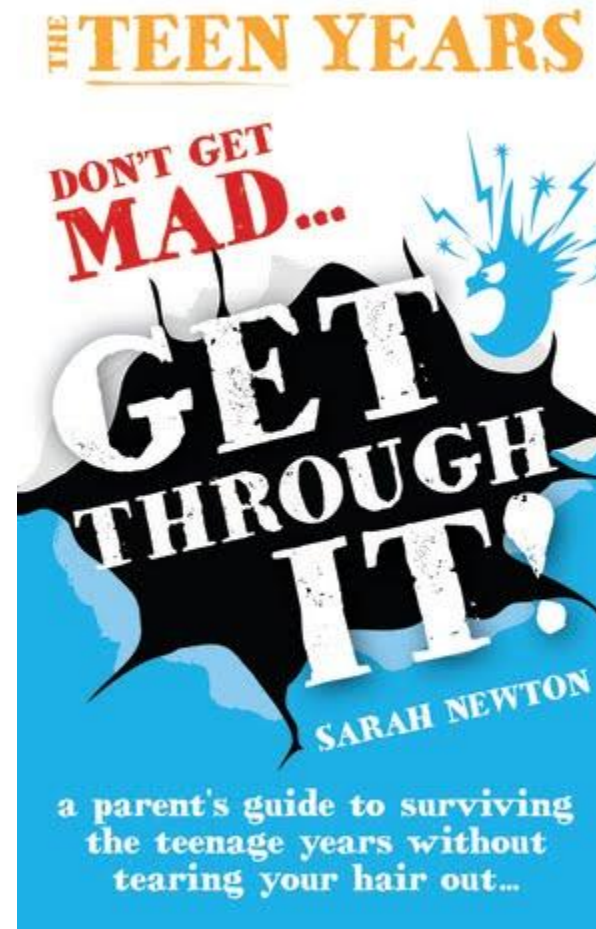
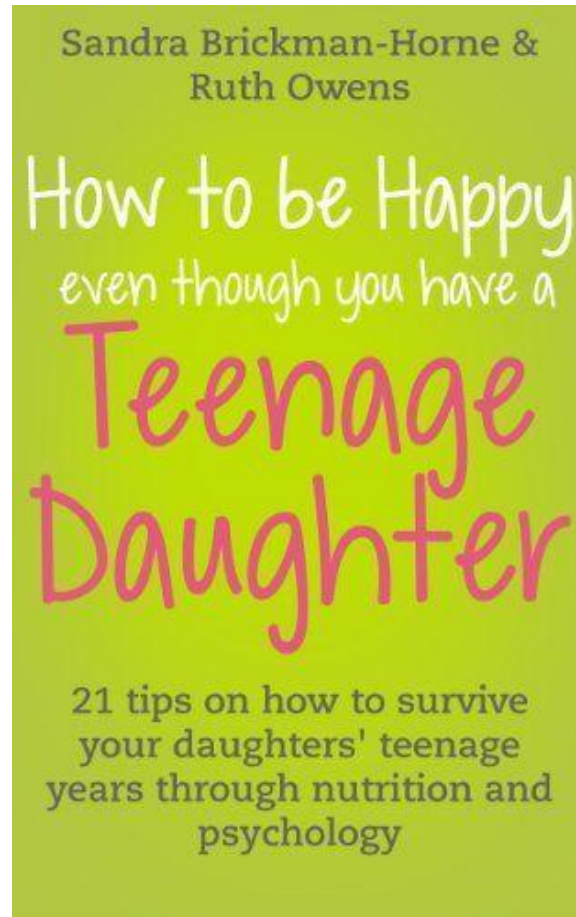


# • **Goals of Adolescent Health Supervision**

- Promote optimum mental and physical health
- Support healthy physical, psychological, and social growth and development
- Reinforce positive health behaviors and discourage health-risk behaviors



# • Dramatizing Adolescence



# **“The Parentectomy”**



# • Adolescent Psychosocial History (HEADDDSSS)

- Home
- Education
- Activities
- Diet/Body Image
- Drugs
- Sexuality
- Suicide/Depression
- Safety



# • Adolescent Psychosocial History (SHADES)

- Strengths
- Home
- Activities
- Education/Employment
- Diet/Drugs/Depression
- Sexuality/Safety/Suicide





- **Confidentiality:  
Parental Perspective**

- Parents are not the enemy.
- Parents are experiencing their own adjustment to their child's adolescence.
- Providers have an opportunity to educate parents about the need for confidentiality in the provider-patient encounter.



# • Professional Consensus

- Professional organizations support confidential adolescent health care
  - ACOG '88
  - AAFP '89
  - AAP '89
  - SAHM '92
  - AMA '92



# • **Discuss Confidentiality in Advance**

- Inform parents about confidentiality policy before the visit
- Explicit policy notice
- Display confidentiality policy related materials



# A Letter From Your Teen's Health Care Provider

Dear Parent or Guardian,

As teens become adults and take more control of their lives, our office will ask them to be more actively involved in their health and health care.

Some areas of teen health that we may talk about during an exam are:

- Eating and how to be active
- Fighting and violence
- Sex and sexuality
- Safety and driving
- Smoking, drinking, and drugs
- Sadness and stress

**You should know...**

We support teens talking about their health with their parents or guardians. But teens may be embarrassed to have an exam or talk about some things in front of their parents. This is a normal part of growing up. We give all teens a chance to be seen privately. During this time, you will be asked to wait outside of the exam room.

In order to best take care of your teen we offer some confidential services. "Confidential" means that we will only share what happens in these visits if the teen says it is okay, or if someone is in danger.

In California, teens can receive some types of health services on their own. We cannot share the content of these visits without your teen's okay. Ask us about what these health services include.

We are happy to talk to you about any questions or concerns you may have about this letter and your teen's health. Together, we can help keep your teen healthy.

Below, you will find some helpful websites about teen health and tips for parents of teens.

Sincerely,

*Your teen's Health Care Provider*





## Teens... Did You Know?

Anything you say about sex, drugs and your  
personal feelings is confidential.\*

*There are some exceptions so ask your doctor about confidentiality rules.*

What we say here  
stays here



\*Visit [www.teenhealthlink.org](http://www.teenhealthlink.org) for more information about laws  
that protect your privacy when talking to your healthcare provider.



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# • Disclosure of Limits of Confidentiality

- Patients should be informed of limits beforehand:
  - Patient's life is in danger
  - Another person's life is in danger
  - Suspected abuse
  - Public health reporting
  - Specific state statutes



# • Consent for Healthcare

- Legal adult at age 18.
- Can provide informed consent
  - Knowledge of risks, benefits, alternatives
  - Mental capacity to make decision
- Assent
  - When not allowed to give consent
  - Minor's views and opinions can/should be respected

\* AL, NE (19); PA, MS (21)



# • Consent for Care for Younger than 18 years old

- Consent required by parent, guardian or some other adult
- Exceptions (  $\geq 12$  yrs old\*)
  - Minor's status
  - Type of services

\*can vary





# • **Minor Status (State Defined)**

- Emancipated ( $\geq 16$  years)
- Married or Divorced Minor
- Military
- Homeless Minor



## • Case: Nicole

- Nicole is a 16-year-old female who presents for a well visit. She is new to your practice.
- You obtain the necessary history with her mother in the rooms and wish to have a private time with Nicole.



- **Case: Nicole**

- Nicole reports being sexually active with one lifetime male partner with whom she recently broke up. You offer screening testing for sexually transmitted diseases.
- ***Do you need to obtain her mother's consent for STI testing?***



- **Case: Nicole**

- Nicole's test returns positive for chlamydia two days later.

***Can she consent for STI treatment?***



- **Sexually Transmitted Infection (STI):  
Diagnosis and Treatment**

- Arizona state law allows minor who may have contracted a venereal disease may give consent to the furnishing of hospital or medical care related to the diagnosis or treatment of such disease
  - Ariz. Rev. Stat. § 44-132.01.



# • HIV Testing

- CDC recommendation for routine, voluntary HIV screening for all persons ages 13 to 64 in any health care setting, regardless of risk
- State law says that minors of any age deemed to have the capacity to consent may consent for HIV testing.
  - Ariz. Rev. Stat. § 36-663(A)

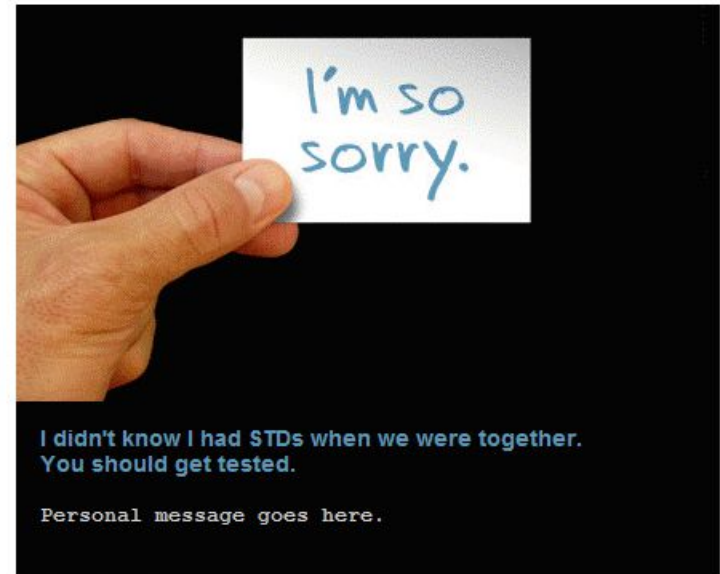


- **Patient Recall**





- **Mandatory Public Health Reporting and Partner Treatment Services**



This is from a friend at **in SPOT** the [STD] Internet Notification Service for Partners Or Tricks.





# • Parental Access to Minor's Records

- No AZ statute that deals specifically with confidentiality of a minor's medical record
  - Use professional judgment regarding release of records, especially confidential aspects, to parents
  - If the adolescent can consent to care based on the type of care or their status, the adolescent and not necessarily his/her parent has the right of access to their health information.



# • **Parental Access to Minor's Records**

- Documenting the sexual and reproductive health visit
  - Use Adolescent Sexual and Reproductive Health Note
- Documenting the “blended” visit
  - Document sensitive/confidential aspects of care on a separate confidential note type
  - Document sensitive psychosocial information on a confidential note type
  - Determine review process prior to release of records when requested



- **Parental Access to Minor's Records**

Type here to enter document

Document Name

OP  
Consultation Note  
OP-Adolescent Clinic Note  
OP-Adolescent Medicine Consult Note  
OP-Homeless Youth Outreach  
OP-Adolescent Sexual and Reproductive Health Note  
OP-Adolescent Psychosocial Note



- **Parental Access to Minor's Records**
  - Importable past medical/visit histories
  - After visit summaries displaying Dx, Labs, Meds
    - Confidential On/Off Selection Options
    - Preliminary AVS
  - Medication reconciliation
    - Parallel Confidential Prescription Writer
  - Problem Lists
    - Parallel Confidential Order Set
    - Symptom based coding: i.e. urethritis/cervicitis



- **Parental Access to Minor's Records**


- Patient Portal

- Portal policies
- Age parameters
- Term limited or valid until revoked



# • Parental Access to Minor's Records

- Patient  $\geq 13$  and LAR must consent for portal access
- LAR becomes a proxy and has full access to the medical record
- Adolescent and LAR access is terminated when either the patient or LAR makes a written or online request to terminate access
- LAR access expires when patient turns 18



Apply Patient Label

**FollowMyHealth Patient Portal - Adolescent Access**

Adolescent access for FollowMyHealth allows an adolescent patient between the ages of 13 and 18 to view components of their medical record and communicate with their physician's office regarding non-urgent matters. The parent/legally authorized representative (LAR) will have the same level of access to the adolescent's medical record through a proxy account. In order to obtain access, both the parent/LAR and the adolescent must complete and sign the Adolescent Access Authorization Form due to Federal and State privacy rules. This form will only be accepted if signed by both Patient and Parent/LAR in the presence of PCH Staff

**Adolescent Access Terms and Conditions:**

**PATIENT AND PARENT/LAR ACKNOWLEDGE THAT BOTH PARTIES WILL HAVE ACCESS TO ALL MEDICAL RECORDS MADE AVAILABLE THROUGH FOLLOWMYHEALTH.** This includes records which may contain information related to the testing, diagnosis or treatment for conditions including, but not limited to, drug and alcohol abuse; psychotherapy; mental or other behavioral health; HIV/AIDS or other communicable diseases; genetic testing; or any other condition expressly protected by State and Federal Law.

Adolescent and proxy access to FollowMyHealth is terminated when either the patient or parent/LAR makes a written or online request to terminate access.

Unless otherwise terminated through written or online request, the patient will have full control of their FollowMyHealth account when they reach the age of 18 and the parent/LAR access will expire. Beyond the age of 18, the patient may still grant parent/LAR access by completing a FollowMyHealth Proxy Access form.

Username and passwords are unique to the Adolescent and Proxy accounts and sharing of this information may grant others access to the patient's health information.

Refusal to complete this form will not prevent me from receiving a copy of the patient's medical records, nor will it prohibit the patient from receiving treatment, payment for treatment, enrollment in a health plan, or eligibility for benefits.

**Confirmation and Authorization Signatures:**

By signing below, I acknowledge that I have read and understand the Terms and Conditions regarding FollowMyHealth Adolescent Access.

Patient Signature	Date
Patient Printed Name	Email Address
Parent/Legally Authorized Representative Signature	Date
Parent/Legally Authorized Representative Printed Name	Email Address


*If the patient lacks the capacity to sign, the provider will sign on behalf of the patient.*

Practitioner Signature	Date
Practitioner Printed Name	

**Internal Use Only**

Witness Signature	Witness Printed Name	Date
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PCH11518 (Rev. 2/08/2016)



1. Patient Info Tab
2. Comments

### 3. Status on Portal Indicator Line



- # Parental Access to Minor's Records



## REQUEST FOR REMOVAL OF FOLLOW MY HEALTH PORTAL ACCESS

Apply Patient Label

I, \_\_\_\_\_ am the patient at Phoenix Children's Hospital.

I am requesting to remove access for both myself and the all proxies that are attached to my Follow My Health portal account.

Listed below are all known proxies that need to also be removed:

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**Acknowledgement:**

After Completing the Above Information, please fax, email or mail this form to:  
Phoenix Children's Hospital/Attn: Health Information Management  
1919 E. Thomas Rd Phoenix, AZ 85016  
FAX: 602-933-2469

Email: [patientportalsupport@phoenixchildrens.com](mailto:patientportalsupport@phoenixchildrens.com)





- **Financial/Billing Aspects**

- HIPAA and Explanation of Benefits

- HIPAA allows confidential communication requests to their insurers if disclosing the information involved might “endanger the individual”

- Federal Title X Family Planning Program

- [www.sexfyi.org](http://www.sexfyi.org)

- Local free clinics

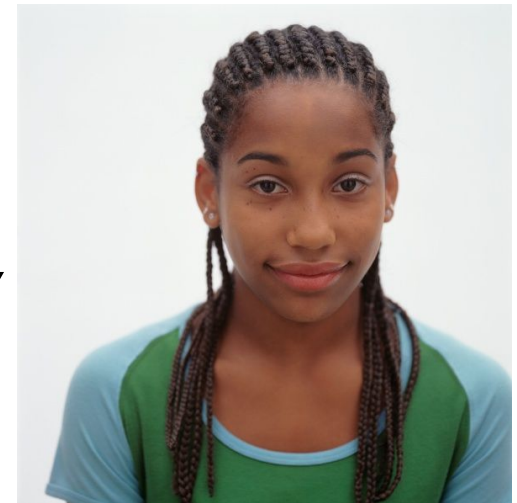
- Promote parent-teen communication



## • **Case: Michelle**

- Michelle is a 15-year-old female who has come to your clinic for evaluation of abdominal pain.
- She confides that she is in a relationship and is interested in contraception.
- She has also had unprotected sex and thinks she might be pregnant.

***Can she consent to a pregnancy test and contraception without the consent of a parent?***



**CONFIDENTIAL**

# • Family Planning

Minors of any age must consent to federally funded family planning services

- While no Arizona statute specifically addresses minor consent for non-federally funded family planning services, opinion issued by the State Attorney General in 1977 provides for minor consent
- Health care provider who delivers such services will not be civilly or criminally liable to the minor's parents for battery



- **Minor Status (State Defined)**

- **Mature Minor**

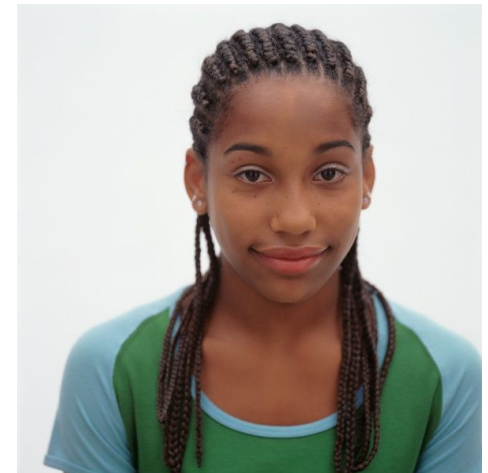
- No legal definition of “mature minor”
- Not recognized in Arizona Statute
- Medical care is for the patient’s benefit
- Care is necessary according to conservative medical opinion
- There is good reason (including the minor’s objection) for not obtaining parental consent
- $\geq 15$  years



## • Case: Michelle

- The HCG test confirms Michelle's pregnancy.
- You speak with her about her options.

***If she opts for parenthood, can she consent for prenatal care?***



# • **Pregnancy and Prenatal care**

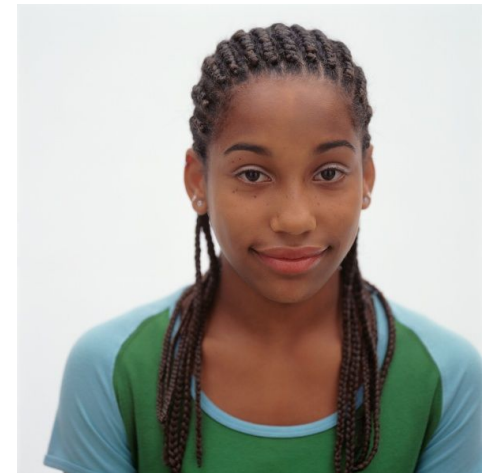
- No specific Arizona statutes addressing the right of minor parents or pregnant minors to consent to their own health care
- Generally able to consent to treatment for her pregnancy—including prenatal care, delivery services, treatment of complications and post natal care.
- Cannot consent for care not related to her pregnancy
- What constitutes “related to pregnancy” has not been litigated



## • Case: Michelle

- The HCG test confirms Michelle's pregnancy.
- You speak with her about her options.

***Can she consent if she opts for adoption?***



# • Adoption

- Minors may provide consent for adoption in AZ
- About 80% of states allow minors to consent for adoption either explicitly or by making no distinction between a minor and an adult parent.
  - Guttmacher Institute, July 2010

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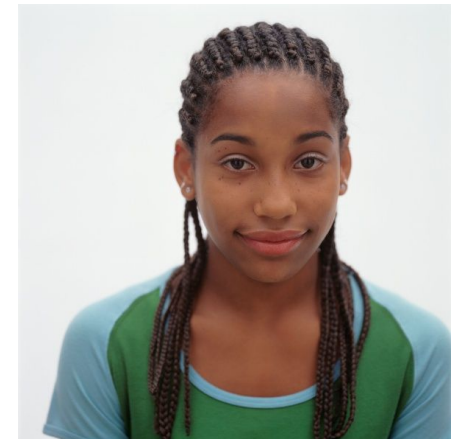




- **Case: Michelle**

- Michelle does not think making an adoption plan seems right for her.

***If she opts for an abortion,  
can she consent for care?***



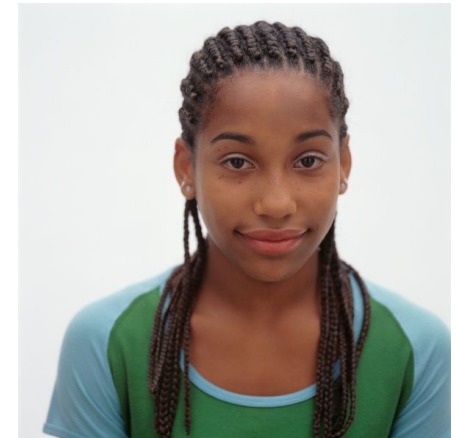
# • Abortion

- Requires written consent of one of the minor's parents or guardian
- Exceptions:
  - When the minor has sought and received judicial authorization for the abortion
  - When a delay would put the minor at serious risk of “substantial and irreversible impairment”
  - When the pregnancy was the result of incest
- Ariz. Rev. Stat. § 36-2152



- **Case: Michelle**

- As you counsel Michelle on her options, she tells you that she is unprepared to make a decision and would like to involve her 24 year old partner.



# • Age of Consent for Sexual Activity

- No statute specifically establishes an age at which a minor may legally consent to sexual activity
- There can be criminal penalties for consensual sexual activity with a minor 18 years of age or younger
  - Ariz. Rev. Stat. 13-1406



# • Consensual Sexual Activity Reportable as Child Abuse

- Suspicion of abuse or neglect
- The minor has had oral or sexual intercourse with a person aged 18 or older
- The minor has had oral or sexual intercourse with a person aged 13 or under



# • **Non-Reportable Consensual Sexual Activity**

- Minor if both partners are between 14 and 17 years old
- Minor who is 15, 16 or 17 years old if the partner is less than 19 years of age or attending high school and is no more than twenty-four months older than the minor

Ariz. Rev. Stat. §§ 13-3620(B); 13-1407(D-F).



# • Mandated Reporting of Sexual Activity

## Reporting of Teen Sexual Activity in Arizona R=Report D=No Report Required

COPPERSMITH  
BROCKELMAN  
LAWYERS

Partner's Age	Client's Age					
	13	14	15	16	17	18
	13	R	R	R	R	R
	14	R	D	D	D	R
	15	R	D	D	D	R
	16	R	D	D	D	R
	17	R	D	D	D	R
	18	R	R	R	R	D



- No statute or case obligates providers to ask their minor patients about the age of the minors' sexual partners....



WHEW!



# • Sexual Assault Examination

- A minor twelve years of age or older alleged to be the victim of [sexual assault] may give consent when it is not possible to contact the parents or legal guardian within the short time span in which the examination should be performed
- Such parent shall not be liable for payment for any services rendered pursuant to this section.
  - Ariz. Rev. Stat. § 13-1413.



## • **Case: Mark**

- Mark is a 16 yo male brought in by his parents after being suspended from school for marijuana possession.
- His parents also report that he has been increasingly sullen and withdrawn in the past three months.
- You suspect depression and a co-occurring substance use disorder.

***Can Mark consent for mental health services and substance abuse treatment?***



# • Alcoholism and Substance Abuse

- A minor may apply for care to an approved treatment facility but family must be notified as promptly as possible if admitted for treatment
- Minor  $\geq 12$  years found, upon diagnosis of a licensed physician or a registered nurse practitioner, to be under the influence of a dangerous drug or narcotic, may be considered an emergency case and as having consented to hospital or medical care need treatment for that condition



# • Drug Testing

- No applicable Arizona Statute that states the minor must be aware of, and consent to, drug testing requested by a parent or guardian
- To test or not to test...
  - AAP discourages testing without patient's knowledge (non-emergent)



# • Mental Health

- May not perform mental health screenings of a minor in a non-clinical setting or perform mental health treatment without the written or oral consent of the minor's parents or legal custodian
- Consent requirements do not apply in the event of an emergency that requires a screening or treatment to prevent serious injury to or save the life of a minor child



# • Emergency Care

- In cases of emergency in which a minor is in need of immediate hospitalization, medical attention or surgery and after reasonable efforts made under the circumstances, the parents of such minor cannot be located for the purpose of consenting, consent for said emergency attention may be given by any person standing *in loco parentis* to said minor.
- Ariz. Rev. Stat. § 44-133.





# • Refusal of Consent by the Minor

- Strong consideration should be given to the minor's wishes if a competent minor refuses care
- Should normally comply with parental instructions that are consistent with the patient's best interest when parents or legal guardians consent



# Resources/ Websites

- Minor Consent, Confidentiality, and Reporting Child Sexual Abuse: A Guide for Title X Family Planning Providers in Arizona
  - <http://www.cardeaservices.org/resourcecenter/minor-consent-confidentiality-and-reporting-child-sexual-abuse-a-guide-for-title-x-family-planning>
- Consent & Confidentiality in Adolescent Health Care: A Guide for the Arizona Health Care Practitioner; Arizona Medical Association
  - [https://azmed.org/wp-content/uploads/2014/09/2011Adol\\_Consent\\_Conf\\_Booklet.pdf](https://azmed.org/wp-content/uploads/2014/09/2011Adol_Consent_Conf_Booklet.pdf)
- Alan Guttmacher Institute
  - [www.guttmacher.org](http://www.guttmacher.org)
- Center for Adolescent Health and the Law
  - [www.cahl.org](http://www.cahl.org)



# • Conclusion

- Confidential care for adolescents is important
- Know your state laws and seek counsel when in doubt
- Encourage your teens to communicate with their parents and caregivers
- Advocate for your adolescents



- **Questions?**

