



PREGNANT STUDENTS AND CONFIDENTIAL MEDICAL SERVICES

Pregnant Students' Access to Confidential Medical Care

In California, minors of any age have the right to consent to all medical care related to pregnancy, including pregnancy prevention and termination (i.e., abortions) but not sterilization services.¹ Although parental consent is generally required before a minor can receive medical services, California has enacted specific statutory exceptions to this general rule, known as “medical emancipation” statutes. These statutes authorize minors, without parental consent, to obtain medical care for specific, designated conditions, usually involving sexual activity or other sensitive matters.² Minors also have an expressly guaranteed right, under the California Constitution, to sexual and informational privacy.³ In some circumstances, a minor has “a state constitutional right of privacy exercisable against the minor’s parents.”⁴ Together, these protections mean that minors have the right to keep certain medical conditions and services, including those that relate to pregnancy and abortions, private and confidential from their parents.⁵ Minors also have the right to keep the records of these medical services and conditions confidential from their parents.⁶

These protections are controversial because they relate to minors’ sexual activity and even more so because they specifically allow a minor to have an abortion without notifying or obtaining their parents’ consent. Since 2005, there have been three statewide ballot propositions to amend the California Constitution to *require* parental notification before a minor can obtain an abortion; all three initiatives failed.⁷ A “Parental Notification Before a Minor’s Abortion” ballot initiative

¹ Cal. Fam. Code § 6925, *parental consent requirement declared unconstitutional by American Academy of Pediatrics v. Lungren*, 16 Cal.4th 307 (1997).

² *Lungren*, 16 Cal.4th at 316; *see also* Cal. Fam. Code §§ 6924-6929.

³ *Lungren*, 16 Cal.4th at 334-35; *Planned Parenthood Affiliates of California v. Van de Kamp*, 181 Cal.App.3d 245, 280 (1986); *see generally* Cal. Const. art. I, § 1.

⁴ *Van de Kamp*, 181 Cal.App.3d at 278.

⁵ *Id.* (Other statutory rights similarly protect unwanted disclosures. *See, e.g.*, Cal. Civ. Code § 56.11; Cal. Health & Safety Code § 123110 (because a minor may consent to these services, only the minor patient can authorize the disclosure of the medical information gathered through these services)).

⁶ Cal. Health & Safety Code §§ 123115(a)(1) & 123110(a); Cal. Civ. Code §§ 56.10 & 56.11(c); *Van de Kamp*, 181 Cal. App. 3d at 270 (“only the minor may consent to disclosure of records of treatment to which the minor consented”).

⁷ *See* Proposition 73 (2005) at <http://vote2005.sos.ca.gov>Returns/prop/00.htm>; Proposition 85 (2006) at http://www.sos.ca.gov/elections/sov/2006_general/sum_amended.pdf; Proposition 4 (2008) at http://www.sos.ca.gov/elections/sov/2008_general/7_votes_for_against.pdf.

was approved for circulation in California in 2012, but its sponsors did not submit the required signatures to election officials by the deadline.⁸

Schools are often mired in this controversy. The constitutional and statutory protections that enable minors to independently access certain medical services and keep information about them confidential apply to schools and school officials. Yet school officials routinely violate pregnant students' constitutional and statutory rights to sexual privacy and confidentiality, particularly when it relates to a minor's rights to confidential medical services without parental consent or notification. Violations occur both unintentionally, when schools are simply unaware of the law, and intentionally, based on the political and subjective beliefs of individual school officials.

Some examples of violations that have occurred in California schools illustrate the problem:

A school in the San Diego area refused to provide a student with pregnancy support services until the student agreed to inform her parents about her pregnancy, which the student refused to do.

A school counselor in the San Diego area attempted to tell a teen's parents that she had recently had an abortion. The teen had gone to get an abortion with another family relative and was adamant that she did not wish to disclose this information to her parents. The school counselor was concerned that the teen would not get proper follow-up medical care.⁹

California law requires schools to keep information concerning confidential medical services separate and private from students' parents. In fact, the chief law officer of the state, the California Attorney General,¹⁰ has determined that school districts cannot have a policy that notifies or requires the prior written consent of a parent before a student is allowed to leave school to receive confidential medical services, which includes pregnancy-related care.¹¹ The Attorney General specified that minors have a right under California law not only to seek sensitive medical treatment without parental consent, but also to keep the existence of such services confidential, even from their parents.¹² Moreover, a policy that requires schools to disclose the voluntary sexual activity of minors violates the minor's right to sexual and

⁸ See California Parental Notification Before a Minor's Abortion (2012) at [http://ballotpedia.org/wiki/index.php/California_Parental_Notification_Before_a_Minor's_Abortion_\(2012\)](http://ballotpedia.org/wiki/index.php/California_Parental_Notification_Before_a_Minor's_Abortion_(2012)), (2012).

⁹ These examples are based on complaints regarding actual school practices in San Diego area schools. The California Women's Law Center ("CWLC") provides statewide legal trainings on the civil and educational rights of pregnant and parenting students to attorneys, teen advocates and school administrators. The trainings serve two important purposes: (1) to educate key stakeholders about the state and federal laws that protect pregnant and parenting students *and* (2) to uncover illegal school policies that violate these laws – such as those mentioned in this brief.

¹⁰ Cal. Const. art. V, § 13.

¹¹ 87 Op. Att'y Gen. 168 No. 04-112 (2004); *see also* 94 Op. Att'y Gen. 111, 2 (2011) (affirming 2004 opinion).

¹² *Id.* at 4; *see also* 66 Op. Att'y Gen. 244 (1983).

informational privacy guaranteed under the California Constitution.¹³ Schools must also keep information relating to confidential medical services confidential and any information regarding such services must not be made part of the student's education record.¹⁴

These statutes embody a "legislative recognition that, particularly in matters concerning sexual conduct, minors frequently are reluctant, either because of embarrassment or fear, to inform their parents of medical conditions relating to such conduct. . . ."¹⁵ These statutes recognize that the threat of disclosure to parents might deter minors from seeking needed medical treatment.¹⁶

In recognition of the dilemma that school counselors face, the Attorney General recently clarified an extremely narrow exception to this confidentiality mandate and opined that California Education Code § 49602(c) permits but does not require school counselors to disclose a student's personal information (including pregnancy-related or abortion-related information) to the student's parents or school principal when the counselor has reasonable cause to believe that the disclosure is *necessary* to prevent a clear and present danger to the student's health, safety or welfare.¹⁷ Moreover, the Attorney General further clarified that section 49602(c) may not form the basis for civil liability against a school counselor or the school where the school counselor decides not to disclose pregnancy-related or abortion-related personal information to the parents or school principal regarding a minor and the minor thereafter suffers harm that could have been averted by the disclosure of that information.¹⁸

The Attorney General cautions that section 49602(c) "is an exception to a general statute that in most cases requires counselors to keep students' personal information confidential. Statutory exceptions to general rules are to be narrowly construed."¹⁹ Given the political controversy over this issue, the opinion further specifies that

an individual's or a community's moral, ethical, or religious values should not be considered in determining whether there is a clear and present danger to the health and safety of the student. For example, we believe that section 49602(c) would *not* permit a counselor to reveal a student's pregnancy-related or abortion-related personal information based solely on the counselor's personal views on the subjects of teen pregnancy or abortion, or on the counselor's or community's subjective belief that this is the type of information that every parent should know.²⁰

¹³ *Van de Kamp*, 181 Cal.App.3d at 276-80.

¹⁴ Cal. Educ. Code § 49602.

¹⁵ *Lungren*, 16 Cal.4th at 317.

¹⁶ *See Id.* at 316-18 and 354-56 for legislative history and empirical support for medical emancipation statutes.

¹⁷ 94 Op. Att'y Gen. 111, 5-6 (2011) (concerning Cal. Educ. Code § 49602(c)).

¹⁸ *Id.* at 9-10 (explaining that because § 49602(c) is a permissive statute with no mandatory duty to act, negligence per se claim would fail because there is "no duty to violate by not disclosing.").

¹⁹ *Id.* at n. 26.

²⁰ *Id.*

Pregnant teens in California have the independent right to consent to all medical care related to their pregnancy. This right extends to other limited, specified medical conditions – usually those that involve sexual activity and other sensitive matters. These discrete exceptions recognize that, in a number of specific contexts, the protection of the health of minors may best be served by permitting a minor to obtain medical care without parental consent. California’s Constitution and its statutes require schools to recognize these exceptions and allow pregnant students to access confidential medical services during the school day without parental notification or consent.



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CWLC is dedicated to eliminating the barriers that keep women and girls in poverty and ensuring that women and girls in poverty have full and complete access to the benefits and support services to which they are entitled.

This policy brief provides general background information on California and Federal law and is not intended as legal advice.

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