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## MEDICAL CARE AND THE INDEPENDENT MINOR

Early one evening, September, 1967, Dennis Evans,<sup>1</sup> seventeen years old, was brought into a hospital emergency room with a broken leg. The hospital immediately attempted to contact his parents for consent to treat him. However, three months before the accident, young Dennis had moved away from home to take a job in a neighboring city. His departure was amicable and both of his parents understood, although his mother was still a little upset. Like a typical mother, though, she somehow managed to save about fifty dollars a month from her grocery and household funds to send to her son. With this and the money he earned as a supermarket clerk, Dennis managed to support himself, and even had enough left over to buy a motorcycle, the cause of his accident. The night of the accident, Dennis' parents had gone to a movie and would not return home until after midnight. The hospital authorities were thus unable to locate his parents until hours after the mishap. What happened to Dennis in the meantime? Almost nothing. His life was not in immediate danger; he just had a broken bone.

Before January, 1968, few doctors would treat a minor in a non life-death emergency situation without parental consent.<sup>2</sup> Most physicians justifiably feared that treating a minor would result in civil liability for battery. The practice with hospitals and physicians, therefore, had been to require parental consent.<sup>3</sup>

In order to eliminate the burden of obtaining parental consent, over the past few years California has enacted several statutes

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<sup>1</sup> A fictitious character.

<sup>2</sup> See generally *Luka v. Lowrie*, 171 Mich. 122, 136 N.W. 1106 (1912) (a doctor may always act without parental consent in a life or death emergency situation where obtaining consent is impracticable).

<sup>3</sup> The law regarding the necessity of obtaining parental consent is confusing. In *Bonner v. Moran*, 126 F.2d 121 (D.C. Cir. 1941), a doctor was found civilly liable for performing a skin graft on a fifteen-year-old boy without parental consent. Likewise in *Moss v. Rishworth*, 222 S.W. 225 (Tex. Comm. App. 1920), and in *Zoski v. Gaines*, 271 Mich. 1, 260 N.W. 99 (1935), physicians were held liable for performing tonsilectomies on an eleven-year-old girl and a nine-year-old boy without parental consent. On the other hand, in *Bakker v. Welsh*, 144 Mich. 632, 108 N.W. 94 (1906), the court refused to find a doctor civilly liable for removing a tumor from the ear of a seventeen-year-old boy. Nor did the court find a doctor liable for performing plastic surgery on an eighteen-year-old without parental consent in *Lacey v. Laird*, 166 Ohio St. 12, 139 N.W.2d 25 (1956) (per curiam). Also in *Gulf & S.I.R. Co. v. Sullivan*, 155 Miss. 1, 119 So. 501 (1928), the court found a doctor not liable for vaccinating a seventeen-year-old boy. California courts apparently never reviewed this issue, but since the possibility of such liability deterred physicians from acting, the practical result is the same as if liability did exist.

eliminating the need for parental consent for medical treatment in certain limited situations. In 1953 unmarried pregnant minors were empowered to consent to medical care related to their pregnancies.<sup>4</sup> In 1961 all married minors<sup>5</sup> and those on active duty in the armed services<sup>6</sup> were allowed to consent to medical treatment. In 1968 all eighteen-year-olds were given power to consent to give blood donations.<sup>7</sup> Also, after 1968, minors over the age of twelve were allowed to consent to treatment for certain communicable diseases.<sup>8</sup> However, by far the most radical change in the state of the law occurred in 1968 when the legislature passed section 34.6 of the Civil Code, extending the right to consent to medical care to all minors fifteen or over, living away from home, and managing their own finances.<sup>9</sup> Doctors may now treat these youngsters without parental consent and presumably without fear of a suit for battery.

This comment examines that statute, concentrating on the troublesome areas of the type of minor described, the financial responsibilities of parent and child and the type of confidential relationship which exists between the child and the physician.

#### WHO MAY CONSENT?

Although a bold departure from previous law, section 34.6 is not so broad as to be all-inclusive. It is definitely limited in scope

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<sup>4</sup> CAL. CIV. CODE § 34.5 (West 1954). This statute was also curious in that it applied only to *unmarried* pregnant minors. Since married minors could not consent to medical care until 1961, for three years unmarried pregnant minors could legally consent while married pregnant minors could not.

<sup>5</sup> CAL. CIV. CODE § 25.6 (West Supp. 1970).

<sup>6</sup> CAL. CIV. CODE § 25.7 (West Supp. 1970).

<sup>7</sup> CAL. CIV. CODE § 25.5 (West Supp. 1970).

<sup>8</sup> CAL. CIV. CODE § 34.7 (West Supp. 1970).

<sup>9</sup> CAL. CIV. CODE § 34.6 (West Supp. 1970): "Notwithstanding any other provision of law, a minor 15 years of age or older who is living separate and apart from his parents or legal guardian, whether with or without the consent of a parent or guardian and regardless of the duration of such separate residence, and who is managing his own financial affairs, regardless of the source of his income, may give consent to hospital care or any X-ray examination, anesthetic, or medical or surgical diagnosis or treatment to be rendered by a physician and surgeon licensed under the provisions of the State Medical Practice Act, or to hospital care or any X-ray examination, anesthetic, dental or surgical diagnosis or treatment to be rendered by a dentist licensed under the provisions of the Dental Practice Act. Such consent shall not be subject to disaffirmance because of minority.

"The consent of the parent, parents or legal guardian of such minor shall not be necessary in order to authorize such hospital, medical, dental, or surgical care and such parent, parents or legal guardian shall not be liable for any care rendered pursuant to this section.

"A physician and surgeon or dentist may, with or without the consent of the minor patient, advise the parents, parent or legal guardian of such minor of the treatment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given him by the minor, the whereabouts of the parents, parent or legal guardian."

to a specified class of minors. Unfortunately, the group encompassed by the code section is not as identifiable as those groups covered by previous enactments<sup>10</sup> and, indeed, the group's identification may prove to be one of the more troublesome aspects of the statute, especially to the physician who must decide whether or not to treat the child. Unless the physician has some degree of certainty about what classes of minors are included in the statute he may remain hesitant about treating any minor.

Section 34.6 applies to minors: (1) fifteen or older, (2) living separate and apart from their parents, with or without their consent and regardless of the duration and (3) managing their own finances, regardless of the source of the income. This description appears clear. However, close examination reveals the description to be composed of subjective factors which lend themselves to numerous interpretations.

First, what does living separate and apart from one's parents mean? Obviously children like Dennis would be included in the description. But suppose he were going to college in another city and living on campus? Theoretically he would be living separate and apart from his parents. Yet he would probably go "home" for holidays and for the summer. What if Dennis were just visiting a friend in another town for the weekend? The statute does specify that the duration of the separate residence does not matter; so in a sense he might be living separate and apart from his parents. The variety of possible situations is innumerable.

A similar phrase, "living separate," appears in section 169 of the California Civil Code,<sup>11</sup> which deals with property of the wife acquired while living apart from her husband. Unfortunately, judicial interpretation of the statute provides little help in establishing any definite guidelines which would be applicable to section 34.6. In deciding whether a husband and wife were living separate and apart<sup>12</sup> the courts looked to the intent of the parties to see if they desired the separation to be final.<sup>13</sup> However, Civil Code section

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<sup>10</sup> For example, there is little problem in defining an unmarried pregnant minor.

<sup>11</sup> CAL. CIV. CODE § 169 (West 1954).

<sup>12</sup> Even though the term "living separate and apart" does not appear in section 169, courts refer to the statute as if it did. *See, e.g., Makeig v. United Security Bank & Trust Co.*, 112 Cal. App. 138, 296 P. 673 (1931).

<sup>13</sup> The most startling case is *Makeig v. United Security Bank & Trust Co.*, 112 Cal. App. 138, 296 P. 673 (1931). Here a married couple lived together for about seven weeks—six weeks following the marriage and one week three years later. The husband claimed that they always intended to resume living together permanently and that the only reason for the separation was to enable them to save money for a home. The court said that they were not living separate and apart during the fourteen-year marriage. Also in *Tobin v. Galvin*, 49 Cal. 34 (1874), a couple were separated for about a year while the husband lived in Arizona and the wife worked in Los

34.6 expressly specifies that the duration of the separate residence is not important. Thus a sense of permanency should not govern here as it does with section 169.

In addition, because section 169 concerns community property, "living separate" refers to a break-up of the husband-wife relationship. On the other hand, as used in section 34.6 "living separate and apart" is not primarily concerned with a break-up of the parent-child relationship but with an actual physical separation, which sooner or later occurs in almost all parent-child relationships.

Although the interpretations given to section 169 cannot be strictly adopted, they do provide some guidelines. The intent of the parties can still be relevant, and, indeed, should be. The physician and the court should discern whether there is an intent to *live* rather than an intent just to *visit*. Living may be something less than a "domicile" or "residence,"<sup>14</sup> yet it should be more than just visiting a friend.

Many uncertainties also arise from the statutory requirement that the minor manage his own finances. In a somewhat circular definition, an Idaho court described "manage" in relation to money as the power to control, employ or invest it.<sup>15</sup> This description scarcely provides any standards to determine exactly what "manage" means. Applying the statute to youngsters such as Dennis, who have jobs and pay most of their own expenses, presents few problems. Since that statute specifies that the source of income does not matter, the money Dennis received from home would not affect his status under the statute. But what if Dennis' parents sent a check directly to his landlord to cover his rent? Would he still be managing his own finances? Or suppose Dennis were a college student living on campus and his parents paid the school directly for his room and board. Would it make any difference if his parents sent him the check and he then paid the school for room and board? To say that the child is managing his finances in the latter situation but not in the former is an arbitrary distinction.

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Angeles. The court said they were not living separate and apart during this time so as to come under section 169 of the Civil Code.

<sup>14</sup> "Courts and legal writers usually distinguish 'domicile' and 'residence,' so that 'domicile' is the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he intends to remain and to which, whenever he is absent, he has the intention of returning, but which the law may also assign to him constructively; whereas 'residence' connotes any factual place of abode of some permanency, more than a mere temporary sojourn." *Smith v. Smith*, 45 Cal. 2d 235, 239, 288 P.2d 497, 499 (1955). Perhaps a third category could be created for "living" which would be something even less permanent than "residence."

<sup>15</sup> *Sencerbox v. First Nat'l Bank*, 14 Idaho 95, —, 93 P. 369, 371 (1908).

In determining whether a child does manage his own finances the predominant consideration should be day-to-day expenses, rather than large, one-time expenses which may require little management ability, especially if the source of the income is one's parents. Since managing one's finances does not create or strengthen the need a child would have for medical care without parental consent, in contrast to the provision about living away from home, it should be a liberally construed provision of the statute.

Objective criteria for determining whether or not a minor is included within the statutory limits are simply impossible to establish. The physician must, in the final outcome, use his professional discretion, which will probably involve a consideration of such elements as the need for immediate action, the minor's maturity, the feasibility of obtaining parental consent, the seriousness of the procedures and any psychological factors which may prevent the youngster from going to his parents.

Obviously, section 34.6 requires a very subjective determination by the physician who treats a youngster. Previously, the doctor had only one requirement in this regard, to ascertain the age of the person he was treating. Although this may have been a relatively easy task, the physician may have been strictly liable if he erred in his determination.<sup>16</sup>

On the other hand, determining whether a fifteen-year-old is really living separate and apart from his parents and whether he manages his own finances is more of a task than discovering the true age of the child. In the former, the physician will have the two-fold duty of determining whether or not the child has told him the truth and then whether or not that qualifies as living separate and apart and managing his own finances. To impose strict liability on a physician for this will either require a physician to fill the role of a private detective and judge, thus diverting much of his valuable time from his practice, or, more likely, make the physician hesitant to deal with any minor, thus defeating the very purpose of the statute.

In a discussion of the nature of the group covered by section 34.6 one more point deserves mention. A physician cannot blindly treat any fifteen-year-old who meets the requirements of the statute without first ascertaining that the child sufficiently understands and appreciates the nature of the treatment which he is to receive. The statute says that these youngsters may consent to medical care

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<sup>16</sup> See *Lacey v. Laird*, 166 Ohio St. 12, —, 139 N.E.2d 25, 30 (1956) (concurring opinion of Hart, J.).

and "such consent shall not be subject to disaffirmance because of minority."<sup>17</sup> However, nothing in the statute prevents setting aside the consent for other purposes, such as lack of understanding of the nature of the procedure to be undertaken.

The term, "consent," as used herein carries with it the assumption that previous full disclosure of the implications and probable consequences of the proposed conduct to which such consent applies has been given in such terms as may be fully comprehended by the person giving the consent. It necessarily follows that consent requires a reasonable degree of maturity of mind depending upon the intricacies of the subject matter to which the consent is applicable.<sup>18</sup>

In one case, the court held that where a woman was under the influence of an anesthetic and without her glasses she was unable to understand or appreciate the content of a consent form which she signed for dental surgery.<sup>19</sup> Just as the consent of an adult could be set aside because of lack of understanding, so also can the consent of a minor be set aside for the same reason. Since many fifteen- or sixteen-year-olds may be incapable of understanding the nature of certain types of sophisticated medical procedures, the physician should keep in mind that section 34.6 does not give him a "green light" where fifteen-year-olds living away from home and managing their own finances are concerned.

#### FINANCIAL RESPONSIBILITY

To assume financial liability for medical care requires that one have the ability to enter into a legally binding contract. Therefore if a minor is to incur liability for services rendered under the statute, any contractual consent which he might give must not be subject to disaffirmance.

Generally, a minor's contracts are voidable and subject to disaffirmance at his wish.<sup>20</sup> However, one major exception has been codified in California in section 36 of the Civil Code. A minor under the care of a parent or guardian able to provide for him may not disaffirm his contracts for necessities.<sup>21</sup> Medical care can be a necessity.<sup>22</sup> On the other hand, certain types of treatment may not be considered necessary. Since section 34.6 does not seem to limit the

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<sup>17</sup> See note 9 *supra*.

<sup>18</sup> *Lacey v. Laird*, 166 Ohio St. 12, —, 139 N.E.2d 25, 29 (1956).

<sup>19</sup> *Moore v. Webb*, 345 S.W.2d 239 (Mo. App. 1961).

<sup>20</sup> CAL. CIV. CODE § 34 (West 1954).

<sup>21</sup> CAL. CIV. CODE § 36 (West 1954).

<sup>22</sup> See *Bishop v. Shurly*, 237 Mich. 76, 211 N.W. 75 (1926).

type of treatment which can be rendered<sup>23</sup> a child might seek some type of purely cosmetic surgery.

Furthermore, section 36 of the Civil Code also requires that the minor not be under the care of a parent or guardian able to support him before he will be liable for contracts for necessities. In view of the degree of independence required under section 34.6 the minor seeking medical attention probably will not be under his parents' care. However, considering the wide variety of situations encompassed by the statute, some minors are almost certain to be. For example, a college student, living on a monthly allowance from his parents, might be living separate and apart from his parents, and might be managing his own finances, but still be considered to be under the care of parents able to supply him with necessities.

Whether or not financial responsibility is imposed by section 34.6 itself will depend on the interpretation given to the phrase "such consent shall not be subject to disaffirmance." The power to give contractual consent and the power to give consent to otherwise tortious acts are not synonymous, nor are they necessarily coexistent in the same person. For instance, a child may consent to certain bodily invasions and his consent may be effective to prevent a battery.<sup>24</sup> At the same time, however, the child may not be able to enter into a legally binding agreement or contract so as to make the contract legally enforceable against him.<sup>25</sup> Whether the consent mentioned in section 34.6 refers to consent in the contract or tort sense, or both, is uncertain.<sup>26</sup> The use of the word "disaffirmance," traditionally associated with contracts, may suggest that such is the intention here. However, "disaffirmance" may be used in other contexts.<sup>27</sup> In fact it was used otherwise in section 25.5 of the Civil Code, which gives eighteen-year-olds the right to consent to donate blood.<sup>28</sup> Here no real contract issue is involved.<sup>29</sup> A person does

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<sup>23</sup> The statute provides for "hospital care or any X-ray examination, anesthetic, or medical or surgical diagnosis or treatment to be rendered by a physician or surgeon licensed under the provisions of the State Medical Practice Act, or to hospital care or any X-ray examination, anesthetic, dental or surgical diagnosis or treatment to be rendered by a dentist licensed under the provisions of the Dental Practice Act." CAL. CIV. CODE § 34.6 (West Supp. 1970).

<sup>24</sup> RESTATEMENT OF TORTS 2d § 59 (1965).

<sup>25</sup> CAL. CIV. CODE § 34 (West 1954).

<sup>26</sup> "It is apparent however that the consent, which prevents what would otherwise be an assault [*sic*] from being an assault, does not depend upon the capacity of the consenting party to contract. It has nothing to do with contractual capacity." *Lacey v. Laird*, 166 Ohio St. 12, —, 139 N.E.2d 25, 32 (1956) (concurring opinion of Taft, J.).

<sup>27</sup> "DISAFFIRMANCE. The repudiation of a former transaction . . ." BLACK'S LAW DICTIONARY 549 (4th ed. rev. 1968).

<sup>28</sup> CAL. CIV. CODE § 25.5 (West Supp. 1970).

<sup>29</sup> REVIEW OF SELECTED 1968 CODE LEGISLATION, 11 (Cal. Cont. Ed. of the Bar 1968).

not pay a physician to take his blood. But this use of the word "disaffirmance" need not be determinative in regard to section 34.6. In section 25.5 no contract issues exist. Section 34.6, on the other hand, enters the contract area expressly when it relieves parents of financial liability for treatment rendered pursuant to the statute. In addition, section 34.6 is included amongst other statutes definitely related to contractual capacity. Section 34, for example, provides that "[a] minor may make any other contract than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provision of this Title. . . ." <sup>30</sup>

Probably, then, the "consent not subject to disaffirmance" in section 34.6 does relate to contractual consent, and, therefore, makes the child financially liable. This is even more likely considering that if children were not liable the physician would have no one to hold responsible, parents being expressly exempt.

On the surface, section 34.6 is much clearer in dealing with parental financial liability, or lack of it. Simply stated, parents will not be liable for any treatment rendered pursuant to the statute. Although this apparently marks a considerable change in the law, it may prove to be a very limited departure from prior law, under which parents were not only civilly liable to the physician for medical treatment <sup>31</sup> but the father was also criminally responsible if he failed to provide such care. <sup>32</sup>

Parental financial liability is abolished only where the treatment is rendered pursuant to section 34.6 and only for that treatment rendered pursuant to it. This presents some possible trouble areas, which can perhaps best be understood by referring to Dennis' case. Suppose Dennis had consented to a serious operation after which he could not work for some months. If he had no other source of income, the youth would almost certainly turn to his parents for assistance. While they would not be responsible for the operation expenses, they would be forced to subsequently assume the financial burden of supporting him or be liable under sections 196 and 206 of the Civil Code. The father might also be criminally responsible under section 270 of the Penal Code. Conceivably Dennis might also require extra attention because of his condition. If Dennis moved back home to recuperate and needed subsequent treatment his parents might be liable for that, since he would not be living separate and apart from his parents. <sup>33</sup>

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<sup>30</sup> CAL. CIV. CODE § 34 (West 1954).

<sup>31</sup> CAL. CIV. CODE §§ 196, 206 (West 1954).

<sup>32</sup> CAL. PEN. CODE § 270 (West 1955).

<sup>33</sup> "[The rule requiring parental consent] is not based upon the capacity of a minor to consent, so far as he is personally concerned, within the field of the law of torts or law of crimes, but is based upon the right of parents whose liability for sup-

Another possible area of trouble regarding parental financial responsibility arises when physicians treat youngsters who might qualify to give consent under two different statutes, sections 34.6 and 34.5, the latter dealing with unmarried pregnant minors. Section 34.5 says nothing about financial liability. Take for example, the case of an eighteen-year-old unmarried pregnant college girl, living at school, who sees a doctor about her pregnancy. If parents wish to escape financial liability for the visit they could claim that she consented under section 34.6 because she was living separate and apart from home and managing her own finances. If such were the case the parents would be exempt from financial responsibility. On the other hand, if the doctor wanted to look to the parents for the cost of the treatment he could claim that he treated her under section 34.5 because she was unmarried, pregnant, and sought care related to her pregnancy. Since this statute is silent about the parents' duty to pay, the traditional rule should apply to render the parents liable.

#### DOCTOR-PATIENT RELATIONSHIP

The third major area of concern with the statute relates to the confidential relationship between the doctor and the minor patient. The statute perplexingly states:

A physician may, with or without the consent of the minor patient, advise the parents . . . if the physician . . . has reason to know on the basis of information given him by the minor, the whereabouts of the parents, parent or legal guardian.<sup>34</sup>

If the doctor deems it advisable to tell the parents he must then attempt to trick an unwilling child into giving him enough information so that the parents can be found. The statutory qualification, that the doctor may tell the parents if he has reason to know their location on the basis of information supplied by the child, seems absurd since he does not need the consent of the child to tell the parents.

The absurdity is explained by reviewing the assembly bill as originally introduced. This version states that a doctor *must* tell the parents if he has reason to know their whereabouts on the basis of information given by the child.<sup>35</sup> Here the qualification

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port and maintenance of their child may be greatly increased by an unfavorable result from the operational procedures upon the part of a surgeon." Lacey v. Laird, 166 Ohio St. 12, —, 139 N.E.2d 25, 30 (1956) (concurring opinion of Taft, J.).

<sup>34</sup> CAL. CIV. CODE § 34.6 (West Supp. 1970).

<sup>35</sup> "A physician and surgeon or dentist *shall*, with or without the consent of the minor patient, advise the parents, parent or legal guardian of such minor of the treat-

makes sense, since to provide otherwise would impose an unreasonable burden upon the physician. However, at present, the statute is uncertain and vague with regard to the rights and obligations of the minor patient and the physician. What these are or should be can be clarified by considering the nature of the doctor-patient relationship in general.

Ordinarily the doctor has the duty to refrain from disclosing his patient's confidences. To do so may result in civil liability, usually predicated upon an invasion of privacy<sup>36</sup> or libel.<sup>37</sup> However, the physician is privileged if he acts in good faith and reports fairly only to the relevant parties.<sup>38</sup> Some courts also look to whether the doctor is acting in a public interest.<sup>39</sup> California takes a further step and requires that even to state a cause of action for breach of this duty, the plaintiff must allege that the doctor acted maliciously in disclosing information.<sup>40</sup>

As it is the law in California, a physician's disclosure of information to the parents of his minor patients will seldom, if ever, result in civil liability. The question, then, is whether the disclosure provision in section 34.6 imposes an additional duty on the physician not to tell the parent *unless* the child provides him with information by which he can locate the parent or whether it gives the physician a right, in addition to the other privileges, to make disclosures under the circumstances described.

As stated above,<sup>41</sup> the original bill demanded that the physician notify the parents. The change from "shall" to "may" must have been to ease the obligation imposed on the doctor, and to enable physicians, who so desire, to maintain a confidential relationship with all minor patients. In light of this, the statute probably does not destroy the provisions of the prior law. Rather, it simply enlarges the doctor's rights. If he does notify the parents of the treatment given to a minor patient pursuant to the statute, the question of malice never arises, since he has an absolute right to do so. If he does notify the parents, yet locates them by means of

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ment given or needed if the physician and surgeon or dentist has reason to know, on the basis of the information given him by the minor, the whereabouts of the parents, parent or legal guardian." CAL. CIV. CODE 34.6 (West Supp. 1970) (emphasis added) as originally introduced.

<sup>36</sup> Griffin v. Medical Soc'y of New York, 7 Misc. 549, 11 N.Y.S.2d 109 (1939).

<sup>37</sup> Berry v. Moench, 8 Utah 2d 191, 331 P.2d 814 (1958).

<sup>38</sup> *Id.* at —, 331 P.2d at 819.

<sup>39</sup> Simonsen v. Swenson, 104 Neb. 224, 177 N.W. 831 (1920) (concerned with syphilis).

<sup>40</sup> See Schwartz v. Thiele, 242 Cal. App. 2d 799, 51 Cal. Rptr. 767 (1966); McPheeters v. Board of Medical Examiners, 103 Cal. App. 297, 284 P. 938 (1930).

<sup>41</sup> See note 35 *supra*.

collateral sources, then the normal rules of breach of confidence would apply, making malice a necessary element of a cause of action.

### OBSERVATIONS

California's new law regarding medical consent by a minor will pose a number of difficulties, especially for the physician. Each time he deals with a child he will have to interpret the statute and then determine whether or not that minor meets the stated requirements. Ignorance of the type of liability existing for an error in this determination may weigh heavily upon the doctor.

These problems have undoubtedly resulted from an attempt by the legislature to meet one specific need only: The need created by the often difficult and sometimes impossible burden of obtaining parental consent in order to render medical care to juveniles living away from home. Unfortunately, however, the legislature addressed itself to only one limited area of need, that resulting from the physical separation of parent and child. But for many children still living at home, there exists a psychological separation from their parents. Many of the health problems unique to today's youth reflect that separation. A prime example is the teen drug problem. While perhaps unfair to state that the youngster started using drugs because of his parents, to say that he often fails to obtain medical help because of the gulf is certainly reasonable. He cannot go to a physician for treatment without consent from his parents and is probably too frightened to go to them. In today's society this type of need is becoming all too common.<sup>42</sup> In fact the legislature has to some extent recognized a related problem in section 34.7 of the Civil Code,<sup>43</sup> where it permitted minors twelve or over to consent to treatment for communicable diseases required to be reported to local health officials, thus allowing minors to consent to treatment for venereal disease. But where does the legislature proceed? Does it continue to make laws for each new health problem which arises among the young? This will, of course, be impracticable. The only real solution is to give minors the same status as adults in obtaining medical treatment, at least minors above a certain age, such as fifteen. This has already been done in one state, Mississippi, by means of a statute<sup>44</sup> which provides that any unemancipated minor

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<sup>42</sup> See *Leary v. United States*, 383 F.2d 851, 861 (5th Cir. 1967).

<sup>43</sup> CAL. CIV. CODE § 34.7 (West Supp. 1970).

<sup>44</sup> MISS. CODE ANN. § 7129-81(h) (Supp. 1968): "It is hereby recognized and established that, in addition to such other persons as may be so authorized and empowered, any one (1) of the following persons is authorized and empowered to consent, either orally or otherwise, to any surgical or medical treatment or procedures

of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment may consent to such treatment. The arguments supporting such a statute are augmented by an increasing awareness of medical procedures at all age levels, particularly among juveniles. This is in part because we live in an age in which medicine has become more and more a matter of public interest. The public education systems have complemented this tendency and have often required Health and Hygiene courses. To say that a child could not understand and appreciate many of the dangers inherent in medical practices is not always true.

However, this would solve only one of the problems with California's new statute, for the financial problems as well as those relating to the confidential relationship between patient and doctor would still remain. Making the child expressly financially liable may deter youngsters from seeking help, thus defeating the very purpose of the statute. On the other hand, if children are not held expressly liable, the physician might be somewhat deterred from treating minors. This too would serve to defeat the purpose of such a statute.

Even if the child is held expressly liable for treatment, problems of collateral financial responsibility remain, that is, liability for support and maintenance which may arise as an indirect result of medical procedures secured by the child. To eliminate parental financial liability in this area would, in its effect, be unreasonable. It would also open the door for parents to encourage their youngsters to consent to medical care themselves, thus relieving the parents of any and all responsibilities for their children. On the other hand, holding parents liable on collateral matters related to medical treatment to which they did not consent may not be as unfair as it seems. Section 206 of the Civil Code<sup>45</sup> holds children liable for the support of poor parents. If the parents' need for assistance arose out of some previous medical treatment, the child could not disclaim liability because he was not consulted as to the treatment.

The type of confidential relationship involved also presents problems. With the physician it is mostly a matter of uncertainty. After reading the statute he may not be quite certain of its legal

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not prohibited by law which may be suggested, recommended, prescribed or directed by a duly licensed physician:

“h. Any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures, for himself.”

<sup>45</sup> CAL. CIV. CODE § 206 (West 1954).

meaning. But he is fairly safe in assuming that he will incur no liability regarding his actions, provided they are devoid of malice. But the statute presents much more of a problem for the child. Many times a child leaves home because of various problems with his parents. If that child cannot see a physician with the security of knowing that whatever transpires will be solely between the two of them, he is likely not to go at all. This naturally would defeat much of the value that such a statute has to offer. Therefore, a strict duty of confidence should be imposed upon the physician.

#### CONCLUSION

California's law, in spite of its ambiguities and uncertainties, does make a definite advance and will allow physicians to act in situations where action is needed. It does not, however, go far enough. In order to meet the demands of society and of today's youth the legislature should enact a statute similar to that of Mississippi. Furthermore, such a statute should include a provision holding the minor financially liable for the treatment provided, as well as a provision imposing the strictest duty of confidence on the doctor. To insure the performance of this duty parents must be expressly exempted from financial liability for the care, since physicians may otherwise bill the parents, thus opening a Pandora's box of problems.

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