

02-119

PROFESSIONS AND OCCUPATIONS: MEDICINE AND OTHER HEALING ARTS.

MENTAL HEALTH GENERALLY: SUBSTANCE ABUSE SERVICES.

Parent may consent to drug testing for minor child and obtain results of nondiagnostic drug testing performed on minor child not receiving treatment for substance abuse.

The Honorable Harry B. Blevins
Member, Senate of Virginia
December 10, 2002

Issue Presented

You ask whether § 54.1-2969, relating to the consent of a minor to certain medical procedures, prohibits a parent from requesting drug testing of the minor child without the child's written consent.

Response

It is my opinion that § 54.1-2969 does not preclude a parent from requesting and consenting to drug testing for his or her minor child or from obtaining the results of nondiagnostic drug testing performed on a minor child who is not receiving treatment for substance abuse.

Facts

You relate that you have received numerous inquiries resulting from the dissemination of information by local physicians claiming that parents cannot request drug testing of their minor child without the child's written consent. Therefore, you request an interpretation of § 54.1-2969 and its application to a parental request for drug testing of a minor child.

Applicable Law and Discussion

Section 54.1-2969 establishes the authority for obtaining consent from certain minors for surgical and medical treatment when parental consent is not available. With regard to substance abuse treatment, § 54.1-2969(E) provides:

A minor shall be deemed an adult for the purpose of consenting to:

....

3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203.^[1]

Section 54.1-2969(K) provides that "[n]othing in subdivision 3 of subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.1-203." Section 54.1-2969(K) makes it clear that a parent has the right to access the results of nondiagnostic drug tests of a minor child.²

Parents generally have the authority to make medical decisions for their children, including the authority to request and consent to testing, treatment, or both.³ Section 54.1-2969(E)(3) simply permits a minor child to consent to substance abuse treatment without the permission of a parent or guardian if the child desires such treatment. Nothing in § 54.1-2969(E)(3) precludes a parent from consenting to such treatment for the child.

Conclusion

It is my opinion that § 54.1-2969 does not preclude a parent from requesting and consenting to drug testing for his or her minor child or from obtaining the results of nondiagnostic drug testing performed on a minor child who is not receiving treatment for substance abuse.

¹"*Substance abuse*" is defined as "the use, without compelling medical reason, of alcohol and other drugs which results in psychological or physiological dependency or danger to self or others as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior." Va. Code Ann. § 37.1-203(2) (LexisNexis Supp. 2002).

²*But see* 42 C.F.R. pt. 2, § 2.1 *et seq.* (2001) ("Confidentiality of Alcohol and Drug Abuse Patient Records"). These federal regulations prohibit parental access to any minor's records pertaining to treatment, diagnosis, or referral for substance abuse when state law does not require parental consent. *Id.* § 2.14(b).

³*The Supreme Court has held that drug testing of minors in a school setting is permissible when a parent or guardian consents to such testing. Vernonia School*

Dist. v. Acton, 515 U.S. 646 (1995); see also *Parham v. J. R.*, 442 U.S. 584, 600 (1978) (holding that child's liberty interest in not being confined unnecessarily for medical treatment is inextricably linked with parent's interest in child's welfare and health), cited in *Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 278-79 (1990).

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