Idaho State Board of Medicine
The Report
Volume 1, Issue 1 Winter 2004

EMANCIPATED MINORS FOR HEALTH CARE LOUIE URANGA, JD

As a request for this article suggests, there is no statutory definition in the State of Idaho of an emancipated minor for health care purposes. Thus, reference must be made to other statutes.

The bright line for emancipation is found at Idaho Code §32-101. That code section defines a minor as a male or female under the age of 18 years. Thus, once a child attains the age of 18, they are an adult and emancipated. That code section further states: Provided, that any male or any female who has been married shall be competent to enter a contract, mortgage, deed of trust, bill of sale and conveyance and sue or be sued thereon.

Presumptively, the power to contract also includes the power to contract for medical care. Unfortunately, there is no case which specifically addresses this issue.

Emancipated minor is defined a bit differently in other Idaho Code sections. Under the Uniform Probate Code, a minor is deemed emancipated if the minor has been married, Idaho Code § 15-1-2(1)11. As to treatment and care of a developmentally disabled person, Idaho Code §66-402(6) provides that an emancipated minor means an individual between the ages of 14 and 18 who has been married.

Under the criminal statutes regarding abortion, Idaho Code § 18- 609A(5)(b) adds an additional provision for emancipation. That section states that, for purposes of abortion, emancipated minor means any minor who has been married or is in active military service. There is no legislative history to indicate why the, addition of being in active military service was added to this provision and no where else in the code provisions defining emancipated minor. However, it would, seem there have been no reported cases which attempt to define what the "circumstances" would be which would indicate the parent-child relationship has been renounced. Abandonment or termination of parental rights by formal court proceeding would be the most obvious circumstance evidencing the renunciation. However, the language of the statute suggests that this narrow reading is not the only circumstance in which the parent-child relationship may have been found to be renounced. The only direction that may be given in this regard is that when in doubt, error on the side of being conservative and treat the minor as being not emancipated.

Under the criminal statutes regarding abortion, Idaho Code§18-609A(5)(b) adds an additional provision for emancipation. That section states that, for purposes of abortion, emancipated minor means any minor who has been married or is in active military service. There is no legislative history, to indicate why the addition of being in active military service was added to this provision and no where else in the code provisions

defining emancipated minor. However, it would be a reasonable criteria or additional circumstance to consider for purposes of medical treatment.

Finally, the area that has received the most attention regarding the emancipation of minors is, as one may expect, in the context of child support. Child support is required to be provided for minor children. One exception to this obligation is when the child has become emancipated. Two cases that address this issue directly are **Ireland vs. Ireland, 123 Idaho 955 (1993)** and **Embree vs. Embree, 85 Idaho 443 (1963)**. In each of those cases, the court held that age is not the controlling factor in determining emancipation for purposes of child sup- port. A factor to be considered, according to these decisions, is the economic self sufficiency of the child resulting from the child's earnings. In each case, it was established the child was sustaining themselves through employment, including purchasing automobiles and working on a full time basis. There was further evidence the custodial spouse was not providing support for the child although the child continued to live in that household. In each case, the court found the child to be emancipated. In **Ireland**, the child was 16 years old. The court did express some reluctance in defining emancipation at that age, but nevertheless, upon the facts presented to it concluded in that particular case the child had been emancipated.

Drawing upon the above cited cases and statutory authorities, it would appear reasonable to conclude that a child is emancipated once they attain the age of 18 or if they have been married. Interestingly, all of the statutes refer to marriage in the past tense. Thus, a minor child who has been married and is now divorced continues to be emancipated. Further, in determining emancipation, if the child is in the active military service such evidence will appear sufficient to establish their independence and emancipation. If the minor child has not been previously married or has not been in the military service, one should assume they are not emancipated. While there may be circumstances in which a child is emancipated because of their economic self sufficiency, it would be difficult to evaluate that circumstance in the context of medical treatment. If a provider wishes to rely upon economic self sufficiency, it would be appropriate to condition such conclusion upon a statement of a parent that the child has been emancipated and is not dependent upon them for support.

In conclusion, based upon the applicable Idaho statutory and case law authority, a child may be deemed emancipated if they have been married or they are in the active military service. Beyond that each case will have to be examined separately and individually to determine the status of a minor who asserts emancipation.