

# Children's Health Defense



August 15, 2021

To: Chairman Kerry Roberts and Chairman John Ragan, Jr.  
From: Rolf G. S. Hazlehurst

Subject: August 18, 2021 Government Operations Committee meeting regarding the TN Department of Health's policies and the "mature minor doctrine."

Dear Chairman Roberts and Chairman Ragan,

I attended and briefly spoke during the Joint Government Operations Committee meeting on June 16, 2021. In accordance with Chairman Ragan's instructions, I am writing to bring to your attention past and current TN Department of Health policy statements regarding the administration of vaccines to minors without parental consent under the "mature minor doctrine" which are grossly inaccurate and highly misleading.

During the June 16, 2021 meeting, there was much discussion regarding the TN Department of Health [memo](#) dated May 12, 2021, which was written by Michelle Fiscus, MD FAAP, (former) Medical Director, TN Vaccine-Preventable Diseases and Immunization Program, TN Department of Health. Although Dr. Fiscus has been terminated from her previous position in part because of her memo, a key portion of her memo misrepresenting the "mature minor doctrine" remains on the States' website, TN.GOV, and it is obviously being relied upon by the TN Dept. of Health. The document in question is another memo entitled, "TN Department of Health, [Mature Minor Doctrine](#)."

According to an internal email dated June 29, 2021, between Dr. Fiscus and the Tennessee Department of Health Chief Legal Counsel, Grant Mullins, the Mature Minor Doctrine memo was placed on the State's website on or about April 26, 2021, "and is blessed by the Governor's office on the subject." Both memos are dangerous over simplifications of the mature minor

doctrine. The memos omit critical elements of the “mature minor doctrine” and distort the doctrine to the extent that both memos are inaccurate and highly misleading. **As described below, the TN Department of Health is relying upon and publishing very bad legal advice.**

The TN Department of Health is portraying to the average layperson and medical professionals, that the COVID-19 vaccine and other vaccines may be administered to children fourteen years of age or older without the parents’ knowledge or consent under the presumptions in the “Rule of Sevens”, which is part of the “mature minor doctrine.” The Department of Health memos give a dangerously over simplistic explanation of the “mature minor doctrine” and the Tennessee Supreme Court decision of [Cardwell v. Bechtol](#). The legal issues regarding the “mature minor doctrine” and the administration of vaccines are much more complex than what is explained in the memos.

The “mature minor doctrine” is a defense in a medical malpractice action. In essence, the TN Dept. of Health is taking a jury instruction in a medical malpractice claim and portraying it as the statewide standard of care for the administration of the COVID-19 vaccine and other immunizations. Whether a minor child has the maturity and mental capacity to consent to a specific medical procedure is a question that must be determined by a jury after reviewing and weighing all the evidence and individual facts of a case in accordance with the Tennessee Health Care Liability Act and specifically T.C.A. [29-26-115](#) and T.C.A. [29-26-118](#).

The TN Department of Health memos fail to mention key provisions of the TN Supreme Court’s decision in [Cardwell](#). The following are critical quotes from *Cardwell*, which the Department of Health officials continuously and intentionally omit.

**-Adoption of the mature minor exception to the common law rule is by no means a general license to treat minors without parental consent and its application is dependent on the facts of each case. It must be seen in the context of the tort in question.** (Emphasis added.)

-Whether a minor has the capacity to consent to medical treatment depends upon the age, ability, experience, education, training, and degree of maturity or judgment obtained by the minor, as well as upon the conduct and demeanor of the minor at the time of the incident involved. Moreover, the totality of the circumstances, the nature of the treatment and its risks or probable consequences, and the minor’s ability to appreciate the risks and consequences are to be considered. Guided by the presumptions in the Rule of Sevens, **these are questions of fact for the jury to decide.** (Emphasis added.)

-Accordingly, we hold that the mature minor exception is part of the common law of Tennessee. **Its application is a question of fact for the jury to determine** whether the

minor has the capacity to consent to and appreciate the nature, the risks, and the consequences of the medical treatment involved. (Emphasis added.)

**-We do not, however, alter the general rule requiring parental consent for the medical treatment of minors.** (Emphasis added.)

**By omitting the above referenced key quotes in [Cardwell](#), and distorting the meaning of the points which the memos cite, the TN Dept. of Health is twisting and distorting the ruling by the TN Supreme Court and deceptively portraying the age of fourteen as the age at which minors may receive vaccinations without the parents' consent as uniform and clear, which is not true.**

The TN Dept. of Health Mature Minor Doctrine [memo](#) begins by stating,

The 'mature minor' doctrine in Tennessee permits healthcare providers to treat certain minors without parental consent, according to the 'Rule of Sevens.' (*See Cardwell v. Bechtol*, 724 S.W.2<sup>nd</sup>. 739 (Tenn. 1987)).

The bullet points below the opening sentence blur the lines between the TN Supreme Court's ruling and the TN Dept. of Health's overreaching and grossly oversimplified argument. The third bullet point states,

Between the ages of 14 and 18, there is a rebuttable presumption of capacity, and the physician may treat without parental consent unless the physician believes that the minor is not sufficiently mature to make his or her own health care decisions.

The final sentence of the memo states,

Tennessee county health departments follow Tennessee law and provide medical treatment and vaccinations to patients as young as 14 without parental consent if the individual provider determines that the patient meets the definition of a mature minor in accordance with Tennessee law.

The TN Dept. of Health Mature Minor Doctrine memo is deceptive and dangerous to children. It also exposes health care providers who rely upon the memo to potential liability. Ultimately, under the "mature minor doctrine," it is up to a jury to decide if the child meets the requirements of the "mature minor doctrine" and this determination can be made only after the jury has considered the "totality of the circumstances."

To see how the TN Dept. of Health memos and over simplification of the “mature minor doctrine” is being confused and relied upon at the highest levels of TN Government, please see the attached letter dated May 17, 2021, from Commissioner Piercy to Representative Robin Smith. In the letter, Commissioner Piercy states, “The mature minor doctrine has been present in Tennessee since the 1980s and permits healthcare providers to treat certain minors without parental consent.” She then directs Representative Smith to the memo in question on the State’s website. Again, the circumstances in which a health care provider may administer vaccinations to a minor without the parent’s consent is not nearly as simplistic as characterized in the TN Department of Health memo, which omits critical points of law.

During the Government Operations committee meeting on June 16, 2021, Commissioner Piercy appeared with Tennessee Department of Health Chief Legal Counsel, Grant Mullins and the oversimplification and misrepresentation of the “mature minor doctrine” continued. Starting at the 7:00 minute time mark of the [committee meeting](#), Dr. Piercy described her understanding of the “mature minor doctrine” and stated that the “mature minor doctrine” was an “allowance”, which permitted health care providers to administer vaccines without the parents’ consent, “in their discretion.” Mr. Mullins gives his interpretation of *Cardwell v. Bechtol* at the 31:50 minute time mark. While it is possible that Commissioner Piercy does not understand [Cardwell v. Bechtol](#) and the application of the “mature minor doctrine” in Tennessee, it is inconceivable that the Tennessee Department of Health Chief Legal Counsel does not understand “the seminal case that was the adoption of the (mature minor) doctrine.” It is the case the TN Department of Health is relying upon to assert children fourteen years of age and older may be vaccinated without parental consent.

One of the powerpoints, which Commissioner Piercy presented while addressing the Committee, is entitled “Mature Minor Doctrine and COVID-19.” The first sentence of the powerpoint states, “The doctrine allows treatment of mature adolescents at the discretion of a licensed healthcare provider.” This powerpoint is highly misleading. **To the best of my knowledge, the “mature minor doctrine” has never been litigated in the context of the administration of vaccines in Tennessee.** Mr. Mullins did not cite a single court case involving the administration of vaccines and the “mature minor doctrine.” **The TN Department of Health memos, Commissioner Piercy’s statements and the powerpoint slide portray the issue of when a child may be vaccinated without the parents’ knowledge or consent as well established law in Tennessee. It is not.**

The second bullet point of Dr. Piercy’s powerpoint presentation to the Commission is also blatantly inaccurate. It states, “Among the services included under the mature minor doctrine are STD testing, family planning, vaccinations, and substance abuse treatment.” This statement is not true. These areas of law do not arise from the “mature minor doctrine.” The laws allowing health care providers to administer STD testing, family planning, and substance abuse treatment

to minors, prior to the age of eighteen, are all statutes enacted by the legislature, not offspring of the mature minor doctrine. (See [T.C.A. § 68-10-104\(c\)](#), [T.C.A. § 68-34-107](#), and [T.C.A. § 63-6-220](#)).

During her comments, Commissioner Piercy stressed that the “audience” for Dr. Fiscus’ memo was restricted to “enrolled vaccine providers” and “nobody outside of vaccine providers.” While strictly speaking Dr. Fiscus’ memo may have initially been sent to enrolled vaccine providers, Commissioner Piercy’s statement overlooks the glaring fact that the portion of the letter pertaining to the “mature minor doctrine” is word for word the exact same language as the memo currently on the [TN.GOV website](#).

**The memos have tremendous legal consequences.** In essence, the memos give a green light to health care providers to vaccinate minor children fourteen years of age and older without the parents’ knowledge or consent. The potential legal consequence of the memos is to strip away any legal action by the parents or children for a claim of lack of informed consent after the child has been injected with the vaccine(s). The sentence in the memos which states, “Tennessee county health departments follow Tennessee law and provide medical treatment and vaccinations to patients as young as 14 without parental consent if the individual provider determines that the patient meets the definition of a “mature minor,” has tremendous legal consequences. The legal consequence of the memos, and in particular that sentence, is a very effective attempt to establish a statewide standard of care as to the administration of the COVID-19 vaccine under the “[locality rule](#)” contained in [T.C.A. 29-26-115](#) and the standard of care as to informed consent contained in [T.C.A. 29-26-118](#). Please see my two minute comment during the June 16, 2021, [Gov. Ops. Committee meeting](#) (1:22:30 time mark).

**Because the legislature has not specifically addressed the age at which a child may consent to receive vaccinations, the age at which a child may consent to receive vaccinations is left in the broad category of “medical procedures.” The Department of Health is filling the void and attempting to unilaterally set Tennessee State law that is the responsibility of the Tennessee General Assembly.**

The last paragraph of Dr. Fiscus’ memo regarding the simultaneous administration of the COVID-19 vaccine with other childhood vaccinations is particularly troubling. The letter acknowledges that “it is unknown whether the reactogenicity is increased with coadministration, including with other vaccines known to be more reactogenic, such as adjuvanted vaccines.” The primary factor the last paragraph of her [memo](#) emphasizes is “whether the patient is behind or at risk of becoming behind on recommended vaccines.” The letter fails to explain that increased risk of reactogenicity equals increased risk of harm to the child. It should be noted that the [National Childhood Vaccine Injury Act of 1986](#), the National Vaccine Injury Compensation Program ([NVICP](#)) and the Supreme Court of the United States case of [Bruesewitz v. Wyeth](#) are all

based upon the premise that vaccine injury is “unavoidable.” In other words, if enough people are administered vaccines, some people will be injured. Please see the last sentence of the first paragraph of [Bruesewitz](#). “Most importantly, the Act eliminates manufacturer liability for a vaccine’s unavoidable, adverse side effects.” Medically, scientifically and legally [recognized vaccine injuries](#) include encephalopathy (brain damage), and death. The VICP has paid over [\\$4.6 billion](#) in vaccine injury claims.

Dr. Fiscus’ statement that “There is no federal, legal requirement for parent or caregiver consent for COVID-19, or any other vaccine” completely ignores the requirements of the National Childhood Vaccine Injury Act of 1986 and specifically [42 USC 30aa-25](#) and [42 U.S.C. 300aa-26](#).

**Although Dr. Fiscus has been fired, the legal damage caused by the TN Department of Health can only be cured by the legislature passing a law clearly defining the age at which a child may consent to the administration of vaccinations.**

In a related matter, the Governor’s [Executive Order #83](#) requires the people of Tennessee to have a very high level of trust in the Executive Branch of Government. The blatant misrepresentations of law by the Tennessee Department of Health, which includes the Tennessee Department of Health Mature Minor Doctrine memo, “blessed by the Governor’s office,” undermines the credibility of the Executive Branch.

I trust the Tennessee General Assembly will take the appropriate action.

If you have any specific questions, please contact me. I appreciate the opportunity to discuss this matter with you further.

Sincerely,

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