What limitations should be placed on the right of a specific child or adolescent to make decisions about his or her own health care? This is a continuing issue in the everyday practice of pediatrics [14, 17, 28, 30]. My friends who practice ambulatory pediatrics tell me that the number of adolescents who present themselves for treatment is increasing, they are becoming younger, and the situations in which they find themselves are more complicated.

At common law, a child, which meant anyone under 21, not 18, was a chattel of his or her parent – actually, of his or her father. A father had the right to sue a physician who treated his son or daughter without his permission, even if the treatment had been perfectly appropriate, because such an intervention contravened the father’s right to control the child.

That is still the rule with a young child in a non-acute situation. If a three-year-old is visiting his grandmother who brings him to a plastic surgeon to remove a birthmark the parents had decided to leave alone, the plastic surgeon is at substantial risk of suit from the parents if he operates without parental knowledge [6, 45].

In an emergency, any child, no matter how young, may be treated without parental consent [27, 41]. An “emergency” is any condition which requires prompt treatment, and does not mean solely a condition which may cause death or disability. If a four-year-old is brought to the Emergency Room by a 12-year-old baby sitter because he has cut his foot, if immediate attempts to locate a parent are unavailing, it is perfectly legal to sew up the child’s foot. In fact, I suspect that it is more likely that a suit would arise from letting a child lie around in an emergency room in pain because a surgeon could not find a parent and was too afraid of a suit to take care of the child, than it is that a parent would think of seeing a lawyer because a compassionate physician took care of a hurt or frightened child.

The emergency exception to parental consent would also cover the situation where a child or young adolescent presents for treatment of a relatively minor illness such as a sore throat or earache. Although my pediatrician friends tell me that ten-year-olds in fact do not come to the doctor by themselves, if one did, as long as the therapy presented few risks and the child understood the problem, if a parent could not be located it
would be perfectly all right to provide treatment.

To proceed to the more usual situation, courts in a great many contexts are permitting adolescents much more decisionmaking autonomy than they had in earlier times. Society has changed within the past twenty-five years and teenagers are much more independent in all areas of their lives. Courts have not been unaware of this.

I. THE EMANCIPATED MINOR

For at least two hundred years courts in the Anglo-American system have recognized the concept of an “emancipated minor.” This means one who is living on his or her own (in the earlier days of the law, it was on his own), is self-supporting, and is not subject to parental control. The old concepts of emancipation included minors in the military (of which there were numerous when the age of majority was 21) or married minors. The concept has evolved nowadays to include college students, even when parents are completely responsible for paying the bills, or unmarried minor mothers [3] – and in some states, a pregnant minor is considered completely emancipated. A runaway is also considered an emancipated minor, no matter how young he or she may be.

II. MINOR TREATMENT STATUTES

Because physicians were concerned about the legality of treating teenagers, many states have enacted what are known as minor treatment statutes. These provide a specific age, usually 16 but in some states it may be as young as 14, at which a minor may be considered completely independent for health care purposes and treatment may be given as if he or she were an adult. All states now have statutes giving a physician the right to treat any minor for VD without parental knowledge. Almost all states permit treatment of any minor for drug or alcohol problems without parental knowledge. Most of the VD, drug, and alcohol statutes in fact forbid informing parents without the child’s permission, since teenagers would not seek treatment for these problems without knowing that their parents could not find out about it. The North Carolina statute [32] provides that a physician may treat a minor of any age for VD, drug or alcohol abuse, pregnancy, or emotional disturbance without parental consent, although the statute explicitly excludes abortion, sterilization, or commitment to a mental hospital from its terms. I point out, however, that if a parent receives a bill, he or she will find out what the problem was.