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TO: MEMBERS OF THE LONG ISLAND JEWISH ORGANIZED MEDICAL STAFF

The issue concerning the rights of children to participate in health care decisions about their well being has been a topic of interest to UN committees and would give weight to the opinions of minors in these matters. The same is true in official Opinions issued by the American Academy of Pediatrics which, in addition to discussing assent opined that a patient should participate in decision-making "commensurate with their development." If it is considered that intervention is non-essential the opinion of the pediatric patient should be afforded considerable weight.

The statements above, while of interest, do not necessarily fit within the parameters of the laws in our state. The generally accepted broad and statutory rule in New York is that a minor does not have the ability to consent to medical treatment or make a decision regarding the same. As with all rules, however, there are exceptions to the rule. Example – our Public Health Law allows a pregnant minor to consent to needed prenatal care – and – that same minor – now a parent may herself consent to the medical treatment needed for her child.

New York Public Health Law does not require parental consent for a minor to seek and receive treatment for a sexually transmitted disease. Under Mental Hygiene Laws psychotropic medications are available for a minor's care regardless of parental consent if the treatment is in the interest of the patient.

New York case law understandably centers about those instances where one side regarded treatment at necessary and the other did not. In a landmark 1990 litigation, Long Island Jewish saw the need for a blood transfusion to save a life of a 17 year old and, on religious grounds both parents refused on "religious beliefs." The hospital went to court and explained that minus the transfusion the patient would die a painful death within a month. Permission was granted by the court. In its decision the court did make reference to

the doctrine of a "mature minor" to make a medical decision for himself/herself but ruled that the child (who would reach 18 within seven weeks), was not a "mature minor." Interestingly, the so-called "mature minor" designation discussion has not again appeared in reported cases.

Another interesting court opinion is found in a matter wherein a 15 year old cancer patient attempted to refuse a surgical biopsy which had been approved by his mother. The judge ruled that since the 15 year old lacked capacity in this instance to seek treatment himself, he lacked the capacity to refuse treatment.

It has been urged by some that New York adopt a statutory "mature minor" right so that the "mature minor" could give informed consent to medical care. How does one statutorily define who is and who is not mature? And – if there is a definition – does the treating physician want to have this burden in the perhaps not too few instances where it will be present?

Respectfully submitted,

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