

CAUTIONARY LETTER

**TO: ALL PHYSICIANS, PHYSICIAN ASSISTANTS,
CERTIFIED NURSE PRACTITIONERS/NURSE MIDWIVES**

**FROM: South Dakota State Board of Nursing
South Dakota State Board of Medical & Osteopathic Examiners**

As you are aware, the physician, certified nurse practitioner (CNP), or certified nurse midwife (CNM) treating a patient must obtain the consent of that patient. When the patient is a minor, the consent is generally furnished by the parents. When either a CNP, CNM, or a physician prescribes contraceptives for a minor, the immunity from liability which would generally result without obtaining the parental consent is not applicable. SDCL 20-9-4.2 states that the immunity is generally obtained in treating a minor if, in the opinion of the treating physician exercising competent medical judgment, the attempt to secure the consent would result in delay of treatment and threaten the minor's life or health. Therefore, under circumstances where the CNP, CNM, or physician treats the minor for a non-emergency without parental consent, the prescribing physician or CNP or CNM could be exposed to civil liability. Furthermore, we wish to caution that if a CNP or CNM operating under an agreement with a physician prescribes contraceptives, immunity from liability may not apply to the physician. In other words, the physician should, under his/her collaborative agreement, have knowledge of what the CNP or CNM is prescribing.

In the general case, the law appears to treat such matters as within the civil liability realm and not as a licensing issue. However, the joint boards have considered a complaint regarding this issue, and advised the CNP and physician that such prescribing should cease.

The federal law regarding this issue in a Title X Clinic, however, may allow the CNP, CNM, or physician in providing Title X services to treat the minors, including prescription of contraceptives, without parental consent. For guidance regarding the matter, consult legal counsel.

