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Dealing With the Parent Whose Judgment Is Impaired by Alcohol or Drugs: Legal and Ethical Considerations

ABSTRACT. An estimated 11 to 17.5 million children are being raised by a substance-abusing parent or guardian. The importance of this statistic is undeniable, particularly when a patient is brought to a pediatric office by a parent or guardian exhibiting symptoms of judgment impairment. Although the physician-patient relationship exists between the pediatrician and the minor patient, other obligations (some perceived and some real) should be considered as well. In managing encounters with impaired parents who may become disruptive or dangerous, pediatricians should be aware of their responsibilities before acting. In addition to fulfilling the duty involved with an established physician-patient relationship, the pediatrician should take reasonable care to safeguard patient confidentiality; protect the safety of the patient and other patients, visitors, and employees; and comply with reporting mandates. This clinical report identifies and discusses the legal and ethical concepts related to these circumstances. The report offers implementation suggestions when establishing anticipatory office procedures and training programs for staff on what to do (and not do) in such situations to maximize the patient's well-being and safety and minimize the liability of the pediatrician. *Pediatrics* 2004;114:869-873; *judgment impaired, alcohol, substance abuse, disruptive parent, informed permission, informed consent.*

ABBREVIATIONS. AAP, American Academy of Pediatrics; HHS, US Department of Health and Human Services; OSHA, Occupational Safety and Health Administration.

INTRODUCTION

In the course of providing health care services to children, pediatricians may encounter situations in which a patient arrives at the office accompanied by a parent, guardian, or caregiver who displays signs of judgment impairment. In these circumstances, pediatricians are challenged by an array of professional, ethical, and legal obligations, some of which may conflict. Pediatricians have sought guidance from the American Academy of Pediatrics (AAP) on how to respond to these potentially volatile and risk-laden scenarios. The purpose of this clinical report is to analyze the physician's poten-

tially conflicting duties and suggest ways that he or she can help both the child and the judgment-impaired adult in a situation fraught with legal complexity. This clinical report primarily addresses the situation in which the judgment of the parent, guardian, or caregiver is impaired by use of alcohol or drugs. However, the principles should be applicable to judgment impairment attributable to any cause (eg, prescription medication use, unstable medical condition such as diabetes, suspected dementia).

SCOPE OF THE PROBLEM

The Children of Alcoholics Foundation estimates that there are between 11 and 17.5 million children in the United States younger than 18 years currently living with a parent with alcoholism.¹ The number of children living in homes with an adult who abuses drugs is unknown. Clearly, this represents a substantial public health problem that most pediatricians will encounter at some point in their careers. Encounters with children accompanied by an impaired parent may take place wherever pediatric services are delivered. This report focuses on the legal and ethical issues pediatricians and their staff should consider when a patient's parent or guardian arrives at a pediatric office in a judgment-impaired state.

The profound effects of parental substance abuse on children have been described throughout the pediatric literature and summarized comprehensively in various AAP policy statements²⁻⁴ and the manual on substance abuse.⁵ A multidisciplinary working group developed a consensus paper titled "Core Competencies for Involvement of Health Care Providers in the Care of Children and Adolescents in Families Affected by Substance Abuse"⁶ to identify the pivotal role of the primary health care professional in addressing the health needs of children in substance-abusing environments. It also suggests levels of responsibility and competencies for health care professionals in protecting the health and safety of these children. By virtue of their training and experience, pediatricians are well aware of the long-term risks to the child's physical, mental, and developmental health and safety associated with parental substance abuse. Therefore, it is not necessary for this clinical report to address the effects of parental substance abuse on the child. Instead, the report outlines the immediate risks and legal considerations associated with managing a parent or guardian

The guidance in this report does not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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whose judgment is impaired from alcohol or drugs during a pediatric office visit.

LEGAL CONSIDERATIONS

Pediatricians should consider the following legal principles when dealing with the parent whose judgment is temporarily impaired by alcohol or drugs:

- the physician-patient relationship;
- the duty to act in the best interest and for the safety of the patient;
- the need to obtain informed consent;
- the importance of safeguarding patient confidentiality;
- the mandated reporting of suspected child abuse and neglect; and
- the duty as an employer and business owner to protect the safety of employees and visitors in the office.

At times, there may be apparent conflict in these obligations. Every case is unique. The general considerations in this report are provided to enable pediatricians to develop office policies responsive to these situations. In translating this guidance into office policy, pediatricians should seek advice from competent legal counsel to ensure that the office policy is appropriate for a specific health care facility in a given state. The report's implementation suggestions serve as general guidance and, as such, should not be considered a specific course of action for a specific situation.

PHYSICIAN-PATIENT RELATIONSHIP

The parents, guardians, or caregivers who accompany infants, children, adolescents, and young adults play an important role in pediatric encounters. Depending on the age and circumstances of the patient, the adult often provides consent to treatment, furnishes pertinent historical information on the family and the child, and is financially responsible for medical care. Nevertheless, the pediatrician needs to remember that the physician-patient relationship exists between the pediatrician and the child. Thus, the pediatrician's first duty is to the patient.

The physician-patient relationship conveys many duties; one is to prevent harm. If there is reason to believe that the parent's impaired judgment substantially risks harming the patient or others, the pediatrician should attempt to decrease that risk by the least restrictive means. For instance, an impaired parent should not be allowed to drive. Not only would the patient be in considerable danger if allowed to ride in a motor vehicle being driven by someone under the influence of chemical substances, but the parent and the public also would be endangered. Depending on the circumstances, taking appropriate action could involve securing alternate transportation (eg, calling a taxi, contacting another family member to intervene). It may necessitate reporting the situation to the appropriate authorities including police or child protective services if discussion with the parent fails to result in a safe and

satisfactory resolution. Local laws regarding public drunkenness or impairment may specify the appropriate course of action. Failing to fulfill the duty owed to a patient may constitute medical negligence and may even subject the pediatrician to liability from third parties.

BEST INTEREST OF THE PATIENT

Parents are presumed to have the best interests of their children at heart. Parents exhibiting signs of alcohol or drug impairment may be incapable of caring for a child properly. Therefore, the pediatrician's actions should be guided by the child's best interest, especially when the parent's condition compromises his or her ability to share that interest.

CONSENT TO CARE

Consent to care is a complicated concept in pediatrics. The ethical and legal considerations have been articulated in a number of AAP policy statements.⁷⁻⁹ Pediatricians should be aware that it is likely that judgment-impaired parents are incapable of giving informed consent for their children's medical treatment. Pediatricians may have to use their judgment in determining whether a parent is incapable of consenting for a child. In some situations, it may be apparent that the parent has recently used alcohol or drugs but may not necessarily be impaired. In these circumstances, the pediatrician should be very careful about providing nonemergent care because of liability concerns brought forth later about insufficient informed consent. Therefore, if the child, by virtue of age or legal status, cannot consent to his or her own medical treatment and the parent's competency to do so is uncertain because of the chemical impairment, it would be advisable to postpone routine nonurgent medical care until consent can be obtained. To provide nonurgent care without consent would risk allegations of unauthorized treatment and even battery.^{10,11}

However, in hospital emergency departments, the Emergency Medical Treatment and Active Labor Act¹² (EMTALA) plays a role. Under this act, a physician in certain situations may be mandated to screen for an emergency medical condition regardless of consent. Additional care may need to be given in the absence of consent if a delay would result in a threat of harm to the child's life or health. The EMTALA requirement for a medical screening examination does not apply to physician offices.

CONFIDENTIALITY AND PRIVACY

Parents have a reasonable expectation that information provided to the child's physician during a medical encounter will be considered confidential and protected by applicable laws. Thus, physicians should take reasonable care to safeguard health information obtained from the parent or guardian concerning the family (health and social history). Additional safeguards may be needed for sensitive topics such as substance abuse. These efforts should be reflected in the medical office's security policies for protecting patient records and other forms of identifiable health data according to any state and federal

(Health Insurance Portability and Accountability Act of 1996 [HIPAA]) laws.^{13,14}

Due care should be taken to ensure that discussions with parents, patients, and appropriate government agencies concerning the substance-abuse problem and the family are conducted in a manner that protects confidentiality. For example, if the receptionist notices that an adult appears to be intoxicated when checking in for an appointment, it might be prudent to isolate the impaired person from others so that he or she can be spoken to privately. That would be preferable to confronting the impaired parent in the reception area in the presence of his or her child and others. The office could have a policy in place to summon the impaired parent as though it were time for the child's appointment and usher him or her into a more private location (eg, an office, conference room, or examining room) and take the child ostensibly to be weighed or measured in another room. This not only would minimize the risk of the conversation being overheard by others but also could afford an opportunity to discuss the problem without the child being present. However, if the impaired parent is disruptive in the office reception area, quick action may be needed to contain the situation, and in such instances, keeping the impaired person from harming others would take precedence over preserving the confidentiality of his or her chemical impairment.

MANDATED REPORTING

Every state has enacted laws to mandate reporting of child abuse and neglect. This is a legal obligation that is extended to children outside the physician-patient relationship. The physician must put the child's best interest before the parent's expectation of privacy and comply with mandated reporting to child protective services.¹⁵⁻¹⁷

An issue paper from the US Department of Health and Human Services (HHS) titled "Current Trends in Child Maltreatment Reporting Laws" summarizes how the standards used to determine when a mandatory reporter is required to notify authorities of abuse or neglect vary slightly from state to state.¹⁸ These variances include who is a mandated reporter, the level of knowledge or suspicion of abuse necessary to report, and what constitutes abuse. The HHS issue paper provides a summary of common themes and general information on this complex topic. State Web sites may offer additional guidance to health care providers on mandated reporting of child abuse. However, specific legal advice interpreting the applicable laws and regulations is necessary when developing office policies for these situations.

It is important that mandated reporters understand these nuances in their state law. The patient should be carefully assessed for other signs of neglect or abuse. To do otherwise puts the pediatrician at risk of prosecution for failure to report suspected abuse or neglect of the patient. Should the patient subsequently be harmed as a consequence of the physician failing to act, the physician could be sued for medical negligence or face possible sanctions from a state licensing board. Anyone who is man-

dated to report suspected child abuse or maltreatment and fails to do so could be subject to criminal charges and could be sued in a civil court for monetary damages for any harm caused by their failure to report.

Two states impose penalties on mandatory reporters who intentionally, negligently, or purposefully fail to report suspected abuse. A few states impose penalties without imposing a standard. Failure to report is classified as a misdemeanor in approximately 35 states. Typically, sanctions are in the form of a fine and/or imprisonment.

Of greater impact on mandatory reporters themselves are the provisions exposing them to civil lawsuits for failure to report. The potential financial liability for additional injury of a child whose maltreatment should have been detected and prevented by a timely report can be considerable.

If a mandated reporter makes a report in earnest concern for the welfare of the child, that reporter is immune from any criminal or civil liability that may result. However, this good-faith immunity may not be available when the liability results from willful misconduct or gross negligence by the mandated reporter. Approximately 30 states impose penalties for false reporting of abuse. The most common standards used are knowingly and/or willfully filing an unproven report of abuse or neglect. A few jurisdictions impose penalties for intentionally making an unproven notification of abuse or neglect.¹⁸

GENERAL DUTY

In recent years, health care facilities have become targets of violence. Thus, the Occupational Safety and Health Administration (OSHA) has imposed regulations requiring health care employers to establish policies and procedures to safeguard employees from violent actions. Specific recommendations are enumerated in the OSHA regulations under the general duty heading.¹⁹ Several documents are available on the OSHA Web site (www.osha.gov) that can be helpful in establishing practical step-by-step safety policies to protect employees in health care settings from potentially violent visitors.

IMPLEMENTATION SUGGESTIONS

The following suggestions are intended to help pediatricians implement office policies and procedures that may minimize legal risks should a patient arrive at the medical office in the care of an adult whose judgment is impaired.

Safety

Conduct a safety audit of your facility, including procedures for management of judgment-impaired visitors. Establish an office policy and train staff to respond appropriately. Incorporate this policy into your OSHA compliance program. Review and update the policy periodically. If the procedure is implemented, document the incident, how it was handled, and any injuries that occurred and evaluate whether the safety policy needs to be revised as a result of this occurrence. Maintain these records in a secure area of the office. Contact your professional

liability insurance company to determine whether consulting services for developing such a loss-prevention program are available.

Confidentiality

Verify the confidentiality laws applicable in these situations and align your office confidentiality policies with these laws. Unless state laws indicate otherwise, the physician's duty to the patient should take precedence over the parent's expectation of confidentiality. Discuss with the parent your concerns regarding the risk to the child caused by his or her impairment in a compassionate, nonjudgmental fashion. Use the benefit of your previous rapport and professional relationship to show that the concern is for both the child's and the parent's welfare. Both the child and the parent should know what is happening and why it is necessary. Provide a referral for counseling to address the parent's substance abuse and its effect on the child. The Substance Abuse and Mental Health Services Administration of the HHS maintains a searchable directory of 12 000 facilities with treatment programs for drug and alcohol abuse throughout the United States (<http://findtreatment.samhsa.gov>).

Consent

Remember that an impaired parent cannot consent to medical treatment for the child. Therefore, it would be prudent to postpone nonurgent pediatric care until a time at which consent can be obtained. If no care is delivered, it is suggested that the physician document in the medical record that "valid and sufficient consent was not given by the parent for treatment today."

Mandated Reporting

It would be difficult to imagine how children under the care of an adult whose judgment is sporadically or habitually impaired by alcohol or drugs would not be at risk of harm. Use your best clinical judgment to determine the specific risks that the parent's condition poses to the child, and take action accordingly. Be knowledgeable of your state's laws governing reporting child abuse, standards of abuse, and consequences of failing to report for mandated reporters. Contacting child protective service agencies may be the only way to get treatment for the parent and protection for the child. If you believe that the judgment-impaired person may harm himself or herself or others, take action in accordance with applicable laws. Summoning for police escort or emergency personnel to transport the impaired adult to the emergency department for evaluation and treatment may be necessary. Should the child's custodial parent or guardian agree to it, it may be preferable to release the child to the care of a relative rather than have the child accompany the parent to the emergency department or police station. However, child protective services may be in the best situation to make such determinations.

The greatest risk is to do nothing.

DISCLAIMER

The information contained in this clinical report is provided for educational purposes only and should not be used as a substitute for licensed legal advice.

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