CLINICAL REPORT Guidance for the Clinician in Rendering Pediatric Care

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

Steven A. Bondi, JD, MD, FAAP,[a] James Scibilia, MD, FAAP,[b] COMMITTEE ON MEDICAL LIABILITY AND RISK MANAGEMENT

An estimated 8.7 million children live in a household with a substance-using parent or guardian. Substance-using caretakers may have impaired judgment that can negatively affect their child's well-being, including his or her ability to receive appropriate medical care. Although the physician-patient relationship exists between the pediatrician and the child, obligations related to safety and confidentiality should be considered as well. In managing encounters with impaired caretakers 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 their patient, other patients in the facility, 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 procedures and training programs for staff in such situations to maximize the patient's well-being and safety and minimize the liability of the pediatrician.

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 caretaker* 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 potentially conflicting duties and suggest ways to interact with both the child and the judgment-impaired

* The term "caretaker" will be used throughout this report to represent a parent, guardian, or other adult who is accompanying a child and providing permission for treatment.

abstract

[a]*Department of Pediatrics, School of Medicine and Dentistry, University of Rochester, Rochester, New York; and* [b]*Heritage Valley Pediatrics, Beaver, Pennsylvania*

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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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adult in a situation fraught with legal complexity. This clinical report primarily addresses the situation in which the judgment of the caretaker is impaired by use of alcohol or drugs. However, the principles are also applicable to judgment impairment attributable to any cause, such as behavioral health issues, dementia, or an unstable medical condition.

SCOPE OF THE PROBLEM

The US Department of Health and Human Services estimates that 8.7 million children in the United States live in a household with a parent with a substance use disorder. Of those, 7.5 million children are currently living with a parent with an alcohol use disorder, and 2.1 million children are living with at least 1 parent with a drug use disorder.[1] Given the commonality of substance use disorders, it is likely that pediatricians will interact with caretakers under the influence of drugs or alcohol at some point in their careers. Encounters with children accompanied by an impaired caretaker may take place wherever pediatric services are delivered.

The impact of caretaker substance use on children is profound and has been described in the pediatric literature. Two AAP publications examine the pivotal role of the primary health care provider in addressing the health needs of children whose caretakers use drugs or alcohol.[2,3] An extensive discussion of the impact of parental substance use is better addressed by those resources and is beyond the scope of this report. Instead, the report outlines the immediate risks and legal considerations associated with managing a caretaker whose judgment is impaired for any reason during a medical encounter.

ETHICAL AND LEGAL CONSIDERATIONS

There are multiple ethical and legal issues involved when dealing with a caretaker whose judgment is impaired by any means, but most often, this involves alcohol or drugs. Impairment is defined as "the state of being diminished, weakened, or damaged, especially mentally or physically."[4] What constitutes a significant impairment is highly contextual. Consider that an airline pilot may not consume alcohol for 8 to 12 hours before flying, but adults are legally permitted to drive having just consumed an appropriate-sized alcoholic beverage. Given that the assessment of impairment can be subjective and influenced (perhaps unconsciously) by such factors as the caretaker's race, ethnicity, or socioeconomic status, it is critically important for the pediatrician to be aware of his or her own biases, including the possibility of unconscious bias, when making a determination of impairment. For example, in 1 study, given comparable levels of maternal drug use based on urine drug screens, women who were economically disadvantaged or from ethnic or racial minorities were more likely to be reported to child protective services compared with other women.[5] Staff training for the acknowledgment and recognition of bias can be helpful.

Pediatricians should consider how caretaker impairment might affect

- the physician-child, physician-family, and family-child relationships;
- the duty to act in the best interest and for the safety of the patient;
- the need to obtain informed permission from a competent legal guardian;
- the importance of safeguarding patient confidentiality;
- the mandated reporting of suspected child abuse and neglect; and
- the duty as an employer, business owner, or supervisor to protect the safety of employees and visitors in the office.

These obligations can be complex and nuanced and can appear to conflict. The general considerations in this report are provided to enable pediatricians to develop broad policies responsive to these situations. In translating this guidance into specific policy, pediatricians should seek advice from competent legal counsel so that policies accord with appropriate state law. The report serves as general guidance and, as such, should not be considered a specific course of action for any particular situation.

PHYSICIAN-PATIENT RELATIONSHIP

The parents, guardians, and other caretakers who accompany infants, children, and adolescents play an important role in pediatric encounters. For most children, the adult provides permission for treatment, furnishes pertinent historical information, is responsible for implementing the treatment plan, and is financially responsible for medical care. It is important to remember, however, that the physician-patient relationship exists between the pediatrician and the child. The pediatrician's first duty is to the best interests of the patient.[6]

The physician-patient relationship conveys many duties, the first of which is to prevent harm. When the pediatrician believes that the accompanying adult's impaired judgment substantially risks harming the patient, the caretaker himself, or others, the pediatrician should act. Confrontations should be avoided, if possible. For instance, all reasonable steps should be taken to keep an impaired caretaker from driving. Not only would the patient be in considerable danger if allowed to ride in a motor vehicle being driven by someone who is impaired, but the caretaker and the public would also be endangered. Depending on the circumstances, appropriate action could involve arranging alternate

transportation (eg, calling a taxi, contacting another family member to intervene) or providing temporary emergency child care. In cases of immediate danger when discussion with the caretaker fails to result in a safe and satisfactory resolution, law enforcement should be called. In such circumstances, child protective services should also be contacted (see below, Mandated Reporting). Courts have generally not recognized a duty to protect a nonpatient from his or her own behavior, so it is unlikely that a physician would be held civilly liable for failure to protect the impaired caregiver. Failing to safeguard the child patient from the caregiver, however, could constitute negligence.

BEST INTEREST OF THE PATIENT

Parents and guardians are legally and morally required to act in the best interests of their children.[7,8] Caretakers 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 caretaker's condition compromises his or her ability to share that interest.

PERMISSION FOR CARE

Permission for medical care can be complicated in pediatrics. The doctrine of informed consent has limited direct application in pediatrics because parents and other surrogates provide informed permission rather than informed consent for diagnosis and treatment of children. Ethical and legal considerations are articulated in a number of AAP publications.[9–12] A pediatrician should always use his or her judgment to determine if a parent, guardian, or medical proxy is capable of providing informed permission. Judgment-impaired caretakers may lack the capacity to provide informed permission for their child's medical treatment. In some situations, it may be apparent that the caretaker has recently used alcohol or drugs but may not be obviously impaired. Pediatricians should take care in these circumstances because the sufficiency of informed permission can be challenged after the fact. Accordingly, if the child, by virtue of age, medical condition, or legal status, cannot consent to his or her own treatment, and the caretaker's capacity to give permission is uncertain because of the impairment, it would be advisable to postpone routine, nonurgent medical care, including, but not limited to, routine physical examinations or immunizations. The provision of nonurgent care without appropriate consent or permission is unethical and risks allegations of unauthorized treatment and even battery.[13–15]

Hospital emergency departments are bound by the Emergency Medical Treatment and Active Labor Act.[16] Under this law, a physician in certain situations is mandated to perform a "medical screening examination" to assess for an emergent medical condition, regardless of consent. Additional care may need to be given in the absence of consent or permission if a delay would result in a threat of harm to the child's life or health. The Emergency Medical Treatment and Active Labor Act requirement for a medical screening examination generally does not apply to physician offices, unless located at the same facility as a hospital.

CONFIDENTIALITY AND PRIVACY

Caretakers 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. Physicians should take reasonable care to safeguard health information obtained from the caretaker concerning the family, such as health and social history. Additional safeguards may be needed for topics such as substance use or mental health concerns. These efforts should be reflected in the medical office's privacy and security policies for protecting patient records and other forms of identifiable health data according to any state and federal laws, including the Health Insurance Portability and Accountability Act of 1996.[17–19]

Although generally not protected by law, attempting to maintain the privacy of interactions with an impaired caretaker is appropriate. Discussions with caretakers, patients, and others concerning substance use or other impairing problems should be conducted in a manner that maximizes privacy and confidentiality. For example, if the receptionist notices that a caretaker appears to be intoxicated when checking in for an appointment, it might be prudent to direct the impaired person to an area where he or she may be spoken to discreetly. This would be preferable to a confrontation in the reception area in the presence of the caretaker's child and other patients. However, if the impaired individual is disruptive, quick action may be needed to contain the situation. In such instances, keeping the impaired person from harming others would take precedence over preserving his or her privacy. Office policy and staff training can be helpful in anticipating and appropriately dealing with these circumstances.

MANDATED REPORTING

Every state has enacted laws to mandate reporting of child abuse and neglect. Physicians and other mandated reporters are required to put the child's best interest above the privacy concerns of the caretaker.[19,20]

The standards used to determine when a mandatory reporter is

required to notify authorities of abuse or neglect differ from state to state, including who is a mandated reporter, the level of knowledge or suspicion of abuse necessary to report, and what constitutes abuse.[21] Although definitions vary, generally, the pediatrician is required to report when he or she has a reasonable suspicion that a child has been abused or neglected. A child driven to the pediatrician's office by an intoxicated caretaker would clearly meet this threshold. In situations in which the caretaker is using a legal substance but is not actually intoxicated or in which there is a recent history of caretaker substance abuse, the decision to report is more challenging. In such circumstances, it is incumbent on the pediatrician to consider all available information in the decision to report, including but not limited to past medical and social history, conversations with the child and family, results of the medical examination, and any other relevant factors. Even interactions with the caretaker on social medial might be informative. It is important to remember that the threshold for reporting is generally low: a reasonable suspicion.

The US Department of Health and Human Services has compiled a summary of state and territory laws regarding mandated reporting.[21–23] State Web sites may offer additional guidance to health care providers on mandated reporting of child abuse. Health care providers are wise to understand the applicable law in their jurisdiction and to seek qualified legal advice interpreting the applicable laws and regulations as necessary. Forty-eight states, as well as the District of Columbia and a number of US territories, permit penalties on mandatory reporters who knowingly or willfully fail to report suspected abuse. Penalties vary from state to state but typically include monetary fines and/or jail time.[22] In addition, mandatory reporters expose themselves to civil lawsuits for failure to report. Should the patient subsequently be harmed as a consequence of the physician failing to act, the physician could be sued for medical negligence[24] or face possible sanctions from a state licensing board.[25] Reports made in good faith out of concern for the welfare of the child provide criminal and civil immunity to the reporter, but this immunity does not apply if there is willful misconduct or gross negligence by the reporter.[23,26] As of 2015, 29 states impose penalties for false reporting of abuse. These vary from state to state, range from misdemeanor to felony charges, and include monetary fines and potential jail time. False or negligent reporting also places the reporter at risk for a civil lawsuit.[22]

DUTY TO PROTECT EMPLOYEES AND VISITORS

In recent years, health care facilities have become targets of violence. Violence or threat of violence necessitates the involvement of law enforcement. There are no national standards specifically addressing workplace violence, although federal law requires that "each employer shall furnish to each of his employees employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."[27] This is referred to as the General Duty Clause, and specific recommendations are enumerated by the Occupational Safety and Health Administration (OSHA).[28] Helpful information in establishing step-by-step safety policies to protect health care employees from potentially violent visitors can be found on the OSHA Web site (https://www.osha.gov/SLTC/workplaceviolence/).[29] Certain "low-risk industries," including physicians' offices, are exempt from reporting injuries and illness to OSHA.[30] However, when a workplace incident results in a fatality or serious injury, including inpatient hospitalization, reporting is required.[31] State and local agencies may have broader regulatory and reporting requirements.

A safety audit can be performed to evaluate the workplace for various hazards, including workplace violence. Online resources are available for a self-performed audit, but a safety and security professional may provide a more-detailed and comprehensive analysis.

RECOMMENDATIONS

The following recommendations 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

Physician practice owners and employers: 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 if consulting services for developing such a loss-prevention program are available. Report any episodes of workplace violence to your insurance carrier, OSHA, and any state or local agencies as appropriate.

Physician employees: review facility safety policies and discuss procedures with your employer.

Encourage the employer to conduct periodic safety audits of the premesis.

Confidentiality

Verify applicable confidentiality laws and align your office policies with these laws. Unless state law indicates otherwise, the physician's duty to the patient should take precedence over the caretaker's expectation of confidentiality.

Conversations regarding the caretaker's substance use can be challenging. The tension of this dialogue can be mitigated by

- having a supporting and safe environment;
- emphasizing that your purpose is the safety and well-being of the child as well as support for the caretaker;
- discussing your concerns regarding the risk to the child caused by the caretaker's impairment in a compassionate and nonjudgmental manner, using the benefit of your previous rapport and professional relationship; and
- assisting the individual in finding resources to address his or her substance use and its effect on the child, as appropriate. A recommendation for the individual to discuss options with their primary care physician can also be an effective means to medically address related issues.

Consent and Permission

An impaired caretaker may not be able to give permission to medical treatment of the child. Therefore, it would be prudent to postpone nonurgent pediatric care until a time at which permission can be obtained. If no care is delivered, it is suggested that the physician document in the medical record that "valid and sufficient consent or permission was not given by the caretaker for treatment today."

Mandated Reporting

Use your best clinical judgment to determine the specific risks that the caretaker's condition poses to the child. 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. If you believe there is an acute risk to the child because of the caretaker's condition, contacting law enforcement and child protective agencies is an appropriate means to secure the child's safety and obtain appropriate treatment of the impaired caretaker. Should the child's custodial parent or guardian agree, it may be preferable to release the child to the care of a relative rather than have the child accompany the caretaker to the emergency department or police station. Child protective services may be in the best position to make such determinations.

LEAD AUTHORS

Steven A. Bondi, JD, MD, FAAP
James P. Scibilia, MD, FAAP

COMMITTEE ON MEDICAL LIABILITY AND RISK MANAGEMENT, 2017–2018

Jon Mark Fanaroff, MD, JD, FAAP, Chairperson
Robin L. Altman, MD, FAAP
Steven A. Bondi, JD, MD, FAAP
Sandeep K. Narang, MD, JD, FAAP
Richard L. Oken, MD, FAAP
John W. Rusher, MD, JD, FAAP
Karen A. Santucci, MD, FAAP
James P. Scibilia, MD, FAAP
Susan M. Scott, MD, JD, FAAP
Laura J. Sigman, MD, JD, FAAP

STAFF

Julie Kersten Ake

ABBREVIATIONS

AAP: American Academy of Pediatrics
OSHA: Occupational Safety and Health Administration

Address correspondence to Steven A. Bondi, JD, MD, FAAP, Department of Pediatrics, University of Rochester School of Medicine and Dentistry, Rochester, NY. E-mail: steven_bondi@urmc.rochester.edu

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