Pediatric dentists and the law of child abuse

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Abstract

Legal issues for the pediatric dentist confronted with suspected child abuse or neglect include: what must be reported, to which agency, with what certainty, and with what liabilities and protections. Reporting laws are part of an overall protective structure which extends to children victimized either within families or by unfamiliars. Dentists need to be at least generally aware of the requirements for documenting cases for court, as well as their potential role as witnesses. Consultation with physicians, lawyers, and other professionals when indicated is part of modern, multidisciplinary practice.

Dentists participating in the diagnosis and management of child abuse and neglect share with other health professionals a common effort to improve the lives of children harmed within or outside of the home. Health professionals failing to respond knowingly to children in need also risk individual and corporate liability. The dentist's specific duties and liabilities under the law are part of a larger child protection framework.

The Legal Structure of Child Protection

With the advent of mandatory reporting of suspected child abuse in the early 1960s, the documented incidence and prevalence of child abuse and neglect began to increase dramatically. Reporting of child abuse is thus part of an overall protective system, and serves a case-finding function comparable

to that of infectious disease reporting. Similarly mandated, social services agencies, and sometimes law enforcement agencies, are required to respond to reports by evaluating the report, child, and general circumstances of the child's care.

Given that an important goal and common result of reporting is further information about a child's well-being or endangerment, no reporting professional is responsible for "proving" a case of child abuse or neglect. The law can be a tool for assuring that a thorough examination of the child's safety is completed without depriving a child or parent of procedural safeguards. Without the authority of law, many abused or neglected children would not have their situations thoroughly investigated. Allaying suspicions about parental caretakers also serves the child and the family, and may lead to other explanations for harm observed. Other explanations developed may include not only quite rare medical conditions, but less rare harms to children by individuals other than parents.

Finally, the law can help assure that local standards of minimal care for children — in effect, what the community will tolerate as minimally acceptable care — will be observed for each child. Without these procedures, parents and professionals are left to speculate, without a clear normative structure, as to the relative responsibilities of professionals treating children when the health of a child is jeopardized by the very individuals empowered to make decisions on behalf of the child.

Law as a Therapeutic Tool

While use of the courts to solve conflicts is not an immediately attractive course of action, it is an available response to harms inflicted by one person on another. Moreover, perhaps the courts can have a surprisingly beneficial influence in some cases of abuse or neglect. In one study, families court-ordered into therapy were 5 times more likely to complete the indicated therapy than a group of families initially agreeable to services. Both sets of families were confirmed to be abusive, although the voluntary parents "admitted" by agreeing to services whereas the court-ordered families were found by a judge, in a formal trial, to have abused their children.[1]

Court-ordered supervision in the home, special day care arrangements, or foster care to protect a child who cannot be protected in the home, all are possible only through the courts if parents refuse services. In the worst cases, court-ordered dissolution of the parent-child legal relationship will increase the chances that a child will be given adequate care and safety to maturity. Imprisonment of a parent for severe abuse may or may not be appropriate, depending on the special facts of a case,[2] but alone cannot assure the long-term safety obtained by a permanent placement for the child.

Crimes against Children

Knowledge of the signs and symptoms of nonaccidental trauma, neglect, and sexual abuse are important to dentists treating children for reasons other than possible parental abuse or neglect. Children are victimized in many ways, and by many individuals, not always recognized by parents or professionals. Interpretation of bite marks, identification of victims through dental charts, and observations of behavioral signs and symptoms associated with victimization all are potential contributions to the safety of children. A parent truly caring for a child is likely to be quite grateful to the professional who uncovers harm to that child by another person, as in the instance of undisclosed sexual abuse. Care of the "whole child" depends on health professionals able to understand the general circumstances of a family, the developmental stage of a given child, and the use of specialists from within and outside of dentistry to help in diagnosis and management of child maltreatment.

Specific Laws of Child Protection Applied to the Dentist

Reporting of a suspicion of child abuse or neglect is expressly required of dentists in some states.[3] All but 5 states require reporting by medical professionals, defined in different ways,[4] and those 5 require reporting by everyone,[5] which reasonably could be interpreted to include dentists. The protective services agency should receive the report in most cases, although the police also can receive reports. Dentists who report are immune from criminal or civil liability[6] as long as their suspicion has a reasonable basis, meaning that unless they are reckless with their diagnosis or know a report is false, immunity is complete. Even in those states which do not expressly require reporting by dentists, any dentist reporting a reasonable suspicion of child abuse or neglect is likely to be under a statutory grant of immunity or protected under common law.[7]

If a diagnosis of child abuse or neglect is suspected, the reporting process is intended to assure that the possible diagnosis is verified or ruled out. Sometimes appropriate professionals cannot be sure and, therefore, further intervention cannot be justified. The dentist can determine whether there is a basis to suspect child abuse or neglect. Other professionals similarly must decide within their own competency, e.g., social work, medicine, mental health, or law enforcement, whether there is a basis to proceed. If legal action is taken, lawyers present the available evidence, but a judge or jury must determine whether

or not abuse or neglect is confirmed for legal purposes. Even if there is an admission of harm by the caretaker, a judge often must rule formally to accept the admission if it is to have legal force. The dentist must prove nothing, except that a reasonable basis for reporting existed at the time of the report, and then only if the report is challenged.

Failure to report does not carry the same degree of protection for the dentist. If a dentist either knew or should have known that a child was abused or neglected, he may be prosecuted criminally in some states or may be held civilly liable in monetary terms for not reporting. A general medical practitioner pleaded "no contest" to charges of manslaughter in Los Angeles in 1984 after failing to report a case of child abuse which eventually led to the child's death.[8] At least 3 other physicians have been sued for failure to report.[9] One settled[10] and one lost at trial and was ordered to pay $186,851 in damages.[11] In summary, current legislation and case law clearly favor the reasonable reporter.

The Dentist as Witness

Careful documentation of dental findings may prevent a child from having to appear as a witness, as well as saving a child from futher harm by a perpetrator. Findings should be kept in a business-like, contemporaneous manner. In suspected cases of abuse, X rays, laboratory test results, and sometimes even back-up samples for retesting, bite impressions, hair and similar physical evidence must be identified as to source, time obtained, and the person obtaining the information. Maintaining the evidence in a rigorous way in the custody of responsible individuals preserves the "chain of evidence." When in doubt as to these procedures, a district or state's attorney should be contacted.

The dentist called to testify should initiate contact with any lawyer who is calling the dentist to the stand, if he is unsure as to the issues of fact or law in at least general terms. On the stand, the dentist has rights which include being able to state that a response of "yes" or "no" would be misleading; although a yes or no answer still can be required subsequent to explanation, the dentist can request a chance to review his own records or charts to refresh his memory, and request to have a question restated or clarified.

The Dentist as Diagnostic Team Member

Child protection teams[12] are common at medical facilities handling a large number of child abuse and neglect cases, and also are found frequently at the community level, where they generally are established by departments of social services. In a complex diagnostic area like child abuse, the ability to consult quickly with other professionals is invaluable. The use of multidisciplinary teams increases the chances that an appropriate diagnosis will be made, and decreases the chances that diagnosing professionals can be sued successfully for malpractice.

The Dentist and the Child Patient

Among the persons who may abuse or neglect children must be included professionals who come in contact with or care for children. Not surprisingly, sexual abuse of a patient may lead to criminal prosecution, monetary damages, and professional disciplinary proceedings.[13] Similarly, physical abuse can be a basis for criminal or civil complaints. Techniques such as physical restraints, hand-over-mouth, and other applications of force should be considered carefully before use. Limited physical force is permissible only in special situations, for example as self-defense.

The dentist wishing to act as an effective steward for children has many opportunities to do so. Improving techniques for reassuring children, obtaining consent appropriate to their developmental age, preventing inappropriate procedures by colleagues, and acting against the various forms of sexual or physical abuse, as well as physical and emotional neglect are among the ways that pediatric dentists can act within dentistry and more broadly as advocates for children.[14]

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1. Wolfe DA, Aragona J, Kaufman K, Sandler J: The importance of adjudication in the treatment of child abusers: some preliminary findings. Child Abuse and Neglect 4:127–36, 1980.
2. Examples of situations in which prosecution and imprisonment would be agreed to be appropriate by most would-be cases of torture, or persons with long histories of violence not responding to intervention.
3. Besharov DJ: The legal aspects of reporting known and suspected child abuse and neglect. Vill Law Rev 23:458, 1978.
4. Trends in child protection laws, report no 128. Denver: Education Commission of the States, 1979.
5. Id.
6. Paulsen M: The legal framework for child protection. Columbia Law Rev 66:679, 1966.
7. Foster HH, Freed DJ: Battered child legislation and professional immunity. Am Bar Assoc J 52:1071, 1966; McCoid AH: The battered child and other assaults upon the family. Minn Law Rev 50:1, 1965.
8. Los Angeles Times, Saturday, December 1, 1984, Metro Section, p 1.
9. Robinson v. Wical, unreported case, CA no 37607 (Cal Super Ct, San Luis Obispo, filed September 4, 1970), cited in Thompson ML: Civil suit: an abused child's only protection. Probate Law J 6:85, 1984; Landeros v. Flood, 50 Cal3d 399,

551 P2d 389, 131 Cal Rptr 69, 1976; O'Keefe v. Dr. Pablo Osorio and Osorio Medical Center Ill, Cook Cty Circuit Ct, no 70L14884 (1984) cited in ATLA Law Rep 27:392, 1984.

10. Robinson v. Wical cited above. The agreed award was for a $600,000 trust fund.
11. O'Keefe v. Dr. Pablo Osorio and Osorio Medical Center Ill, cited above.
12. Schmitt BD: The Child Protection Team Handbook. New York; Garland, 1978.
13. For example, see brief article on Public Service Mutual Insurance Co v. Goldfarb, 442 NYS2d 422, 1981; found at J Am Dent Assoc 104:122–23, 1982.
14. For a more thorough discussion of legal aspects of child abuse and neglect for dentists see Sanger RG and Bross DC: Clinical Management of Child Abuse and Neglect, A Guide for the Dental Professional. Chicago; Quintessence Pub Co, 1984 pp 109–23.

Where Do I Find Reporting Information?

Since the responsibility for investigating reports of suspected child abuse and neglect lies at the state level, each state has established a child protective service reporting system. The National Center on Child Abuse and Neglect (NCCAN) annually compiles the descriptions of the reporting procedures in each state. Listed below are the names and addresses of the child protective services agency in each state, followed by the procedures for reporting suspected child maltreatment.

Alabama:
Alabama Department of Pensions and Security
64 N. Union St.
Montgomery, AL 36130

Reports made to County 24-hour emergency telephone services.

Alaska:
Department of Health and Social Services
Division of Family and Youth Services
Pouch H-05
Juneau, AK 99811

Reports made to Division of Social Services field offices.

American Samoa:
Government of American Samoa
Office of the Attorney General
Pago Pago, American Samoa 96799

Reports made to the Department of Medical Services

Arizona:
Department of Economic Security
PO Box 6123
Phoenix, AZ 85005

Reports made to Department of Economic Security local offices.

Arkansas:
Arkansas Department of Human Services
Social Services Division
PO Box 1437
Little Rock, AR 72203

Reports made to the statewide toll-free hotline (800)482-5964

California:
Department of Social Services
714-744 P St.
Sacramento, CA 95814

Reports made to County Departments of Welfare and the Central Registry of Child Abuse — (916)445-7546 — maintained by the Department of Justice.

Colorado:
Department of Social Services
1575 Sherman St.
Denver, CO 80203

Reports made to County Departments of Social Services.

Connecticut:
Connecticut Department of Children and Youth Services
Division of Children and Youth Services
170 Sigourney St.
Hartford, CT 06105

Reports made to (800)842-2288.

Delaware:
Delaware Department of Health and Social Services
Division of Social Services
PO Box 309
Wilmington, DE 19899

Reports made to statewide toll-free reporting hotline (800)292-9582

District of Columbia:
District of Columbia Department of Human Services
Commission on Social Services
Family Services Administration
Child Protective Services Division
First and I Streets, SW
Washington, DC 20024

Reports made to (202)727-0995.

Florida:
Florida Department of Health and Rehabilitative Services
1317 Winewood Boulevard
Tallahassee, FL 32301

Reports made to (800)342-9152

Georgia:
Georgia Department of Human Resources
47 Trinity Ave., SW
Atlanta, GA 30334

Reports made to County Departments of Family and Children Services

Guam:
Child Welfare Services
Child Protective Services
PO Box 2816
Agana, Guam 96910

Reports made to the State Child Protective Services Agency at 646-8417.

Hawaii:
Department of Social Services and Housing
Public Welfare Division
Family and Children's Services
PO Box 339
Honolulu, HI 96809

Reports made to the hotline operated by Kapiolani-Children's Medical Center on Oahu, and to branch offices of the Division of Hawaii, Maui, Kauai, Mokalai.

Idaho:
Department of Health and Welfare
Child Protection Division of Welfare
Statehouse
Boise, ID 83702

Reports made to Department of Health and Welfare Regional Offices.

Illinois:
Illinois Department of Children and Family Services
State Administrative Offices
One North Old State Capitol Plaza
Springfield, IL 62706

Reports made to (800)25-ABUSE.

Indiana:
Indiana Department of Public Welfare
Division of Child Welfare - Social Services
141 S. Meridian St., 6th Floor
Indianapolis, IN 46225

Reports made to County Departments of Public Welfare

Iowa:
Iowa Department of Social Services
Division of Community Programs
Hoover State Office Building
Fifth Floor
Des Moines, IA 50319

Reports made to the legally mandated toll-free reporting hotline (800)362-2178.

Kansas:
Kansas Department of Social and Rehabilitation Services
Division of Social Services
Child Protection and Family Services Section
Smith-Wilson Building
2700 W. Sixth
Topeka, KS 66606

Reports made to Department of Social and Rehabilitation Services Area Offices.

Kentucky:
Kentucky Department for Human Resources
275 E. Main St.
Frankfort, KY 40621

Reports made to County Offices within 4 regions of the State.

Louisiana:
Louisiana Department of Health and Human Resources
Office of Human Development
Baton Rouge, LA 70804

Reports made to the parish protective service units.

Maine:
Maine Department of Human Services
Human Services Building
Augusta, ME 04333

Reports made to Regional Office or to State Agency at (800)452-1999.

Maryland:
Maryland Department of Human Resources
Social Services Administration
300 W. Preston St.
Baltimore, MD 21201

Reports made to County Departments of Social Services or to local law enforcement agencies.

Massachusetts:
Massachusetts Department of Social Services
Protective Services
150 Causeway St.
Boston, MA 02114

Report made to Regional Offices.

Michigan:
Michigan Department of Social Services
300 S. Capitol Ave.
Lansing, MI 48926

Reports made to County Departments of Social Welfare.

Minnesota:
Minnesota Department of Public Welfare
Centennial Office Building
St. Paul, MN 55155

Reports made to the County Departments of Public Welfare.

Mississippi:
Mississippi Department of Public Welfare
Division of Social Services
PO Box 352
Jackson, MS 39216

Reports made to (800)222-8000.

Missouri:
Missouri Department of Social Services
Division of Family Services
Broadway Building
Jefferson City, MO 65101

Reports made to (800)392-3738.

Montana:
Department of Social and Rehabilitative Services
Social Services Bureau
PO Box 4210
Helena, MT 59601

Reports made to County Departments of Social and Rehabilitation Services.

Nebraska:
Nebraska Department of Public Welfare
301 Centennial Mall South
5th Floor
Lincoln, NE 68509

Reports made to local law enforcement agencies or to County Divisions of Public Welfare.

Nevada:
Department of Human Resources
Division of Welfare
251 Jeanell Dr.
Carson City, NV 89710

Reports made to Division of Welfare local offices.

New Hampshire:
New Hampshire Department of Health and Welfare
Division of Welfare
Bureau of Child and Family Services
Hazen Drive
Concord, NH 03301

Reports made to Division of Welfare District Offices.

New Jersey:
New Jersey Division of Youth and Family Services
PO Box 510
One South Montgomery St.
Trenton, NJ 08625

Reports made to (800)792-8610. District Offices also provide 24-hour telephone service.

New Mexico:
New Mexico Department of Human Services
PO Box 2348
Santa Fe, NM 87503

Reports made to County Social Services Offices or to (800)432-6217.

New York:
New York Department of Social Services
Child Protective Services
40 N. Pearl St.
Albany, NY 12207

Reports made to (800)342-3720 or to District Offices.

North Carolina:
North Carolina Department of Human Resources
Division of Social Services
325 N. Salisbury St.
Raleigh, NC 27611

Reports made to County Departments of Social Services.

North Dakota:
North Dakota Department of Human Services
Social Services Division
Children and Family Services Unit
Child Abuse and Neglect Program
Russel Building, Hwy. 83 N.
Bismarck, ND 58505

Reports made to Board of Social Services Area Offices and to 24-hour reporting services provided by Human Service Centers.

Ohio:
Ohio Department of Public Welfare
Bureau of Children Services
30 E. Broad St.
Columbus, OH 43215

Reports made to County Departments of Public Welfare.

Oklahoma:
Oklahoma Department of Institutions, Social and Rehabilitative Services
Division of Social Services
PO Box 25352
Oklahoma City, OK 73125

Reports made to (800)522-3511.

Oregon:
Department of Human Resources
Children's Services Division
Protective Services
509 Public Services Building
Salem, OR 97310

Reports made to local Children's Services Division Offices and to (503)378-3016.

Pennsylvania
Pennsylvania Department of Public Welfare
Office of Children, Youth and Families
Bureau of Family and Community Programs
1514 N. 2nd St.
Harrisburg, PA 17102

Reports made to the toll-free CHILDLINE (800)932-0313.

Puerto Rico:
Puerto Rico Department of Social Services
Services to Families With Children

PO Box 11398,
Fernandez Juncos Station
Santurce, Puerto Rico 00910

Reports made to local offices or to the Department.

Rhode Island:
Rhode Island Department for Children and Their Families
610 Mt. Pleasant Ave.
Providence, RI 02908

Reports made to State agency child protective services unit at (800)662-5100 or to District Offices.

South Carolina:
South Carolina Department of Social Services
PO Box 1520
Columbia, SC 29202

Reports made to County Departments of Social Services.

South Dakota:
Department of Social Services
Office of Children, Youth and Family Services
Richard F. Kneip Building
Pierre, SD 57501

Reports made to local offices.

Tennessee:
Tennessee Department of Human Services
State Office Building
Room 410
Nashville, TN 37219
Reports made to County Departments of Human Services.

Texas:
Texas Department of Human Resources
Protective Services for Children Branch
PO Box 2960
Austin, TX 78701

Reports made to (800)252-5400

Utah:
Department of Social Services
Division of Family Services
150 West North Temple, Room 370
PO Box 2500
Salt Lake City, UT 84103

Reports made to Division of Family Services District Offices.

Vermont:
Vermont Department of Social and Rehabilitative Services
Social Services Division
103 S. Main St.
Waterbury, VT 05676

Reports made to State agency at (802)828-3422 or to District Offices (24-hour services).

Virgin Islands:
Virgin Islands Department of Social Welfare
Division of Social Services
PO Box 500
Charlotte Amalie
St. Thomas, Virgin Islands 00801

Reports made to the Division of Social Services.

Virginia:
Virginia Department of Welfare
Bureau of Family and Community Programs
Blair Building
8007 Discovery Dr.
Richmond, VA 23288

Reports made to (800)552-7096 in Virginia, and (804)281-9081 outside the States.

Washington:
Department of Social and Health Services
Community Services Division
Child Protective Services
Mail Stop OB 41-D
Olympia, WA 98504

Reports made to local Social and Health Services Offices.

West Virginia:
Department of Welfare
Division of Social Services
Child Protective Services
State Office Building
1900 Washington Street E.
Charleston, WV 25305

Reports made to (800)352-6513.

Wisconsin:
Wisconsin Department of Health and Social Services
Division of Community Services
1 West Wilson St.
Madison, WI 53702

Reports made to County Social Services Office.

Wyoming:
Department of Health and Social Services
Division of Public Assistance and Social Services
Hathaway Building
Cheyenne, WY 82002

Reports made to County Departments of Public Assistance and Social Services