I Think This Child Has Been Abused: Being Prepared for What to Do Next

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Objectives

★ Explain the current statutes regarding child abuse and neglect (CAN) reporting and the provider’s responsibility

★ Describe the possible outcomes in a CAN investigation

★ Outline the role of the primary/specialty physician in a CAN investigation
Caveat

➤ I am not a lawyer

➤ Make sure that you discuss any concerns with your or your institution’s legal counsel

➤ They are much more familiar with the state statutes

➤ BUT, work with them to advocate for your patients...sometimes the law can be interpreted/misinterpreted differently
Mandatory Reporter

★ What does this mean?
  - Different for every state

★ Every state has statutes surrounding reporting of CAN

★ Some define all adults as mandatory reporters

★ Others single out those who work with children in their profession

★ ALL define physicians and providers as mandatory reporters
When do you report?

★ Most states define a “reasonable suspicion”
  - Near the top of the differential
  - “Alarm bells” in your head
  - More likely than not

★ As soon as possible
  - Don’t wait until the next work day

★ Some require follow up with a written report
What do you report?

- Child’s information
- What led you to the concern
- Any other important information
- Disclosure of medical records/information?
What about HIPAA?

★ Exception in the case of CAN reports

★ Allows you to disclose information

- Some trouble defining exactly what can be disclosed
- Investigators need a certain amount of information to make a decision
Report to Whom?

- Law enforcement
- Child Protective Services
- Depends on the statutes/who takes precedence on investigations
- Typically it is better to do both and then let them sort it out...
  - Ask them what to do with the child
Who makes the report?

- Many institutions have a mechanism (Social Work) to make the process easier on the provider.
- Make sure that the reporter understands the case.
- Ultimate responsibility.
- Be available if there are questions or misunderstandings.
What do you tell the family?

★ Be honest

★ “I have concerns someone may have hurt your child”

★ “I am required by law...”

★ Preferably away from the child

★ Maintain your and your staff’s safety
Family Reactions

★ Frequently upset

★ Anger is rarely directed at the provider

★ Q: “Are you going to take my child?”

- Don’t answer that
Understanding the Gray

★ Not all cases of CAN are clear cut

★ Understand what you do and do not know about the case and make it clear to the investigators

★ It is not your job to prove abuse, just to suspect it
Why physicians fail to report

- I know the family
  - The family may not return

- There is not enough to report
  - No other injuries

- It won’t do any good/may harm the family to report

- I can fix it myself
  - Jones et al, Pediatrics, 2008
Legal repercussions of reporting

★ May be sued for reporting, they can try...
  - Law confers protection
  - Very difficult to be successful as they must prove malice

★ May be charged for not reporting
  - Typically a misdemeanor

★ May be sued for not reporting
  - Especially when there is an adverse outcome as a direct result of a failure to report
LEGAL PROCESS
What happens to the child initially?

★ Removed immediately
  - Various placements

★ Investigated and placed in a safe place
  - Left at home
  - Put with non-offending parent

★ Nothing happened/no further investigation
Two parallel investigations

- **Child Protective Services**
  - Child safety
  - Work with the family for long term
  - Juvenile court

- **Law Enforcement**
  - Criminal activity
  - Short term
  - Criminal court
Legal process

★ Juvenile court

- Whether or not the child was abused/is at risk
- Ultimate goals are child safety and family preservation/reunification
- Preponderance of the evidence
- Child centered
- Child protective services
Outcomes in a CAN investigation

★ Founded/substantiated

- Abuse happened to this child
- May or may not name an abuser
- Juvenile court
- Allows court oversight to “make” the parent comply with recommendations
Outcomes

★ Unfounded/unsubstantiated

- Does not necessarily mean that nothing happened
- Not enough to prove either way
- Child may still be at risk
Then what?

- Reunified after treatment
- Permanent foster placement/guardianship
- Relinquishment of parental rights
- Termination of parental rights

- Adoption
Legal process

★ Criminal court

- Who dunnit
- Aimed at finding a perpetrator and convicting them of the crime
- Criminal/crime centered
- Beyond a reasonable doubt
- Law enforcement
Outcomes in criminal investigations

★ No arrest
- Not enough evidence
- Multiple perpetrators

★ Arrest/charges

★ Trial
- Guilty
- Not guilty
- Mistrial, dismissed etc.
ROLE OF THE PRIMARY PHYSICIAN
Recognize and Report!

★ Recognize abuse

★ Be aware it can exist and understand when you need to involve others

★ Don’t think you can fix it yourself
Details, details, details

Court is frequently months to years away
- Helps remember what happened

Very helpful with lawsuit
Provide medical care

★ Foster care examination
  - Look for other signs/symptoms of CAN

★ Continuing medical care
  - Sometimes you may know more about the child than any other adult

★ Critical medical issues

★ Referral for mental health evaluation
Educate investigators

- Help them understand the CAN
  - Medical lingo
  - What is known/not known about the injury?

- Mental and physical health risks for any child with CAN
This can be very scary and confusing

THE COURT PROCESS
Caveat: we think differently

★ Physicians use Aristotelian logic (start with the facts, find the solution)
  - Inductive reasoning
  - Probability

★ Attorneys use Platonic thinking (start with the premise, muster evidence to support or refute)
  - Deductive reasoning
  - Absolutes
Subpoenas

★ Legal order
  - Can be held in contempt if you don’t show

★ Usually list the defendant/child

★ Time/date of appearance

★ Prosecutors name and phone number
What do you do with a subpoena?

★ Don’t throw it away...
  - Even if you want to

★ Look up the child, if you can figure out the name

★ Check the dates

★ Call the prosecutor
  - May be quite a few conversations
Advocating for your time

★ Discuss the case and your testimony with the prosecutor
  ▪ May not be needed
  ▪ Is your testimony duplicated by others?
  ▪ What do you really know about the case?

★ Try to narrow the time frame you are needed
  ▪ Can they put you on call?
Other information

★ What is the purpose of the proceeding?

★ Where are you going
  ■ Where should you wait?

★ Curriculum vitae

★ Contact information
  ■ Many cases are called off/rescheduled on the day of the trial
Talk about the testimony

★ What do they expect you to say on the stand
  ■ Can you say that?!

★ Educate the attorney on the pertinent medical information and why the child is/was at risk
  ■ If they don’t understand, a judge or jury is not going to either
What is an expert witness?

★ Someone who renders an opinion in court
- Different from a fact witness

★ Depends on the state
- Frye: knowledge above that of general population
- Daubert: evidence-based
Hearsay

★ Out of court statement used to prove the matter at hand
  - What someone else said

★ Typically not admissible because you cannot verify if they were telling the truth

★ Medical exception

★ You can use the statements of others (history of present illness) to come to your opinion
The Day of Court

★ Dress Professionally

★ Arrive early/on time
  - Do not be late

★ Turn off all phones/pagers
  - Nothing is worse for a judge than a cell phone

★ It’s okay to be nervous
Testifying

- Called as a witness
- Sworn in
- Answering questions
  - Don’t answer unless asked
  - Pause before answering
- Remember: it is not your job to prove the case, it is the attorney’s
Things to do

★ Advocate for your patients and families

★ Educate yourself on recognition of abuse/neglect

★ Report abuse when needed

★ Continue to care for the patient and family after the report is made
  - Mental health evaluation and treatment!
Things not to do

★ Don’t

- Argue, put down or dismiss the investigators
  - They may be misguided, uneducated or egotistical but impeding the investigation will only hurt the children

- Try to do it all yourself
  - Each of us has our own role...

- Neglect to document
References

★ PROS study: http://pediatrics.aappublications.org/content/122/2/259.abstract?ijkey=f37d5912b66ac348a3e0f52d1885090017336fb4&keytype2=tf_ipsecsha

★ AAP Section on Child Abuse and Neglect: http://www2.aap.org/sections/childabuseneglect/

★ State map of child abuse centers: http://www2.aap.org/sections/childabuseneglect/MedicalDiagnostic.cfm


★ State laws regarding abuse/neglect: http://www.childwelfare.gov/responding/reporting.cfm
QUESTIONS?
THANK YOU!