

Consent refused? Take appropriate action

The courts are most likely to side with the doctor

(Editor's Note: This is a two-part series on legal risks involving parents refusing medical care for a child. This month, we cover reporting obligations for physicians in this scenario. Last month, we covered what to document to reduce risks.)

In 2002, a police officer took custody of a 5-week-old febrile infant girl after her parents refused to consent to a spinal tap to rule out meningitis.

“The physicians were concerned that failure to timely diagnose and treat meningitis could lead to death or permanent brain injury. Additionally, published guidelines recommend a spinal tap in this situation,” says **Jonathan**

M. Fanaroff, MD, JD, associate professor of pediatrics at Case Western Reserve University School of Medicine and co-director of the Neonatal Intensive Care Unit at Rainbow

Babies & Children's Hospital, both in Cleveland, OH.

The parents sued the police department, hospital, and physician, and alleged a violation of their constitu-

Executive Summary

If a parent's refusal to consent to treatment is life-threatening for the child or places the child at risk of serious harm, physicians have a legal duty to report this to the appropriate child protection agency or law enforcement.

- ◆ Child protection agencies and courts are empowered to take emergency custody of the child and provide consent for medical treatment.
- ◆ The federal government has deferred to states to define abuse/neglect.
- ◆ Physicians should be familiar with reporting obligations and state definitions of neglect.

tional rights. A federal jury rejected the parent's claims and found in favor of the police, hospital, and physicians.¹

Parents are the primary decision-makers when it comes to medical treatment for their children, and this is the basis for the requirement to obtain parental informed consent, says Fanaroff. "Parents have an obligation, however, to provide needed medical care for their children," he says. "Additionally society has an interest in protecting children from harm. This is known as the doctrine of *parens patriae*."

When a parent's refusal to consent to treatment is life-threatening for the child or places the child at risk of serious harm, then the physician has a legal duty to report the situation to the appropriate child protection agency or law enforcement. "Child protection agencies, as well as the court system, are both empowered to take emergency custody of the child and provide consent for medical treatment," says Fanaroff.

Though Congress passed the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, the federal government has deferred to states to define abuse/neglect, notes **John W. Miller II**, principal at Sterling Risk Advisors, Marietta, GA. The CAPTA amendments of 1996 and 2003 contained no federal requirement for a parent to provide any medical treatment for a child if that treatment is against the parent's religious beliefs. "However, CAPTA also designates that there is no requirement that a state either find,

or be prohibited from finding, abuse or neglect in cases where parents or legal guardians act in accordance with their religious beliefs," says Miller.

In almost every state, physicians are mandatory reporters and are legally required to report suspected child abuse or neglect when presented with reasonable cause, says Miller.

"An [against medical advice] discharge or elopement can rise to the level of neglect depending upon your state's definition," adds Miller. "Be familiar with your state's definitions of neglect. Be aware of your obligations to report such activity to the proper authorities." (*The U.S. Department of Health & Human Services' Child Welfare Information Gateway provides searchable by state definitions of child abuse and neglect, along with definitions for who are mandatory reporters in each state and what duties they have to report suspected abuse. Go to <http://1.usa.gov/LsWxGs>.)*

Reference

1. Mueller v. Aufer, 576 F. 3d 979-Court of Appeals, Ninth Circuit 2009.

SOURCES

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CME OBJECTIVES

After reading *Physician Risk Management*, the participant will be able to:

- describe the legal, clinical, financial, and managerial issues pertinent to physician risk management;
- explain the impact of risk management issues on patients, physicians, legal counsel, and management;
- identify solutions to risk management problems for physicians, administrators, risk managers, and insurers to use in overcoming the challenges they face in daily practice.

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