MLPP News

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FOCUS

To Report or Not to Report: The Significance of the "Spanking Case" for Mandatory Child Abuse Reporters

By Jay Sicklick, MLPP Director

This month's FOCUS looks at the "spanking case," Lovan C. v. Department of Children and Families, recently decided by the Connecticut Appellate Court.

Does the case really address the merits of corporal punishment, and does it shed any light on the often confusing issue of whether a pediatric provider should make a report of child abuse to the state Department of Children and Families (Department) in the gray area involving parental discipline?

Imagine the following scenario:
You are a pediatrician examining a five year old girl with a one inch bruise on her thigh. Upon inquiry, the child's mother informs you that she "spanked" the child with a belt after seeing her daughter jump up and down on her expensive canopy bed. Such was the scenario presented to a pediatrician in the case of *Lovan C.*, a controversial case recently decided by the Connecticut Appellate Court.

Contrary to popular belief, *Lovan C.* is not a case about spanking, or the merits of corporal punishment. And while it broaches the contentious issue of corporal punishment, the essence of the case lies in the process and procedures used by the Department to determine whether and how someone accused of child abuse or neglect is listed on the state's official child abuse registry. In *Lovan C.*, the child's father reported the incident, admittedly out of spite, and the Department found enough evidence to substantiate the abuse and placed the mother's name on the child abuse registry. After an administrative hearing and initial court appeal upheld the substantiation finding, the mother appealed to the Appellate Court.

In its rather curious decision, the Appellate Court, on its own volition, inserted a requirement that an analysis of whether parental discipline is "reasonable" under the circumstances must be made before substantiating child abuse. Borrowing from a criminal statute interpreting the limits of parental discipline, the court overturned the finding of substantiated child abuse because the mother's conduct was "reasonable" in this instance, and ordered the Department to remove the mother's name from the child abuse registry.

Given this analysis, what are the repercussions for pediatric providers in the field? Frankly, the case does not address the mandated reporter's obligation to report child abuse or neglect, nor does it change the standard for reporting such abuse or neglect. Pediatricians, and other mandated reporters, are still required to report non-accidental physical injuries (such as the bruise reported on this five-year-old) when they reasonably suspect that such abuse or neglect has occurred. This suspicion is based on the clinician's experience, instinct, and expertise – a standard that is not changed by the "reasonableness" analysis presented by the Appellate Court in *Lovan C.* Clinicians are still required to report reasonably suspicious abuse and neglect, and children who are placed at imminent risk of serious harm. Included in the definition of abuse are the scenarios where a child has had physical injury inflicted upon him or her other than by accidental means, has injuries at variance with history given of them, or is in a condition resulting in maltreatment, such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment. Amongst the descriptions of "injury" defined by Department policy are bruises, scratches and lacerations. So, the question of whether a pediatrician, reporting a "bruise" such as the one inflicted on Lovan C.'s daughter, was on the mark for reporting is an easy one to answer. Guided by present statutory reporting requirements and the Department's policy, reporting this type of corporal punishment would be not only justifiable, but most likely required.

Questions about this case, or other issues regarding mandatory reporting and child abuse/neglect issues may be addressed to the MLPP Director by calling (860) 570-5327, or by sending an e-mail to *jsicklic@kidscounsel.org*.

CASE SPOTLIGHT

Tory's Case: Special Education and Due Process

By Jay Sicklick, MLPP Director

The Case Spotlight section provides an in-depth analysis of a recent MLPP case, and demonstrates how the collaborative intervention of pediatric providers and the MLPP staff resulted in the improvement of a family's status. The MLPP's mission remains to improve children's health outcomes through multidisciplinary intervention, and the MLPP strives to improve the quality of life for families by assisting in accessing health care benefits, public entitlements, educational opportunities and disability assistance, thereby improving family status as well as health outcomes.

This month, CASE SPOTLIGHT examines a recent special education case handled by the MLPP, and how the MLPP attorney and its collaborative partners worked together to ensure that a child with a severe learning disability received appropriate educational services after three years of battling with the local school district.

Background

Tory is a ten-year-old boy who was referred to the MLPP by his pediatrician, a resident in the University of Connecticut Medical School's pediatric residency training program. Despite numerous attempts to convince the school district that Tory was suffering from a learning disability, the exasperated physician could not persuade the school that Tory's behavior resulted from his frustration with his inability to comprehend the academic material – not from an inherent psychological impairment that caused him to "act out." With permission, the resident referred the case to the MLPP director for assessment and intervention.

The resident, along with an attending faculty member, believed that Tory's frustration was rooted in his inherent inability to process information – thereby resulting in reading levels two to three years below average. While the physicians were not certain why Tory was having so much trouble in school, their hypothesis about the learning disability was supported by initial test results performed by a different school district two years prior. The school principal informed the resident that Tory's behavior was "out of control," and that his mother would best

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be suited exploring medications that would temper his inappropriate behaviors.

Upon interviewing Tory's mother, the MLPP set out to investigate Tory's medical and educational history, and set a course of action to implement initial strategies to pinpoint Tory's disability. First, the MLPP attorney convinced the school that moving him to another placement, a therapeutic school designed for emotionally disturbed students (the fourth placement in two years) would have a deleterious effect on Tory's immediate behaviors and suggested that the status quo placement be maintained pending a full review of the facts. Second, the school district agreed to conduct full educational and psychological testing and a neuropsychological examination on Tory, the results of which indicated that Tory suffers from a severe learning disability akin to dyslexia. Third, the district agreed to provide tutoring and an extended school year program (summer instruction) pending an appropriate placement for the following school year. At the resulting planning and placement team (PPT) meeting, the school district agreed to a specialized placement for learning disabled students, along with numerous ancillary supports to meet Tory's educational and behavioral needs.

Despite the MLPP intervention, the school district dragged its feet, and failed to implement the appropriate changes made by the PPT. As a result, the MLPP filed a due process complaint with the State Department of Education in October 2004, seeking redress for the district's failure to provide Tory with an appropriate educational plan.

Case Result

On the date of the due process hearing, the school district agreed to all of the settlement demands requested by the MLPP on Tory's behalf. Included in the settlement package were provisions for full-time tutoring, and a mandate for the district to hire an independent educational consultant to provide Tory's teachers and tutors with curriculum instruction and case management for one calendar year. The additional services constituted "compensatory education" for the time period that the district did not provide Tory with appropriate educational services.

For more information on special education advocacy, and the rights of disabled students in the public schools, please contact the MLPP Director, Jay Sicklick, at 570-5327, or send an e-mail to *jsicklic@kidscounsel.org*. You may also contact the MLPP staff attorney at the Connecticut Children's Medical Center, Gladys Nieves, at 545-8581, or send her an e-mail at *gnieves@ccmckids.org*.

PLEASE NOTE
Our e-mail has changed:
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We Want to Hear from You!
Submit questions for the next edition of the MLPP newsletter to jsicklic@kidscounsel.org or, call Jay Sicklick at 860-570-5327. For information about the Medical-Legal Partnership Project, please check the MLPP website at www.ccmckids.org/mlpp or, check the CCA website at www.kidscounsel.org

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