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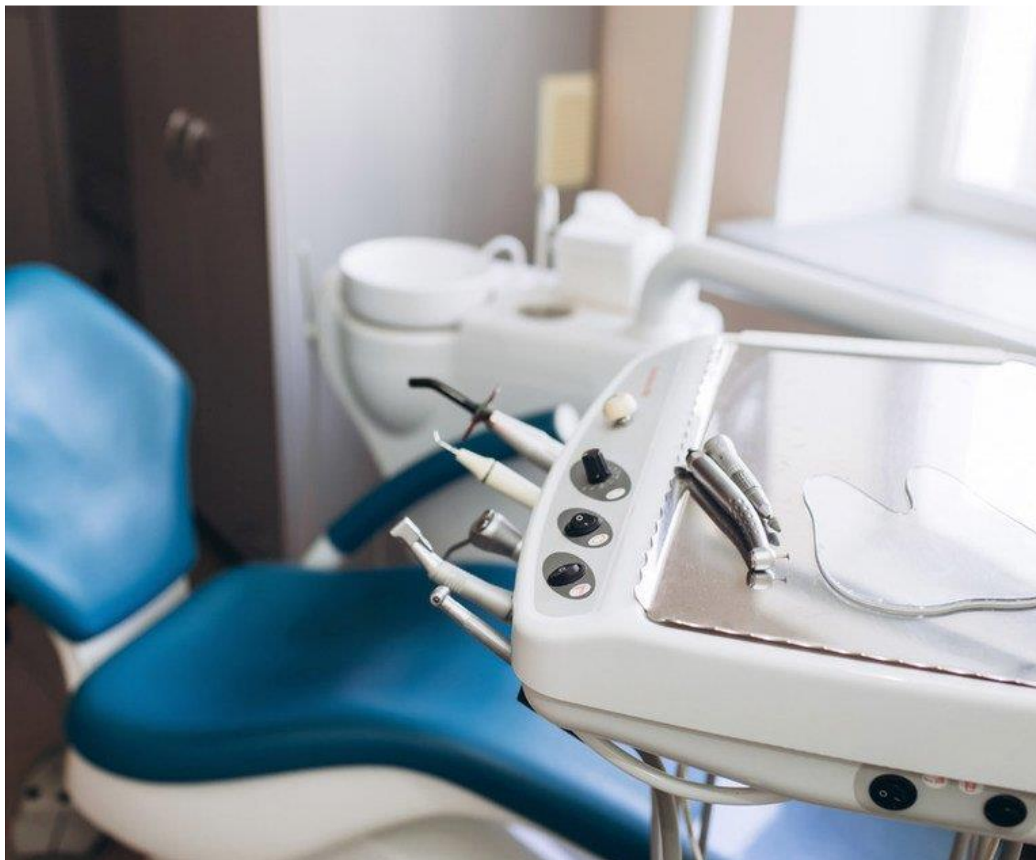
COMMENTARY

Legal issues of reporting child dental neglect

Katheryn Goldman and Daniel Pollack | August 19, 2021



Child neglect can take many forms. Legally, it is generally defined as the failure of a parent or caregiver to provide for a child's basic needs. Those needs are usually categorized as physical, emotional, educational, and medical. Many state definitions are similar to the one found in the Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A.

§5106g), as amended by the CAPTA Reauthorization Act of 2010. It defines child abuse and neglect as, at minimum: "Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation"; or "An act or failure to act which presents an imminent risk of serious harm."

Dental neglect is a subcategory of medical neglect. How prevalent is it, and how often is it reported? In Child Maltreatment 2019: Summary of Key Findings, it is reported that 2.3% of victims of child maltreatment suffered medical neglect (p. 4). The number of those suffering dental neglect was not reported and some of the difficulty arises because dental neglect is often grouped into greater medical neglect. Dental neglect can cause serious systemic and social consequences. One study found that children with oral health problems were more likely to have problems at school and were more likely to miss days of school.

Abuse and neglect are two separate offenses. The key difference between them is the concept of intent. The American Academy of Pediatric Dentistry (2020) defines dental neglect as a "willful failure of parent or guardian to seek and follow through with treatment necessary to ensure a level of oral health essential for adequate function and freedom from pain and infection" (16). How obvious is it to discern that a child's dental care has been intentionally placed at significant risk? Proof of "willful" intent is exceedingly difficult to decipher in clinic dental practice and does not account for cases of neglect where the outcome is unintentional. Dental neglect also requires significant time to develop consequences of pain and loss of function. If the provider has not been a part of the family's care during this time period, it can be onerous to make a determination of neglect.

Let's evaluate a case example of a child with multiple teeth with associated dental infections where the child has diminished function, food intake and is in significant pain. In one case a parent misses multiple appointments for the child, and therefore is neglecting the child's care, but this is due to the fact that the family has unreliable transportation and the parent has a job where she is penalized for requesting time off of work, not to mention the family desperately requires the money from the job to support the family. Now let's consider another family who blatantly ignores the calls of the dental office to bring the child for care. After multiple written and verbal attempts to contact the family, and offers to make available rides, the family still does not present for treatment. In both instances the child is experiencing neglect, but the latter falls into the category of purposeful neglect while the former falls into a grey area of circumstantial neglect. Do we treat these instances the same way in a practice scenario?

The current definition of dental neglect does not take into account that children who are affected by dental caries (dental decay) are disproportionately of low socioeconomic status and racial minority status, the same groups who are disproportionately represented in the child welfare system. One study of kindergartens, evaluating 70,089 students in 1067 schools in 95 counties in North Carolina, found that caries experience (dental decay) for racial/ethnic groups was significantly related to school-level poverty status and that caries (dental decay) among Black and Hispanic children was higher than among White children regardless of poverty status. Therefore, there is the risk that reporting unintentional neglect by means of Child Protective Services may perpetuate greater racial and socioeconomic inequalities in the child welfare system.

Due to these factors, particularly for providers working with vulnerable populations, must the provider consider this added layer of reporting and evaluate if the parent or guardian is actively neglecting his or her parental responsibilities, or if there are socio-economic barriers contributing to a family's inability to follow-through with dental care for their child? As a dental provider, the difficulty is that the clinical outcomes of dental neglect are the same regardless of the intent associated with the cause of neglect, and in the interim the child suffers physically from pain, inability to eat and could incur potentially life-threatening systemic consequences. This poses a challenging question: How do we address the issue of unintentional neglect in a way that is supportive of families, without bringing about the unintended consequences of reporting a family to Child Protective Services?

When a medical or dental provider makes a report to Child Protective Services, there may be unintentional repercussions: The trust between the provider and family may further drive the child and family away from obtaining health care in general, and oral health care in particular, for the child.

Part of what makes tackling the "grey area" of unintentional neglect difficult is that dentistry is largely practiced in the private sector, and can be somewhat disconnected to other social systems. Without smooth connections to other social service and educational agencies, a dental provider is often left with the choice to report, or to do nothing. There is a generalized hesitancy among providers to report dental neglect, out of fear of penalizing the family for unintended clinical outcomes. However, in terms of outcomes for the child, neglect is still neglect regardless of

the intent, and thus, doing nothing is an inadequate and illegal response. After all, dentists are mandated reporters.

For cases of purposeful negligence in not obtaining needed dental care, and dental/oral injuries, reporting to CPS should not be an issue. But it is difficult to claim that parents or guardians committed dental neglect if, given their socio-economic situation, they made reasonable attempts to obtain necessary dental services. Both instances of neglect require intervention, but arguably not the same path of intervention. In other words, for cases where other socio-economic barriers are clearly present, are there legal, non-punitive alternatives that we all need to explore that would preempt a report to CPS?

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