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COMMENTARY

Born Addicted: Legal Intersections of Neonatal Substance Abuse and Child Protective Services

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Because most medicines and drugs pass through a mother's placenta to her unborn baby, a mother's illegal drug use during pregnancy can cause the child to suffer from neonatal abstinence syndrome (NAS). The Centers for Disease Control and Prevention (CDC) reports that, "according to 2016 data from the Healthcare Cost and Utilization Project

… seven newborns were diagnosed with NAS for every 1,000 newborn hospital stays. That is approximately one baby diagnosed with NAS every 19 minutes in the United States, or nearly 80 newborns diagnosed every day."

Commonly, hospital staff will contact Child Protective Services (CPS) to inform them of the mother's and baby's compromised medical status. Whatever the short-term placement decision is for the baby—whether to remain with the mother, to be placed with the mother's spouse or partner, or with a non-relative—an investigation can yield a finding of abuse and/or neglect. Toward that end, many legal questions will need to be addressed:

- What drug use during pregnancy constitutes harm to a child under the relevant state legislative, regulatory, and case law scheme?
- What evidence will be needed and admissible?
- How credible and substantial must the evidence be?
- What witnesses can be and should be called?
- What constitutes an opinion within a reasonable degree of medical certainty?

Attorneys who deal with clients affected by the opioid crisis in general, and NAS concerns in particular, need to have a rudimentary medical background of this specialty area in order to competently represent these clients.

The Finnegan Neonatal Abstinence Scoring System, as modified, is the most commonly used tool for scoring and measuring NAS. The instrument is typically administered after a feeding approximately every three to four hours. NAS will be diagnosed if the infant earns three consecutive high scores or two consecutive severe scores in central nervous system symptoms, metabolic functioning, and gastrointestinal

disturbances. The diagnosis is additionally based on the mother's history of drug or substance abuse. This detailed history will include what substances she used, when they were used, and the quantity of the substance used. All of these will be a guide to the baby's likely withdrawal trajectory.

It has been noted that as a result of either monitored or illegal drug use in pregnant women, approximately 30-50% of their infants will experience withdrawal symptoms of NAS. Speech-language pathologists (SLPs) typically evaluate an infant's feeding difficulties secondary to a diagnosis of NAS. Specific deficits may include poor feeding efficiency, a higher number of apneic swallows, longer and fewer sucking bursts, increased milk spillage, rejection of breast or bottle, hiccups, coughing and reflux. Such symptoms may appear 24-72 hours following birth, and last up to 30 days with an average hospitalization length of 19 days. Following recovery, many will continue to experience cognitive, behavioral, developmental and educational deficits which will require skilled intervention and rehabilitation.

While some clinicians have access to and knowledge of previous medical and birth histories for children who are post-NAS, insufficient documentation in school records of an infant NAS diagnosis may result in a multitude of issues including decreased academic support secondary to milder symptoms. Additionally, for children who present with deficits associated with NAS, detailed documentation is imperative as mainstream assessments are not always capable of identifying specific impairments. For this patient population, immaculate record-keeping and documentation is paramount and should be included within school records for educators and clinicians alike.

Attorneys can help ensure that health and education professionals meet the required standard of care in treating and educating children born with NAS. In this way, attorneys are both patient and client advocates.

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