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COMMENTARY

Medicating foster children: The attorney's role

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Founder and President Emerita of the Children's Defense Fund Marian Wright Edelman writes: "On any given day nearly one in four children in foster care is taking at least one psychotropic medication—more than four times the rate for all children. Nearly half of children living in

residential treatment centers or group homes take psychotropic medications. Children in foster care are more likely to be prescribed multiple psychotropic medications at very high doses, although research shows higher doses can result in serious side effects."

A number of states have passed legislation and rules requiring strict guidelines permitting dispensing psychotropic prescriptions to foster children. In a recent Missouri federal class action lawsuit, *M.B. v Tidball,* a settlement was reached. Significant reforms are summarized by *Missourian* staff writers:

• Closer monitoring of children's medical records and medication use, with a new requirement for follow-up appointments at three-month intervals for children taking a psychotropic drug.

• Establishing informed consent policies that require prescribers and adults with input from children to weigh the risks and benefits of a medication before prescribing it.

• Requiring a secondary review by a child psychiatrist of a recommended psychotropic medication prescription.

• Training all foster care case managers and resource provider staff on appropriate use and potential side effects of psychotropic medications on children.

Florida provides in Rule 65C-35.007 [Authority to Provide Psychotropic Medications to Children in Out-of-Home Care]:

… (3) If the parents' or guardians' legal rights have been terminated, their identity or location is unknown, they decline to approve

administration of psychotropic medication, or withdraw consent to the administration of psychotropic medication and any party to the dependency action believes that administration of the medication is in the best interest of the child and medically necessary, then authorization to treat with psychotropic medication shall be pursued as follows:

(a) The case manager shall consult with the prescribing physician or psychiatric nurse within one (1) business day of being notified that the parent:

1. Is unavailable,

2. Withdraws consent,

3. Declines to consent, or

4. Is found by the prescribing physician or psychiatric nurse to lack the ability to provide express and informed consent ….

(c) Within three (3) business days of receiving the Medical Report from the prescribing physician or psychiatric nurse, the child welfare professional must submit the Medical Report and any supporting documentation to Children's Legal Services, with a request for legal action to obtain a court order authorizing the administration of the prescribed medication.

(d) Children's Legal Services must file a motion seeking court authorization for the provision of the psychotropic medication. Except as provided in Section 39.407(3)(e), F.S., court authorization must occur before the psychotropic medication is administered to the child…

One of the items in the policy agenda of the National Association of Counsel for Children (NACC) is that the "rights of foster children should be protected as a matter of law. These rights include, but are not limited to … freedom from unnecessary and/or excessive medication." How do attorneys ensure this? How can individual attorneys best work with medical, social service, and education professionals toward this goal?

While attorneys are not expected to be experts on medications used in children, from a child psychiatry perspective, a few pieces of information are useful.

Stable homes are the most essential start of good care. Children in foster care do not experience this stability. They too often come from or have experienced abuse or neglect in their families, and sometimes in foster care as well. They may have had many placements and have suffered other types of trauma. Children who have been abused or neglected do not respond as well to medications, even when the medications are properly selected. Regrettably, they often end up with long lists of medications.

How do children end up on large amounts of medications? Many times, the children's behavior is out of control. The response is to hospitalize them when the foster parents become overwhelmed. The hospital's incentive is to stabilize these children as quickly as possible in order to discharge them. This approach unfortunately means throwing a lot of medications at children quickly. Then, the children calm down and can be discharged. But, the side effects of the medication may not appear until after discharge, and may be very difficult to sort out by a follow-up outpatient provider. By the time the child is seen for follow-up—which

may be weeks later—possibly one or more medications out of several may be helping. The child may be a little more stable, so the foster parents "do not want to rock the boat" by eliminating some medications to see which one actually is working. Yet, the child may be experiencing side effects, which unfortunately may cause the child to act out again, leading to more hospitalization and even more medications. As a child psychiatrist, I (B.S.) have seen the results of this cycle play out repeatedly. Although medications are for psychiatric use, they have side effects ranging from headaches to irritability and everything in between, which can cause behavioral problems in children. The child may complain that they don't feel well, and frequently the adults do not take the child seriously. When the child acts out behaviorally, this is treated as yet another behavioral problem, which may lead to adding or increasing medications. Often, the perceived solution to a medication not working is to increase the dose, which in reality may do nothing, or cause more side effects. Sorting out which medications work and which ones don't, and which problems are caused by side effects, is very difficult. The problem is made even more difficult when the child is brought to the outpatient psychiatrist by someone who may be a case manager or a new foster parent, or who has no long-term history with the child and does not have medical records.

These kinds of histories make the life of the attorney watching out for the best interests of children very difficult. To go through all the psychiatric medications used for children is beyond the scope of this paper. Nonetheless, a few things can be said. The academicians like to say there is evidence antidepressants such as sertraline (Zoloft) are helpful for anxiety in children. The evidence here is modest. However, with abused children, we are not talking about simple anxiety. These

children can have a family history of bipolar disorder as well. Antidepressants can make anyone with a tendency to bipolar worse. This is especially true for children and adolescents. The side effects of antidepressants in children can present as greater irritability, which is actually a symptom of bipolar disorder, again leading to hospitalization and more medications. In my (B.S.) experience, children with a history of abuse or neglect do not respond well to sertraline.

Another medication that is commonly given to children is escitalopram (Lexapro), which has the same problems as sertraline. These are the two most common medications that destabilize the moods of children.

Although we have highlighted some side effects of medication that are harmful, we should keep in mind that many medications are very helpful. Some of the most helpful medications are the older medications for ADHD (attention deficit hyperactivity disorder). Children tend to do much better at home and in school with stimulant drugs such as methylphenidate (Ritalin).

Attorneys may encounter parents who are resistant to children being medicated. Those parents often are viewed as uncooperative, especially when their child is in foster care. Generally, the parent has the final right of approval or disapproval of medications. Attorneys are not expected to be psychiatrists, but they should understand that when parents and foster parents complain about long lists of medications, and perceive that the medications are making their children worse, these adults may very well be right.

Attorneys who are guardians ad litem should take these complaints seriously, and, as part of their investigation, talk directly with the

prescribing doctor to understand the child's medications and the parent's hesitancy. Why? Because a parent's hesitancy may be viewed negatively by the courts and may result in a loss of custody, which may be contrary to the child's best interests. The prescribing doctor may not know the child's and family's entire history, and the attorney can gain information as well to help in evaluating the case. On the other hand, biological and foster parents and children may feel that they need to comply with the medication prescribed, and tell the doctor that the medication is working, when it is not, or is causing problems. The doctor then has a much harder time figuring out whether the medication works.

Attorneys looking out for children may feel limited in what they can do, but they should try to know which psychiatric providers in their area work to keep children on lower dosages of appropriate medications and stay away from medications which are not helpful. If children are on long lists of medications, the caregivers should discuss the medications thoroughly with the prescriber to make sure that the medications do not conflict with each other, or that one medication is not causing side effects that are being treated by another medication.

As always, communication is key.

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