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HEALTH LAW
Liability for Failure to Report Child Abuse
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Physicians are obligated by ethical and legal standards to preserve patient confidentiality, but the requirement is not absolute. Confidentiality can be breached ethically when the safety of the patient or an identifiable third party is at risk or when the law requires. There are many legal exceptions to preserving patient confidentiality—statutory and court-made. Physicians are required by law to report communicable diseases, to impose quarantine or isolation, and to report suspected violent acts such as gunshot wounds. Mandating that physicians breach confidentiality forces them to act as agents of the state, rather than solely as agents of the patient. In many of these reporting roles, physicians are acting on behalf of third parties or the public in general. Some of the reports, however, serve the patient directly, and the failure to report may lead to legal action brought on behalf of the patients who allege harm.

Indirectly mandatory child abuse reporting laws serve the public by attempting to reduce the incidence of abuse and thereby protect a sizeable portion of the population, but their main purpose is to protect the patient. To comply with them, physicians must report suspected abuse to law enforcement agencies. What happens, though, if a physician does not report abuse to the proper authorities and the child is victim of further injuries?

Statute as Basis for Liability
In *Landeros v. Flood,* the California Supreme Court was faced with the question of whether a physician could be held liable for failing to diagnose battered child syndrome (BCS) and reporting the diagnosis to law enforcement authorities. An 11-month-old child was taken to the hospital and examined by the defendant physician, Dr. Flood [1]. Baby Landeros had a fracture in her leg that appeared to be have been caused by a twisting force, bruises covering her back, and a fracture of the skull (that was undiagnosed by Dr. Flood). The infant's mother had no explanation for the injuries. Baby Landeros exhibited other symptoms of BCS: in addition to the injuries, she became fearful and apprehensive when approached by Flood.

Dr. Flood did not take additional actions that a diagnosis of suspected BCS would have initiated. He did not X-ray Baby Landeros's entire skeletal structure, which would have revealed the skull fracture. Furthermore, Flood did not report the injuries to law enforcement, as required by a recently enacted law. Subsequent to his inaction, Baby Landeros was admitted to another hospital for a later injury where a

different physician immediately diagnosed her condition and reported it to the authorities. Landeros's mother and stepfather were convicted of child abuse.

Landeros's guardian ad litem (a guardian appointed to appear in court on behalf of a child) brought suit against Dr. Flood and the hospital alleging that, as a result of the defendants' negligence, the infant had suffered permanent physical injuries, including the possible loss of use or amputation of her left hand. The plaintiff (Landeros's guardian) claimed that Flood's failure to report the injuries to law enforcement as required by statute had contributed to the baby's later injuries.

In malpractice actions, the standard of care is always at issue. BCS had been tentatively identified in the 1950s, and numerous medical studies further supported the syndrome as a valid diagnosis. A California court admitted the testimony of a physician who identified elements of BCS in 1971, further legitimizing the diagnosis. In this case, would a reasonably prudent physician examining Baby Landeros have suspected she was a victim of BCS, confirmed the diagnosis through further testing, and reported to appropriate authorities [2]? The trial court was asked to decide this question.

Proving only that the physician's treatment did not meet the standard of care is insufficient; a plaintiff must prove further that the failure to provide standard care caused the injuries received after the original examination. In this case, did Dr. Flood fail to treat according to the standard of care, and was it reasonably foreseeable that his failure to properly diagnose BCS would lead to the eventual injuries? Given that "the assault on the victim is not an isolated, atypical event but part of an environmental mosaic of repeated beatings and abuse that will not only continue but will become more severe…," a physician should foresee future abuse if BCS is properly diagnosed [3].

All states have mandatory child abuse reporting laws, but whether a physician is civilly liable for a violation of the statute, rather than for negligence or malpractice, varies from state to state. The majority of states provide only criminal and not civil liability for failure to report. California, however, has a law that presumes lack of due care if the violation of any *other* state statute leads to an injury. If a California plaintiff can prove at trial that the defendants in the case violated *any* state statute—such as the mandatory abuse reporting statute—and that the violation caused injury, the plaintiff has established a basis for civil liability.

Statute as Evidence of Negligence

In other cases, the existence of the statute may itself be used to illustrate the standard of care. A recent Minnesota case distinguished between use of a statute to prove a breach of the standard of care and its use (as in *Landeros*) as an independent basis for physician liability. In *Becker v. Mayo Foundation,* a 22-day-old child, Nykkole, was taken to the hospital with bruises and an arm fracture [4]. When her father was questioned about the injuries, he told the physician and other hospital employees that

she fell out of his arms. Because the father's story was told consistently a number of times, no one reported the injuries as child abuse.

Less than a month later, Nykkole was taken back to the hospital with multiple injuries. Her mother claimed Nykkole had hit her head on the bathtub, but this time no one believed the story and she was diagnosed with shaken baby syndrome.

Unlike the California law introduced in *Landeros*, no Minnesota statute created general civil liability for failing to perform a statutory duty, nor did the child abuse reporting statute provide monetary damages for failure to report. Because the child abuse reporting statute had no provision for civil penalties, the *Becker* trial court did not allow that statute to be introduced. The Minnesota Supreme Court likewise determined that there was no statutory duty owed by the hospital to Nykkole for which she could recover directly under the statute. This decision, though, did not end the analysis.

As noted in the discussion of *Landeros*, plaintiffs in medical negligence actions must prove a standard of care—the "degree of skill and care possessed and exercised by practitioners engaged in the same type of practice under like circumstances" [4]. The plaintiff in *Becker* had to prove that other physicians would have properly diagnosed shaken baby syndrome and reported the case to authorities. In some states, the existence of a statute designed to prevent such injuries and to punish those who cause them can be used as evidence of the standard of care. Under this theory, the Minnesota Supreme Court reversed the trial court, holding that the statutory reporting requirement could be introduced as evidence of what a physician of ordinary skills would do if abuse were suspected. Of course, the plaintiff still had to prove that the physician should have suspected abuse, but the statute was admitted as evidence of a common law (non-statutory) duty.

Conclusion

The liability that a physician may have for failing to diagnose and report suspected child abuse depends on the physician's practice location. Most states provide criminal sanctions without providing patients an opportunity to recover damages. Some states, such as New York [5] and Colorado [6], expressly allow recovery for a willful and knowing failure to report (which raises the question of what constitutes "willful and knowing"). Other states, as *Becker* illustrates, do not allow recovery of damages under a statute, but permit the statute to be used as evidence in a negligence lawsuit of what the physician should have done.

When a physician is faced with possible cases of child abuse, that physician must report the injuries to the proper authorities. The failure to do so may lead to criminal sanctions, as well as claims of negligence if the child is further injured. It is important to note that physicians who report in good faith, even if investigation determines that there was no abuse, are generally immune from liability for any damages (loss of custody, defamation, etc.) that the report may have caused.

Physicians should be familiar with their states' laws to know what requirements exist for reporting abuse and should, as always, follow legal guidelines.

References

1. *Landeros v Flood*, 17 Cal 3d 399 (Cal 1976).
2. *Landeros*, 409.
3. *Landeros*, 412.
4. *Becker v Mayo Foundation*, 737 NW2d 200 (Minn 2007).
5. NY Soc Serv sec 420 (Consol 2007).
6. Colo Rev Stat sec 19-3-304 (2007).

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