



STATE OF DELAWARE
Child Death, Near Death and Stillbirth Commission
900 King Street
Wilmington, DE19801-3341

CAPTA¹ REPORT

In the Matter of
MJ
Minor Child

9-03-12-00001

May 13, 2015

¹ The federal Child Abuse Prevention and Treatment Act requires the disclosure of facts and circumstances related to a child's near death or death. 42 U.S.C § 5106 a(b)(2)(A)(x). See also, 31 Del.C. § 323 (a).

Background and Acknowledgements

The Child Death, Near Death and Stillbirth Commission (“CDNDSC”) was statutorily created in 1995 after a pilot project showed the effectiveness of such a review process for preventing future child deaths. The mission of CDNDSC is to safeguard the health and safety of all Delaware children as set forth in 31 Del.C., Ch., 3.

Multi-disciplinary Review Panels meet monthly and conduct a retrospective review of the history and circumstances surrounding each child’s death or near death and determine whether system recommendations are necessary to prevent future deaths or near deaths. The process brings professionals and experts from a variety of disciplines together to conduct in-depth case reviews, create multi-faceted recommendations to improve systems and encourage interagency collaboration to end the mortality of children in Delaware.

The case information presented below is based on documents reviewed and presented from the treating hospitals, the Department of Services for Children, Youth and Their Families, the Office of the Child Advocate, Family Court, Law Enforcement, and the Department of Justice.

Case Synopsis

The male child who is the subject of this review, MJ (“Victim”), was born in January 2011 to AJ (“Mother”) and GE (“Father”), at 37 weeks gestation. Mother’s pregnancy was noted to be complicated by illicit drug use including IV heroin and methadone. At one hour of life, MJ began having respiratory distress which resulted in him being placed in the Neonatal Intensive Care Unit (“NICU”). Doctors planned to monitor the infant for possible drug withdrawal symptoms; by the next day, he was considered to be in withdrawal. Notes indicated that parents participated on and off in the care of Victim while he was in the NICU. It was noted later that Mother’s husband, AA (“Step Father”), and not Father, was observed by hospital personnel to be involved in Victim’s care.

In July 2011, an urgent referral was received by the Division of Family Services (“DFS”) Child Abuse and Neglect Report Line alleging the physical abuse of five-month-old MJ. Law enforcement officers were called to the home and observed the Victim to have bruising to his leg and redness on his lower lip. Several hours earlier that same day, another referral was received alleging the physical abuse of Victim’s half sibling, MR (“Sibling”). Sibling was alleged to have bruising inflicted by Mother. The report further alleged drug abuse, domestic violence between Mother and Step Father, and the presence of a gun in the home, which Sibling reported was easily accessible to both her and Victim.

Victim was taken to the hospital for examination by law enforcement and was found to have a raw, red area surrounding the lips, non-tender red, lacy bruising on his left rib, a bruise in the pattern of fingers on the right calf, and mild redness to the perineum with scale on the penis and scrotum. A skeletal survey revealed two skull fractures, an older fracture to the ulna, old fracture to the forearm, and new fracture to the metaphyseal corner of the arm. A computed tomography (“CT”) scan showed no hemorrhage but possible lens dislocation. Victim was admitted to the trauma service for further observation and treatment. When questioned about the injuries, Mother and Step Father stated Victim was always fussy and spit out his pacifier. They admitted to tying a sheet around Victim’s face and head in order to hold the pacifier in. No further explanation regarding Victim’s multiple injuries was offered.

Victim was admitted to the hospital for pain management, weaning off opium, feeding management and physical therapy. He was discharged 11 days later to a medical foster home with orthopedic follow up in 1 week and outpatient physical therapy. Victim’s discharge summary

noted significant developmental delay. At Victim's follow up appointments, the doctor determined he had significant neurological and developmental delays. His long term prognosis was not known.

The DFS investigation was substantiated for physical abuse/bone fracture by Mother and Step Father for Victim's multiple injuries, placing them on Level IV of the Child Protection Registry. Step Father also received a secondary finding for physical abuse of Victim for the bruising caused by the pacifier being tied to Victim's face. In addition, Mother received a secondary finding of physical abuse for hitting Sibling and leaving handprints on her buttocks. The case was transferred to an ongoing treatment worker. Parental rights of both parents were ultimately terminated, and Victim was freed for adoption. His adoption was finalized in March 2013.

In October 2012, Step Father, pled guilty to Offensive Touching, and was sentenced to Level V, suspended to 12 months at Level 2. He was charged with Violation of Probation in 2013 and sentenced to 30 days at Level V with credit given for all days previously served, with no probation to follow. Then, in December 2012, Mother entered a guilty plea for Offensive Touching. She was sentenced to 30 days at Level V, suspended for one year at Level 1. She was charged with Violation of Probation in March 2013 and sentenced to 12 days at Level V with no probation to follow.

Family History: Mother

Mother was found to have no history with the DFS as a child. As a parent, she had a significant history with DFS, which began 4 years prior to Victim's birth.

In October 2007, DFS received a report alleging physical neglect of Sibling. The case was referred to investigation and closed in November 2007, unsubstantiated due to lack of evidence. It was reported that Mother used heroin, Oxycontin, and Marijuana but she told DFS she was actively engaged in substance abuse treatment. The case was closed despite no confirmation of Mother's participation with the substance abuse treatment provider.

A year later, in October 2008, DFS received a report alleging physical neglect of Sibling. The case was referred to investigation and closed in November 2008, unsubstantiated with concerns due to Mother's substance abuse issues and need for continued treatment. Sibling was now in the care of her biological father, and therefore deemed safe.

The first report involving the Victim was received in January 2011. DFS received allegations of physical neglect of Victim, who was in the NICU of the hospital. Mother had been arrested and hospital staff was not aware of whether any plan had been made for the 2-day-old infant. In February 2011, the case was abridged or "Administratively Discontinued" by DFS, noting the only concern was Mother's arrest but that she had been released the same day. There were no other abuse or neglect concerns.

A month later, in February 2011, DFS received a report alleging medical neglect of Victim. The caller reported that Mother was in drug treatment and on methadone. Victim was prescribed medication for withdrawal. Mother and Step Father came to the pediatrician with Victim that day and said they had spilled his medication and were up all night with him due to his refusal to sleep. Their behavior in the waiting room was odd but could be explained as they had not gotten much sleep. They were given a new prescription and the doctor planned to contact the drug treatment facility the next day to inquire as to how Mother was doing in treatment and whether they had any concerns. The doctor doubted Mother could be dosing herself with Victim's opium as it was such a small dose. Concern was raised, however, that parents might not fill the new prescription. The

Report Line held off on disposing of this report until the next day, when they confirmed with the pediatrician that parents did return with Victim as scheduled and seemed more appropriate on that day. The pediatrician further advised that a conversation with Mother's drug treatment provider revealed she had missed two appointments. The doctor planned to make a referral for a visiting nurse. DFS then screened out the hotline report, noting it did not meet their criteria for investigation.

Two days later, in March 2011, DFS received a second call regarding concerns of medical neglect of Victim. The report that was screened out one day prior was re-written and accepted for investigation after review by the Investigation Program Manager. She noted that an investigation had been abridged in February 2011 before any contact with family or collateral contacts had been done. After discussion with the hospital social worker, it was concluded there were many red flags. The Program Manager overrode the earlier decision to screen out the report and the case was then opened for investigation. At the end of March, the case was substantiated against Mother for mild physical neglect and transferred to ongoing services. Victim had been hospitalized during this investigation for withdrawal and feeding difficulties. Numerous concerns were raised by medical staff regarding Mother and Step Father's behaviors. The treatment case was closed on in May 2011 after the DFS worker determined the family to be stable and not in need of any further services from DFS. There was no documentation to suggest the treatment worker ever had any in person contact with Mother or Step Father.

Family History: Father

No documentation was provided to indicate Victim's biological father, GE, had any DFS history.

Family History: Step Father

No documentation was provided to indicate Mother's husband, AA, had any history with DFS aside from the near death incident of MJ.

MJ's Near-Death Incident

In July 2011, an urgent referral was received alleging physical abuse of Victim by Mother. Law enforcement responded to the residence after receiving a phone call from maternal grandmother ("MGM") reporting Mother had beaten Victim this morning, and he had facial bruising. The officer who first responded to the scene reported Mother to be "passed out drunk." This investigation was linked to the already active investigation from an earlier hotline report alleging physical abuse of Sibling, MJ's older sister. An officer called again and informed hotline staff that Victim had definite bruising to his leg and redness to his lower lip. He advised that the infant had been taken to the emergency room ("ER"). MGM told the officer that she watched Victim that morning when Mother and Step Father went to get their methadone and observed marks to Victim's face and leg which became darker as the day went on. Mother then came home and passed out. This officer did not get the impression that Mother was under the influence and advised the hotline worker that she told him she had been sleeping, not passed out. Everyone denied seeing or hearing anything and there was no explanation for the injuries to Victim. MGM also told police that Sibling had reported to her that Mother hit her last night for eating the last of the ice cream. MGM reported there was a gun in the home but it had been moved to a relative's home before the police arrived. The officer noted a lot of family conflict and believed there was some kind of commotion in the home last night.

Two DFS workers responded to the hospital and addressed the two abuse allegations separately. By the time they arrived, Mother and Step Father had been arrested for disorderly conduct due to their behavior while at the hospital. The children were assessed and Sibling was found to have

what looked like a clear handprint on her buttocks. The DFS worker was informed that Step Father reported putting the pacifier in Victim's mouth and using a cloth to cover the pacifier and tie it around Victim's mouth to prevent it from falling out. The rear of Victim's head was noted to appear indented. Victim's test results revealed 2 skull fractures, an older fracture of his ulna, a healing fracture of his forearm and a fresh fracture in the metaphyseal corner. In addition to the fractures, Victim was found to have a raw, red area surrounding his mouth, bruising to his ribs and calf, and severe diaper rash. The attending physician noted the injuries to be definite signs of child abuse. Furthermore, the fact that there were both healing and fresh injuries suggested that the abuse was ongoing with multiple episodes. Victim was admitted to the hospital where he remained for 11 days.

A police interview of Mother occurred on the same date. Interview notes indicate she admitted that Step Father had anger problems, and she had witnessed him squeeze Victim's face with both hands when he would not stop crying. She had also observed him push Victim's chest and stomach and insert his entire hand inside the infant's mouth when he would not stop crying. Mother told the detective Step Father had shoved the pacifier into Victim's mouth and pulled the blanket in which he was swaddled, causing Victim to "fly out of it." Step Father was observed picking Victim up by his forearms to move him from place to place. Mother admitted she and MGM would hear Victim cry when Step Father was in the room alone with him. Step Father had told Mother he hated Victim and hated how he cried all the time. Finally, Mother had seen Step Father pick the infant up by his feet and throw him on the bed, and also smack the baby's buttocks to stop him from crying. Mother admitted to being afraid of Step Father, which led to her initially lying about the cause of injuries to Victim. The next day, Step Father was interviewed. He described Victim as a happy baby and a good child who only cried when tired. He denied getting frustrated with him or ever physically harming him. The interview ended abruptly when Step Father stated that if culpability for Victim's injuries was being directed at him, he wanted to consult an attorney.

DFS filed for legal custody of Victim a day prior to his discharge, and he was placed in a medical foster home. His discharge planning included outpatient physical therapy and follow up with Orthopedics and Rehabilitation.

At the end of August 2011, a Children at Risk Evaluation ("CARE") consult was completed. The medical child abuse expert from the children's hospital reviewed the results of Victim's CT scan and initial skeletal survey from July and repeat survey two weeks later. The findings were as follows:

1. Raw, red areas around the mouth consistent with gag marks that could be caused by a hand or other object used to stop crying, or tying a gag around the mouth with or without a pacifier attached to the gag as Mother and Step Father described.
2. Bruising to the left calf consistent with grasping or squeezing of the calf. Bruises to the leg of a child this age are not likely to be accidental and are consistent with someone grabbing the child's leg firmly whether to yank, pick up, or throw the child.
3. Complex right parietal skull fracture and linear left parietal skull fracture, which are usually produced by two different impacts to the head or due to crushing type of force to the head. A skull fracture is more likely to represent inflicted injury rather than accidental.
4. Fracture of the right distal ulnar metaphysis. This fracture of the forearm is above the wrist and highly associated with abuse in infants. It is typically caused by yanking on the hand. According to the x-rays, this injury would have been recent at the time of Victim's admission.
5. Healing fracture of the distal left ulnar shaft. This fracture is caused by bending the mid forearm or hitting the forearm with or against a hard object that is relatively

narrow rather than flat and broad. It was healing at the time of hospitalization and determined to have occurred more than a week before.

6. Healing fracture of the left lateral condyle of the humerus, caused by hyperextending or bending the elbow in the wrong direction or possibly by a direct blow to the back of the elbow. As it was healing at the time of hospitalization, it clearly occurred more than one week prior.
7. Healing metaphyseal fracture of left proximal humerus, an injury to the upper arm bone close to the shoulder joint that is highly associated with abuse of an infant. This was also healing at the time of admission, so determined to be more than one week old.
8. Spotty bruising around the left ear, extremely unusual in a child unable to walk. This is suspicious for abuse and either caused by impact or by pulling/squeezing the ear lobe.

Criminal /Civil Disposition

The DFS investigation was substantiated for physical abuse/bone fracture by Mother and Step Father for Victim's multiple injuries, placing them on Level IV of the Child Protection Registry. Step Father also received a secondary finding for physical abuse of Victim for the bruising caused by the pacifier being tied to Victim's face. In addition, Mother received a secondary finding of physical abuse for hitting Sibling and leaving handprints on her buttocks. The case was transferred to an ongoing treatment worker.

During the civil court proceedings, DFS filed a motion to suspend Victim's visitation with Mother, citing a letter from a doctor at the hospital, stating it would not be in the best interest of the child to be exposed to the adults who may have been involved in his abuse. He added that Victim remained fussy, jittery, and anxious. The judge ordered there was to be no visitation with Mother while Victim recovered. Mother never requested visitation with Victim following this suspension of visitation. Additionally, a motion was filed by DFS for no reasonable efforts, meaning permission to be excused from case planning with parents. This motion was denied, with the court noting a case plan had already been implemented with parents. Though he had been uninvolved in the life of his son prior to the incident, Father did enter into a case plan with DFS. Parental rights of both parents were ultimately terminated, and Victim was freed for adoption. His adoption was finalized in March 2013.

In October 2012, Step Father pled guilty to Offensive Touching, and was sentenced to Level V, suspended to 12 months at Level 2. He was charged with Violation of Probation in 2013 and sentenced to 30 days at Level V with credit given for all days previously served, with no probation to follow. Then, in December 2012, just 6 days prior to the civil hearing for Termination of Parental Rights, Mother entered a guilty plea for Offensive Touching. She was sentenced to 30 days at Level V, suspended for one year at Level 1. She was charged with Violation of Probation in March 2013 and sentenced to 12 days at Level V with no probation to follow.

System Recommendations

After review of the facts and findings of this case, the Commission determined that all systems did not meet the current standards of practice and therefore the following system recommendations were put forth:

Initial Review December 2011

DIVISION OF FAMILY SERVICES

1. CDNDSC recommends that the Division of Family Services clarify and better define how cases shall be abridged or administratively discontinued. CDNDSC further requests that such cases be tracked and a comparison drawn against the number of cases received by the Division of Family Services versus the number of cases being abridged and/or administratively discontinued.
 - a. Rationale: In February 2011, DFS abridged a case involving the Victim without taking into account history. There were at least two prior investigations with alleged substance abuse by Mother. The current report alleged the infant was in the NICU suffering withdrawal symptoms, and a history of heroin use was reported for Mother. The reporter was concerned that mother was arrested during the child's hospitalization impacting her ability to plan for Victim's discharge. After DFS confirmed that Mother was released, the case was abridged even though contact was never made with the Victim and Mother.
 - b. Anticipated Result: To ensure that a safety assessment is conducted with the victim prior to making a decision to abridge a case.
 - c. Responsible Agency: Division of Family Services

2. CDNDSC recommends that the Division of Family Services develop policy to ensure that workers verify allegations related to medical, mental health and substance abuse issues directly with providers instead of relying on the word of the parent(s) and/or suspected abuser(s).
 - a. Rationale: In October 2007, October 2008 and March 2011, DFS closed its investigations without confirmation from the substance abuse provider that Mother was participating in treatment. There was also no contact during the March 2011 treatment case.
 - b. Anticipated Result: To assess substance abuse concerns that may impact the safety of the child.
 - c. Responsible Agency: Division of Family Services

3. CDNDSC recommends that during the investigation or prior to case closure, the Division of Family Services worker (supervisor and/or caseworker) should consider consulting with the Attorney General's Office as it pertains to the custody of the child.
 - a. Rationale: Despite DFS history and the concerns noted by multiple medical professionals, DFS did not consult with the Attorney General's Office during the March 2011 investigation.
 - b. Anticipated Result: To explore legal options for children when significant safety concerns exist.
 - c. Responsible Agency: Division of Family Services

4. CDNDSC recommends that the Division of Family Services establish a point of contact

- and develop a systems protocol so that when outside committees and/or agencies have concerns regarding egregious cases, such cases can be brought before the point of contact and systems protocol in order to address said concerns.
- a. Rationale: The CAN Panel was concerned about the decisions made by DFS during the March 2011 treatment case and the Panel would like a process to report these concerns to DFS. In addition, the treating hospital was reporting its concerns to treatment staff in March 2011, and these concerns were ignored.
 - b. Anticipated Result: To ensure that immediate concerns identified by the Panel or other organizations are communicated to DFS administrators.
 - c. Responsible Agency: Division of Family Services
5. CDNDSC recommends that the Division of Family Services review policy and procedure for when a worker is to transfer a case from Investigation to Treatment, that policy and procedure should reinforce the importance of verbal communication between caseworkers and that such communication should also be documented within Family and Child Tracking System (FACTS).
- a. Rationale: In the March 2011 treatment case, the treatment worker had no knowledge that the investigation worker was considering taking custody and communicated this information to the medical providers.
 - b. Anticipated Result: To ensure a continuity of services between investigation and treatment.
 - c. Responsible Agency: Division of Family Services
6. CDNDSC recommends that the Division of Family Services follow policy as it pertains to the oversight of caseworkers by supervisors.
- a. Rationale: Despite a number of risk factors, the March 2011 treatment case was closed in May 2011 without the worker making contact with any of the case participants including the victim. A safety assessment also noted the child to be safe.
 - b. Anticipated Result: To ensure that supervisors are addressing policy concerns with staff.
 - c. Responsible Agency: Division of Family Services
7. CDNDSC recommends that a letter be sent to the Director of the Division of Family Services informing the Director of the issues surrounding the caseworker's job performance and the caseworker's ability to follow DFS policy and procedure and the supervisory oversight or lack thereof that was given to said caseworker. CDNDSC recognizes that the caseworker's performance was reviewed in this case, as the caseworker was transferred to a different county but remained in the same position. Concern was raised as to the caseworker's ability to meet job performance criteria and do so competently. Further concern was raised as to the supervisor and his/her lack of oversight as well.
- a. Rationale: Despite a number of risk factors, the March 2011 treatment case was closed in May 2011 without the worker making contact with any of the case participants including the victim. The supervisor incorrectly noted that risk was reduced in the closure note.
 - b. Anticipated Result: To ensure that immediate concerns identified by the Panel are communicated to DFS administrators.
 - c. Responsible Agency: Division of Family Services

CHILD PROTECTION ACCOUNTABILITY COMMISSION

8. CDNDSC recommends that the Child Protection Accountability Commission consider

developing a training program for first responders on the identification and system response to parental substance abuse.

- a. Rationale: Multiple professionals interacted with the parents who had a significant history of heroin and prescription drug use and failed to immediately assess the risk to the victim.
- b. Anticipated Result: To ensure that first responders are able to identify and respond to parental substance abuse.
- c. Responsible Agency: Division of Family Services

Final Review March 2013

MEDICAL

1. CDNDSC recommends that when a child presents to the Emergency Department with concerns of abuse and neglect that said child be examined and that photographs be taken in order to document the evidence.
 - a. Rationale: During the criminal investigation, it was noted that the victim's sibling had visited the Emergency Department one week prior due to allegations of abuse. The sibling was examined and then interviewed at the Children's Advocacy Center where she disclosed being hit on the buttocks.
 - b. Anticipated Result: To ensure evidence is documented in child abuse cases.
 - c. Responsible Agency: Delaware Hospitals

DEPARTMENT OF HEALTH & SOCIAL SERVICES

1. CDNDSC recommends that the Delaware Division of Substance Abuse and Mental Health Services be tasked with creating a workgroup to research and assess Neonatal Abstinence Syndrome (NAS) under the auspices of their Maternal Title V Block grant dollars.
 - a. Rationale: This victim was significantly impacted by the affects of Neonatal abstinence syndrome. At the time of this final review, there was no coordinated effort within the State to address this issue. Subsequently, the Delaware Division of Substance Abuse and Mental Health Services in collaboration with the Medical Society have established a subcommittee to analyze this concerning issue. In addition, several hospitals including the largest birthing hospital have formed subcommittees to improve Delaware's response to Neonatal Abstinence Syndrome.
 - b. Anticipated Result: NAS infants and their parents will have the treatment necessary to reduce their risk of future harm and abuse.
 - c. Responsible Agency: Division of Substance Abuse and Mental Health

Supportive Statements

CDNDSC supports the Division of Family Services review of the Hospital High Risk Medical Discharge Protocol for children and youth with special medical needs.