



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

CAPTA¹ REPORT

In the Matter of
KH
Minor Child

9-03-2011-00001

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 female child who is the subject of this review, KH (“Victim”), was born in February 2010 to KH (“Father”) and BD (“Mother”). She was born full term, weighing seven pounds and four ounces. A maternal history of tobacco use and marijuana use was noted prior to and during the pregnancy. Victim was discharged from the hospital into the care of her mother on day two of life.

Nine week old Victim presented to the Emergency Department in May 2010 with labored breathing and appearing gray in color. She had to be revived in the triage area followed by intubation and connection to a medical ventilator due to her continued struggle to breathe. The infant was found to have 33 bone fractures, old and new, 28 of which involved both lateral and posterior ribs. Victim had a condition known as pleural effusion, whereby a punctured lung leads to fluid in the lung. Further, the infant had “flailed chest,” which means there were bone fragments floating around in her chest that presented further risk for additional punctures of the lung, which could result in death. The infant was found to have multiple bruises under her chin, on the inside of her buttocks and labia, on her thigh, and on her chest. There was a great deal of swelling to her face and chest. Victim was found to have what appeared to be the letters “f” and “u” scratched into her side, and a cigarette burn to the bottom of her left foot. She suffered fractures to her left pinkie finger as well as 4th and 5th toes, left tibia and left fibula. She was admitted to the hospital in critical condition.

A Children at Risk Evaluation (“CARE”) consult was completed where it was determined the fractures were in different stages of healing, thus accounting for 3-4 incidents of non-accidental trauma. The medical child abuse expert from the children’s hospital concluded that the injuries were the result of physical abuse and life threatening.

Victim remained in the hospital for approximately one month, during which time she developed an addiction to morphine and an Escherichia Coli (“E.Coli”) infection. It was determined that her injuries would not result in long term impairment or developmental/physical delays.

A joint investigation was conducted by the Division of Family Services (“DFS”) and law enforcement. During the investigation, it was revealed that Victim had been seen at a different hospital Emergency Room (“ER”) just one week prior to her admission in critical condition. Parents reported noticing a bump they believed to be a possible spider bite. There, the infant was seen by a Physician’s Assistant, who diagnosed her with a “soft tissue growth to back.” No x-rays or diagnostic tests were performed.

The parents were considered heavy drug users, with a history of intravenous use as well as prescription drugs. The DFS investigation was substantiated against parents for physical abuse: bone fracture, burn, puncture/stab, placing them on Level IV of the Child Protection Registry. The civil court proceedings ended with the termination of Mother’s and Father’s parental rights, and Victim was ultimately adopted by a paternal aunt and uncle. Mother and Father were convicted of Conspiracy 2nd and Endangering the Welfare of a Child 2nd. Sentencing occurred in March 2012.

Family History: Mother

Mother has prior history with DFS as a child. In 2/85, DFS investigated allegations of physical abuse of Mother by maternal grandmother (“MGM”). The case was substantiated for physical abuse/bizarre discipline in 4/85 and transferred to a Treatment unit. In 1/86, MGM was again investigated for physical abuse. The case was substantiated for emotional neglect in 8/86. In 9/88 MGM was investigated for other physical abuse, and the case was substantiated in 10/88. In 5/89, maternal grandfather (“MGF”) was investigated for physical neglect and the case was unsubstantiated. An investigation occurred in 12/98 with allegations of physical abuse, physical neglect, and sexual abuse by MGF. The case was closed, unsubstantiated, in 1/99. Another investigation was initiated in 2/99 for physical neglect of Mother by MGF. The case was closed, unsubstantiated in 3/99. Notes indicate MGF was an alcoholic but was granted custody of her in 1986 when MGM, also an alcoholic, threatened to throw her off a balcony.

As a parent, in 2/04, Mother was investigated for allegations of physical neglect of her son from another relationship. This case was unsubstantiated and closed.

Family History: Father

Father has no DFS history as a child. He was involved with YRS after incurring multiple charges. He graduated from the “Back on Track” program successfully.

As a parent, a hotline report was received by DFS in 4/10 concerning his daughter from another relationship. The caller reported Father's daughter had started wetting herself after visits with her father, whom caller claimed was a drug addict. This report was screened out for investigation as it did not meet DFS' definition of maltreatment.

KH's Near-Death Incident

In May 2010, the DFS Child Abuse and Neglect Report Line received an urgent referral alleging the physical abuse of KH. Reports indicate 9-week-old Victim arrived at the ED struggling to breathe and needed reviving during the triage process. She was observed to have multiples bruises on various parts of her body including her chin, chest, buttocks, labia and thigh. She was placed on a ventilator and underwent testing including a portable chest x-ray, which revealed numerous rib fractures in various stages of healing, and pleural effusion caused by a lung puncture. She had a "flailing chest" meaning bone fragments were floating in her chest cavity that could cause additional punctures and kill the infant at any time. A chest tube was inserted and Victim was medically paralyzed in order for doctors to stabilize her body enough to endure a computed tomography ("CT") scan of the head and full skeletal x-ray. Following these tests, doctors discovered additional fractures to the infant's pinkie finger, tibia and fibula of her leg, and 4th and 5th toes. Victim was found to have what appeared to be the letters "f" and "u" etched into her side. Upon hearing about the fractures, Mother asked if Victim's coughing could have caused the fractures. Father commented to Mother that he knew something was wrong.

Parents reported living with Mother's 7-y-o son from a different relationship, and maternal aunt ("MA"). They told hospital staff that only they and the aunt were primary caretakers of Victim. Parents stated that the infant had been fussy, crying, screaming and colicky 24 hours/day, 7 days/week for the past two weeks. About a week and a half ago they noticed a knot on the rib area on the infant's left side; the next day they saw another 1-2 knots. The knots seemed to get worse and bruising developed. Father reported hearing "clicking" when he picked the baby up. Parents advised they had brought Victim to another ER for the knots and were told the baby had some sort of bug bite, or "something abnormal" going on. No x-rays or diagnostic tests were done at that time, and Victim was discharged. Parents denied any trauma to their infant and did not provide any explanation for the injuries.

The DFS worker interviewed Mother, who reported she brought Victim to the hospital because she was struggling to breathe, "gasping for air." She reported giving the infant a bottle around midnight and later noticed her breathing had changed. She was breathing rapidly, her lips turned purple, and she was fussy. Mother was noted to change her story later to say the baby was fine last night and it was not until 11AM that day that she noticed a change. Mother told the worker they took the baby to the ER last week for a lump on her back that was diagnosed as a fatty tumor. She claimed they told hospital staff that they were hearing a clicking sound when they picked the baby up. Mother said they were told to check with the pediatrician, because sometimes things happen when the baby comes out of the birth canal. Mother said the baby had reacted the same way whenever she was picked up, since birth: she put her forearms against the sides of her head and

squished herself into a ball. Mother admitted to seeing a bruise on Victim's buttocks yesterday but said she had no idea how it got there. Aside from the clicking, the lump, and the bruise, Mother reported not noticing anything else concerning. She said both parents are equal caretakers of Victim. The only other caretaker was MA, who owned the home in which they lived. Mother felt MA would never harm the children, as she loved the kids. Her 7-y-o son also loved the baby, and she expressed that if he did something accidentally to hurt Victim, he would tell her. She expressed concerns for the aunt's friend, saying the woman was schizophrenic and may have caused Victim's injuries, though she admitted she could not think of a time when this woman would have been alone with the infant. Mother said she had no concerns for Father's care of the baby; if she did, he "wouldn't be there." She asked the detective present to give her a lie detector test. She wanted to find out who did this as she did not want to lose her children. The DFS worker noted Mother to show no emotion. Mother denied the use of physical discipline, or any drug or alcohol use or any mental illness for herself or Father. Father was not interviewed by the DFS worker as he and MGF left the hospital once Victim was admitted. The worker told Mother she was to leave the hospital and could have no contact with Victim or her son. A safety plan was implemented stating that no one was permitted to visit the infant in the hospital.

The DFS worker observed Victim, who was attached to 2 IVs, a catheter, a chest tube to drain fluid from her lungs, a tube through her nose which went into the stomach to drain stomach acid, a neck brace, and a brace around her torso. Doctors reported that the list of injuries was still pending, but so far they knew of multiple fractures, various abrasions, rectal and labial bruising, and carvings to the infant's side.

The DFS worker observed the interview of Father at the police station. He reported he and Mother took turns at night caring for Victim. They provided equal care in terms of feedings and diaper changes. He said MA also provided some care to the infant. Victim's sleep varied as she had colic and reflux. Father stated that ever since Victim came home from the hospital she had a horrible cry, like she was hurt. She even did this during doctor visits. The doctor told them to change the formula, which they did, and it did not stop the cry. He said he had no idea how Victim was hurt, and he found it disgusting. Father said they took the infant to the hospital for a lump on her back last week. They were told to watch the lump to see if it grew. He said you could hardly touch the infant anywhere, and she would react as if in pain. He denied any use of physical discipline with Mother's son, his 6-y-o daughter from another relationship, or Victim. He stated there was no abuse in the home at all. He felt MA could not be responsible and stated he had no concerns about her. Father said if he knew anything, he would tell the doctors and the police. He reported no concerns with Mother's care of the baby either. Father admitted caring for Victim was "overwhelming for both of them," but said not to the point of violence. Father said he would bet his life that Mother would have told him if anything happened to the infant. Father said he was willing to take a polygraph. The case worker told him he was to have no contact with Victim or his 6-y-o daughter.

MA was also interviewed and this was observed by the DFS worker. She told detectives she raised Mother from infancy. She reported Victim cried all the time and had a lump on

her back. She told parents to take the baby to the children's hospital, but they took her to another hospital instead. MA said she helped out a lot with cooking, cleaning, and caring for Mother's 7-y-o. She said parents got along well but got jealous of one another. She believed Father had been in jail due to drugs but believed he was clean or he would not be living in her home. She reported Father tried to help Mother with feeding, changing, and bathing the baby. She did not understand how the infant got this way. Victim cried this way since one month after she came home from the hospital. MA could not think of a time when only one parent went anywhere with the infant. She expressed being angry with Mother for not taking the baby to be seen by a doctor sooner. MA cared for Victim for a few days when parents worked a job. The infant slept in MA's room 3-4 nights maximum, the last night being 3 nights before the incident. MA agreed there was no way the baby could have caused the injuries to herself. She denied harming the infant or having knowledge of anyone else doing so. She never witnessed anything to cause her concern and there was never any accident with Victim. MA said Mother cared for the infant 90% of the time. Parents had Victim in their bedroom watching television most of the day. MA says neither she nor Mother had ever hurt the infant, but she could not say the same for Father as she did not really know him. However, she said she had never seen Father treat the baby badly. She too, was willing to take a polygraph.

The next day, Mother's 7-y-o son was interviewed at the Children's Advocacy Center. He reported that Father was lazy and just let Victim cry. He said everything made the infant cry. He recalled a specific incident when the infant was on Father's lap crying and Father did not do anything nor pay any attention. The child stated that Father fed the baby sometimes but said nothing when the baby cried and then told Mother to take care of her. He said Father got mad when the infant "barfed"; he knew this because Father made a mean face. He denied ever seeing Mother hit Victim. She was responsible for changing the Victim and Father "did nothing." He said he did not know how the infant broke her ribs and suggested it may have been because she barfed so much or maybe someone held her too tight. The child denied ever seeing any one drop, spank, or hit the baby, or seeing her fall. The team observing the interview agreed the child could not have caused the injuries.

The detective talked to the medical child abuse expert following his CARE consult of Victim. He reported the hand and foot fractures were purposeful and deliberate. The multiple rib fractures proved that this has been going on over time. A break in the palm of the infant's hand was also discovered. He expressed there are just too many injuries for the parents to claim they had no knowledge of them. DFS obtained legal custody of Victim.

Parents submitted to polygraph tests, and both of them failed their respective tests. The detective reported to the DFS worker that he had re-interviewed the parents, and Father told him he and Mother had visited a haunted house where they went to investigate paranormal activity and ever since then, things had been happening to the infant. He stated he had not divulged this information before for fear of being laughed at. Both parents continued to deny any knowledge of how their infant was injured. The mother of Father's older child told the DFS worker that she was with Father for 10 years and their

relationship was filled with domestic violence. She filed for an emergency modification of custody of their daughter and when she saw Father at that hearing, he told her to tell people he was a good father if anyone asked. Her daughter once returned from a visit with a cigarette burn she said was caused by Father. Furthermore, when the child was a baby, Father fell asleep on the couch with the child with a lit cigarette, causing the couch to catch on fire.

At the initial court hearing, despite objection from DFS and the attorney guardian *ad litem* (“GAL”), the judge ordered supervised visits with parents at the hospital at least twice a week. During one such visit, the DFS worker noted Father to hover over the baby, kissing her all over her face, which appeared to agitate Victim. The infant was observed to cry out even while intubated and had an extreme increase in heart rate, requiring medical staff to give her a dose of a sedative medication. Once Victim was discharged from the hospital, the visitation moved to the DFS office, again with continued protest from DFS and the GAL.

During the treatment case, a number of relatives came forward asking to be considered for placement of Victim. One such relative, Father’s Paternal Aunt by marriage, told the DFS worker that Father called her daughter the night before she was brought to the hospital and stated the baby was struggling to breathe and he did not know what to do. The cousin told him she would be right over to drive them to the ER, but Father told her he was too tired, wanted to sleep, and they would take the infant tomorrow. After one month in the hospital, Victim was discharged into the foster home of a nurse. Doctors were very pleased with her recovery. Following a home assessment by the DFS worker, Victim was moved and placed in the care of the Paternal Aunt and Uncle.

Criminal /Civil Disposition

During the civil court proceedings, DFS filed a motion for no reasonable efforts, meaning they would no longer be required to case plan with parents for reunification. Their motion was granted, and Father’s Aunt and Uncle, already caring for Victim, filed for guardianship. Parents’ parental rights were terminated, and the Paternal Aunt and Uncle adopted Victim in March 2012.

The DFS investigation was substantiated against parents for physical abuse: bone fracture, burn, puncture/stab, placing them on Level IV of the Child Protection Registry. The case was transferred to an ongoing treatment worker.

Parents were indicted on charges of Assault 2nd, Conspiracy 2nd, and 3 counts of Endangering the Welfare of a Child, all felonies. The Conspiracy 2nd and Endangering the Welfare of a Child 2nd were secured as convictions. In this instance, statutory guidelines and SENTAC guidelines did not call for jail time, but rather Level II probation. Sentencing occurred in March 2012. For the Endangering charge, Mother received 2 years at Level V, suspended after 1 month. For the Conspiracy charge, she received probation. For the Conspiracy charge, Father received 2 years at Level V, suspended after 3 months and 18 months Level III probation for the Endangering charge.

Strengths of the Case

CDNDSC acknowledges the Department of Services for Children, Youth, and Their Families applauding the exquisite investigative efforts that were put forth by the Division of Family Services' caseworker and Family Crisis Therapist.

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:

Primary Recommendations

MEDICAL

1. CDNDSC recommends that a child who presents to any medical care facility with a traumatic injury, where history of how the injury was sustained is not consistent with the type of injury, or where other trauma is likely to have occurred, that a physical examination be completed such that the child is disrobed in order to observe the child's entire body, so that other injuries and/or abuse can be ruled out.
 - a. Rationale: In April 2010, the child, whom was two months and one day of age, was taken to the emergency room by Mother and Father. Child was evaluated by a Physician's Assistant and diagnosed with what appeared to be a soft tissue subcutaneous mass on the left upper back, approximately 2.5 by 1 centimeters in size. It was documented that this mass was a "spider bite," however, there was no indication of mass mobility, color, or tenderness and no further physical findings were noted. Parents noted that the mark had appeared on the child within the last forty-eight hours. It was further documented that the child would cry upon awakening and had a flat anterior fontanelle (soft spot). Child was discharged home to the care of Mother and Father.
 - b. Anticipated Result: To ensure the safety and wellbeing of a child through proper medical examination and oversight in order to rule out the suspicion of abuse/neglect.
 - c. Responsible Agency: All Delaware Hospitals

2. CDNDSC recommends children two years of age and under should receive physical examinations where clothing is removed in order to observe the child's body so that abuse, whether or not it is suspected, can be ruled out.
 - a. Rationale: In April 2010, the child, whom was two months and one day of age, was taken to the emergency room by Mother and father. Child was evaluated by a Physician's Assistant and diagnosed with what appeared to be a soft tissue subcutaneous mass on the left upper back, approximately

2.5 by 1 centimeters in size. It was documented that this mass was a “spider bite,” however, there was no indication of mass mobility, color, or tenderness and no further physical findings were noted. Parents noted that the mark had appeared on the child within the last forty-eight hours. It was further documented that the child would cry upon waking and had a flat anterior fontanelle (soft spot). According to medical documentation, the Physician’s Assistant did not perform a full body skeletal survey. It does not appear that the Physician’s Assistant conducted a physical examination of the child or fully observed/handled the child.

- b. Anticipated Result: To ensure the safety and wellbeing of a child through proper medical examination and oversight in order to rule out the suspicion of abuse/neglect
- c. Responsible Agency: All Delaware Hospitals

Ancillary Recommendations

MEDICAL

1. CDNDSC recommends that the treating emergency room hospital implement policy and/or procedure to ensure that discharge summaries of children who are seen/examined in the emergency room be sent to said child’s primary care physician in order to ensure or create awareness by the child’s primary care physician that follow up is to occur and/or recommended.
 - a. Rationale: In April 2010, the child, whom was two months and one day of age, was taken to the emergency room by Mother and Father. Child was evaluated by a Physician’s Assistant and diagnosed with what appeared to be a soft tissue subcutaneous mass on the left upper back, approximately 2.5 by 1 centimeters in size. It was documented that this mass was a “spider bite,” however, there was no indication of mass mobility, color, or tenderness and no further physical findings were noted. Parents noted that the mark had appeared on the child within the last forty-eight hours. It was further documented that the child would cry upon awakening and had a flat anterior fontanelle (soft spot). Child was discharged home to the care of Mother and Father. The Physician’s Assistant recommended immediate follow up with the primary care doctor. However, this never occurred. An appointment was scheduled four days after the incident, but the parents cancelled the visit.
 - b. Anticipated Result: To ensure the primary care physician has knowledge of all medical care provided to patients and the patient receives the necessary follow up care.
 - c. Responsible Agency: All Hospital Emergency Departments
2. CDNDSC recommends that there be education/training of medical providers for Neonatal Abstinence Syndrome (“NAS”).
 - a. Rationale: Birth records note that “infant is extremely fussy under bili lights, settles when swaddled and held.” Child was also seen three times

- by the Primary Care Physician in March. During each visit, the parent reported that the child was fussy and seemed like she was crying all the time. Given Mother's history of drug use during the pregnancy, withdrawal should have been suspected.
- b. Anticipated Result: Risk factors would be identified by the Primary Care Physician to ensure the safety and wellbeing of a child.
 - c. Responsible Agency: Medical Society of Delaware and American Academy of Pediatrics
3. CDNDSC recommends that there be education/training of Obstetricians and Family Practitioners on the recognition and prevalence of maternal drug use and/or abuse.
- a. Rationale: Mother's prenatal care revealed a history of marijuana use prior to and during her pregnancy. Additionally, the child was seen on three occasions by her primary care physician. At the time, it was suspected that the parents were actively using heroin.
 - b. Anticipated Result: To ensure that medical providers receive education on screening tests to detect maternal drug use and provide recommendations for treatment.
 - c. Responsible Agency: Medical Society of Delaware
4. CDNDSC recommends that education be offered to physicians on resources regarding home visiting programs.
- a. Rationale: At birth, Mother's maternal history of tobacco use and marijuana use during the pregnancy was known. During the first month of life, the parents reported that the Victim was crying all the time. Maternal substance abuse paired with the Victim's possible withdrawal symptoms put this child at higher risk, as well as an appropriate candidate for home visiting services.
 - b. Anticipated Result: Home visiting services are evidence-based to reduce risk within the family.
 - c. Responsible Agency: Division of Public Health

LAW ENFORCEMENT

1. CDNDSC recommends that law enforcement personnel receive specialized training prior to being assigned cases involving the death or near death of a child, with specific focus on securing and maintaining a crime scene, interviewing witnesses, and communicating with the Department of Justice and Division of Family Services.
 - a. Rationale: In this investigation, law enforcement did not secure and maintain the crime scene. At the time, the location of the crime scene was not yet identified. Several witnesses were not interviewed until November 2010. Given the complexity of the case, a multidisciplinary team meeting should have occurred with representatives from the civil and criminal case. Charges were not filed until January 2011.

- b. Anticipated Result: Law enforcement personnel will have the knowledge to perform a thorough investigation.
- c. Responsible Agency: All Law Enforcement

FAMILY COURT

1. CDNDSC recommends that further education be offered to judicial officers, such as the development of a bench book, pertaining to the psychological, developmental, and/or physical impacts of abuse and neglect on nonverbal children who sustain serious, life threatening injuries.
 - a. Rationale: At the initial court hearing, despite objection from DFS and the attorney guardian *ad litem* (“GAL”), the judge ordered supervised visits with parents at the hospital at least twice a week. During one such visit, the DFS worker noted Father to hover over the baby, kissing her all over her face, which appeared to agitate Victim. The infant was observed to cry out even while intubated and had an extreme increase in heart rate, requiring medical staff to give her a dose of a sedative medication.
 - b. Anticipated Result: The impact of abuse on non-verbal children will be considered when making decisions regarding visitations.
 - c. Responsible Agency: Family Court
2. CDNDSC recommends that the Family Court revisit its scheduling of Court Improvement Project (“CIP”) cases to allow more flexibility in completing complex cases and trials in consecutive days and in a timely manner.
 - a. Rationale: This infant entered DSCYF custody in May 2010. The Adjudicatory Hearing should have occurred within 40 days. Instead it occurred in September 2010, November 2010, December 2010 and January 2011. The decision was issued in February 2011. The Court was seriously constrained by the CIP mandatory schedule resulting in a delay of permanency for this abused infant.
 - b. Anticipated Result: To improve permanency outcomes for children.
 - c. Responsible Agency: Family Court

Supportive Statements

1. CDNDSC supports the statute for centralizing prescription medication prescriptions in order to establish greater quality assurance and prevent abuse of such drugs.
2. CDNDSC supports the continued training of medical professionals on the Recognition and Reporting of Child Abuse and Neglect.
3. CDNDSC supports the use of multidisciplinary team trainings for each county as provided by the Children’s Advocacy Center and the Child Protection Accountability Commission.

4. CDNDSC supports the inception and establishment of a Child Protection Team at all hospitals.