



# MiPSAC

**Newsletter of the Michigan Professional Society on the Abuse of Children, Inc., the Michigan Chapter of APSAC.**

**Volume 4, Issue 3**

**September - December, 1999**

## *Medical Issues*

By Mary Smyth, MD

Although this isn't "new news" I still get calls requesting information about the dating of bruises.

In 1977 E.F. Wilson published a paper entitled *Estimation of the Age of Cutaneous Contusions in Child Abuse*. In this paper, he summarized information found in 5 forensic pathology texts that describe how bruise color changes over time. This information was based on observations made predominantly during necropsy i.e., dead adults. Despite the questionable relevance to living children, as well as the disparate opinions described, Wilson's paper became widely cited in a multitude of texts and journal articles.

Interestingly, tables such as the one below are frequently presented and attributed to Wilson although the table actually contained in his original paper makes no attempt to offer such a simplified scheme.

DATING of BRUISES-- DO NOT USE THIS TABLE !

<u>Color</u>	<u>Age</u>
Red	0-1 day
Blue, purple	1-4 days
Green,yellow	5-7 days
Yellow,brown	8-10 days
Cleared	1-3 weeks

In fact Wilson himself concludes "estimation of the age of a contusion is difficult and imprecise at best....". In 1991, Langlois and Gresham published their study of the visual aging of bruises – using photographs from live patients! Their patients ranged in age from 10-100 years, many over 65. Their research indicted that the development of color in bruises is variable. Yellow, previously thought to be present in bruises at least 5 days old, may actually be

seen as early as 18 hours. Unfortunately, Langlois and Gresham's work went relatively unnoticed.

In 1996, Schwartz and Ricci published *How Accurately Can Bruises be Aged in Abused Children? Literature Review and Synthesis*. These authors point out many of the difficulties associated with attempting to date bruises including:

- Variability associated with the depth of the injury
- Bruises appear different depending on their location e.g. extremities vs. the face
- Which color should be assigned to a bruise is not well defined; do you use the predominant one, more than one?
- Skin pigmentation affects the appearance of bruises
- Repeated injury may affect the healing process

They state that "the available literature does not permit the estimation of a bruise's age with any precision based solely on color" and call for more research.

Remarkably, the same month that the Schwartz article appeared, Stephenson and Bialas published *Estimation of the Aging of Bruising in the Archives of Disease in Childhood*. Finally- a study of bruise appearance in children! They looked at photographs of bruises in children 8 months to 13 years old, where the age of the bruise was known. Their conclusions were similar to those of Langlois and Gresham:

- Yellow is seen in bruises at least 24 hours old
  - Green is seen in bruises at least 48 hours old
  - Red can be seen any time from injury to 7 days
  - Purple, blue and brown are seen at various times
- Bottom line--- we aren't, as good as we thought we were, the dating of bruises should be approached with caution. As Dr. Howard Dubowitz says: "the more we learn, the less we know!"

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## **EDITORIAL COMMENT**

By Leni Cowling

My daughter recently gave me a book entitled, "Neglected Children – Research, Practice, and Policy", by Howard Dubowitz, Editor. I read it quickly and found it excellent.

The questions must be discussed! I believe the thickest cases in my file are ones concerning chronic neglect. What is child neglect? Abuse is rather easy: bruises or no bruises, injury or no injury, but we have shied away from defining neglect.

Personally, I feel neglect is more deleterious on a child's health, welfare and safety, than abuse. A father, who backhands his son for mouthing off, may leave a black eye and the son feels his misdeed is paid for...end of story. Neglect, on the other hand, is insidious and leaves anxiety, inability to socialize appropriately, total lack of self-esteem, and a complete unfamiliarity of how to function in the world.

I feel child neglect is one of the basic causes for the problem of children and violence...TV notwithstanding. In severe cases of chronic neglect, programs that are educational prove to be failures to address the problem because they are time limited – managed care at its best! Child neglect is the most common and the least understood of all child maltreatment.

I have had investigations in which the allegations are of abuse, dad or mom hits child, but on visiting the home, I find a dead deer inside the back door, full of maggots and green slime with a very foul odor. I have read case narratives in which similar situations occur: dead pig on kitchen floor, stench overwhelming.. I have been to homes where animal feces is so thick on the floor, all over the house, the children have it between their toes. I question how people can live in this kind of environment? I believe it is a health hazard at the very least.

Do we wait until some kind of epidemic puts the community into a panic before we can do something about it? One of our small villages is attempting to deal with this kind of problem through zoning laws. Interestingly enough, there are some vociferous individuals who are totally against zoning and are fighting these attempts. They say it is big brother interfering with our freedoms.

Our official definitions of neglect in the FIA are medical neglect, abandonment, improper supervision, and physical neglect. In numerous investigations in which I have taken the concerns to the Court, the children have remained in the home. While it is true that the children have survived, they also grow up to

This has nothing to do with poverty. In cases where the family has received thousands of dollars in lawsuit settlements, their lifestyle remains the same. Who is responsible for cleaning these homes? How is the necessary educational information getting out? Is this enough? What do you think?



*Leni Cowling receives the 1999 MiPSAC Child Advocacy Award in May, 1999.*

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*The comments expressed in this newsletter reflect the views of the author(s) and do not necessarily represent the views of MiPSAC or the American Professional Association on the Abuse of Children (APSAAC).*



### Case Law Update

#### Personal Protection Order -Constitutionality

Kampf v Kampf, \_\_\_ Mich App \_\_\_ (1999)(No.21191, August 31, 1999)

#### Facts

Plaintiff sought and was granted an ex parte personal protection order. The plaintiff petitioned the Isabella County Circuit Court for the order to restrain the defendant, her husband, from entering the property where she lived and worked, from assaulting her, from stalking her, and from threatening to kill or injure her. She asserted in her petition that she would suffer irreparable injury if the order were not issued ex parte. She asserted that her husband had been sexually, emotionally, physically and financially abusive to her. The court granted her petition for an ex parte PPO.

The defendant filed a motion to “quash, suppress, rescind or dismiss” the PPO. He did not challenge the truthfulness of the underlying allegations. Rather, he asserted that the PPO statute was unconstitutional because it deprived him of his property rights and limited his right to liberty by subjecting him to arrest without notice or sufficient procedural safeguards. The trial court denied his motion. He appealed.

#### Holding

The husband first asserted that the PPO statute was unconstitutional because he could not purchase or possess firearms which “eliminates the possibility of hunting or other sporting events.” The court found this basis of objection without merit because the Michigan and United States Constitutions do not protect the right to bear arms “in the context of sport or recreation.”

Next, defendant challenged the statute as a violation of procedural due process because it does not require notice and the opportunity to be heard prior to the issuance of the PPO. However, the court held that there was no violation because the law provides for adequate notice after the order has been entered and before it may be enforced. Moreover, the statute permits the person against whom a PPO has been obtained ex parte to move to rescind the order.

#### Practice tip

Michigan’s Juvenile Code now provides that the family division of the circuit court has jurisdiction over PPO actions involving juveniles. MCL 712.2(h). Additionally, a juvenile who violates a PPO may be taken into police custody without a court order, MCL 712A.14(1), and may be detained pending a hearing, MCL 712A.15(2)(f), if “it appears there is a substantial likelihood of retaliation or continued violation.” If the juvenile is 17 years of age or older at the time he or she is taken into custody, he or she may be held with adults. MCL 712A.15(5)(b). A juvenile charged with a PPO violation is entitled to court appointed counsel, MCL 712A.17c(1), but is not entitled to a jury determination as to whether there was a violation of the PPO. MCL 712A.17(2).

### Question of the Month

The Resource Center has recently received two inquiries about the role of child witnesses in child protection proceedings. First, whether it is permissible for the attorney representing a parent to subpoena a child for a review hearing and what responses may be available to the child’s lawyer-guardian ad litem. Secondly, what protections are available for child witnesses when they must testify in court?

As to the first question, the court rules applicable to child protection proceedings contain little specificity regarding the issuance of subpoenas, MCR 5.920(D). This point is significant because as MCR 5.901 makes clear, “Other Michigan Court Rules apply to such juvenile cases in the family division of the circuit court only when this subchapter specifically provides.” Read together, these rules would seem to indicate that the general court rule regarding subpoenas, MCR 2.506, applies only as it relates specifically to service of a subpoena, barring its provisions on such matters as seeking to quash a subpoena. See MCR 5.920(D)(3): MCR 5.506(H). The practitioner should be aware that the court of appeals has held, in the context of a *delinquency* case, that procedural rules outside those set forth.

In the rules outside those set forth in the rules specific to juvenile proceedings may be used unless a specific rule in the juvenile provisions provides otherwise. In *re* McDaniel, 186 Mich App 696 (1991). McDaniel may provide persuasive precedence for going beyond the rules specifically referred in subchapter 5.900 in a child protection case.

The Juvenile Code seems to provide the court with authority to quash the subpoena in question. “After a petition shall have been filed...the court...may issue a summons...requiring the person or persons who have custody or control of the child, or with whom the child may be, to appear personally and bring the child before the court at a time and place stated: Provided, that the court in its discretion may excuse but not restrict the children from attending the hearing.” MCL 712A12.

The second question, regarding what steps may be taken to protect a child who will testify, is well developed. First, the United States Supreme court has addressed this issue in two cases: *Coy v Iowa*, 487 US 1012 (1987)(Reversed criminal conviction where child was screened from defendant’s view, in part, because there were no particularized findings of fact that the child would suffer harm from a direct confrontation.); *Maryland v Craig*, 497 US836 (1989)(Affirmed criminal conviction where child’s testimony was taken via closed circuit television based on particularized findings that the individual child at issue would suffer trauma if face-to-face confrontation took place.).

Both the Juvenile Code and the Michigan Court Rules address the issue of what measures may be taken to protect a child witness who must testify in a protection proceeding. The Juvenile Code provides for the use of anatomically correct dolls, a support person, videotaped statements or deposition, and the shielding of the child witness. MCL 712A.17b. Most of these provisions require the court to make particularized findings that harm would result to the child witness were the precaution not taken. See *In re Brock*, 442 Mich 101 (1993); *In re Hensley*, 220 Mich App 331 (1996). The Court Rules provide for additional protections such as the use of electronic equipment or an

## UPCOMING MiPSAC MEETINGS:

*We look forward to sharing with you at these meetings. Please call any board member for directions.*

January 21, 2000, 11AM-1PM: Bethany Christian Services, 901 Eastern, Grand Rapids, MI (Call Pat Walsh at (616) 224-7502 for directions).

March 24, 2000: Lansing, MI

May 12, 2000: Northern Michigan

July 10-14, 2000 APSAC Colloquium, Chicago, IL

MiPSAC is looking for articles of interest to our membership for the newsletter. Questions or suggestions to consider are always welcome and should be sent to Leni Cowling, PO Box 892 Bellaire, MI 49615

Volunteers are always welcome for MiPSAC Committees:

- Membership committee (Vince Palusci)
- Legislative committee (Bill Ladd)
- Conference/training committee (Pat Walsh)
- Newsletter/brochure committee (Leni Cowling)
- Communications (Roger Pickering)

### **Family Group Decision Making** by Pat Walsh, RN MSW (pwalsh@bethany.org)

The Child & Family Services Administration received a \$3 million budget enhancement for FY1999 to demonstrate and implement Family Group Decision Making (FGDM). Six demonstration sites were chosen based on an application process which, in part, asked counties to describe how they would fit FGDM into their current community collaborative efforts. The six counties contracted with local providers which were competitively bid, locally administered one-year contracts that may be extended up to three years. The original six demonstration sites initiated their FGDM efforts in the Spring of 1999, and the demonstration project was expanded to include Kent County in the Fall of this year.

Demonstration sites are Charlevoix/emmet, Leelanau/Benzie, Kent, Muskegon, VanBuren, Washtenaw and Wayne counties. Based on a history of Family Conferencing—a family meeting that focuses on resolving a child's care, safety and protection issues---FGDM originates with Maori, an indigenous people of New Zealand. It is well established that Kinship Care provides continuity for abused and neglected children, maintaining their family connections and cultural identity. The Michigan demonstration project, under the auspices of the Family Independence Agency, anticipates fine-tuning this kinship model of involving families in the care, safety, and protection of their own family members.

Working closely with Children's Protective Services' staff who refer children and families to FGDM, and the Family Court and community services representatives, the FGDM Coordinator helps to identify family support systems and build upon strengths of each family.

The purpose of FGDM is to assist the family with establishing a plan that ensures the safety and protection of the children involved. Once the family plan is approved by the referring CPS worker, the FGDM Advocate monitors the plan and provides support to the family in carrying out their plan. Requirements include that the family must have a CPS substantiated case (excluding sexual abuse cases where the perpetrator is in the home), the family must be eligible for Temporary Assistance to Needy Families (TANF) and the parent(s) must agree to participate.

FGDM promotes the belief that families are capable of making responsible decisions for their own members and that solutions to problems often lie within the family. FGDM acknowledges that the family is the most valuable resource in a child's life.

#### MiPSAC Goals

- ◆ To bring together Michigan professionals working in the area of abused children
- ◆ To foster networking among MI professionals
- ◆ To be an information resource for Michigan professionals
- ◆ To sponsor quality training for Michigan professionals

#### **REMINDER!**

Please renew your annual membership to APSAC. You need National membership for MiPSAC. *Part of your annual dues to APSAC pays for MiPSAC membership automatically!* American Professional Society on the Abuse of Children  
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