

# AMERICAN ACADEMY OF PEDIATRICS

Committee on Child Abuse and Neglect and Committee on Bioethics

## Forgoing Life-Sustaining Medical Treatment in Abused Children

**ABSTRACT.** A decision to forgo life-sustaining medical treatment (LSMT) for a critically ill child injured as the result of abuse should be made using the same criteria as those used for any critically ill child. The parent or guardian of an abused child may have a conflict of interest when a decision to forgo LSMT risks changing the legal charge faced by a parent, guardian, relative, or acquaintance from assault to manslaughter or homicide. If a physician suspects that a parent or guardian is not acting in a child's best interest, further review and consultation should be sought in hopes of resolving the conflict. A guardian ad litem who will represent the child's interests regarding LSMT should be appointed in all cases in which a parent or guardian may have a conflict of interest.

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ABBREVIATIONS. LSMT, life-sustaining medical treatment; AAP, American Academy of Pediatrics.

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Pediatricians, pediatric subspecialists, and pediatric surgeons caring for a severely abused child who is supported with life-sustaining medical treatment (LSMT) face many difficult decisions. One potential concern may be how to proceed when the child apparently will survive with seriously disabling neurologic deficits or with continued reliance on LSMT, such as a ventilator. Moreover, a parent or guardian may have a conflict of interest when a decision to forgo LSMT risks changing the legal charge faced by a parent, guardian, relative, or acquaintance from assault to manslaughter or homicide.

Conflict of interest from a parent or guardian should not arise if a child is declared brain-dead. The declaration of death based on brain death criteria is not dependent on the cause of the brain injury. Brain death is a clinical determination based on established criteria, supplemented (if necessary) by cerebral flow studies, electroencephalograms, and other ancillary tests.<sup>1,2</sup> In cases of abuse, given the likelihood of criminal prosecution, it may be prudent to supplement the clinical determination of brain death with an ancillary test, such as a cerebral flow study.

### FORGOING LSMT

LSMT encompasses all interventions that may prolong the life of the patient. These may include cardiopulmonary resuscitation, respiratory and circulatory support, artificially administered nutrition and

hydration, and medications, such as antibiotics.<sup>3</sup> Decisions to forgo LSMT for a critically ill child whose injuries are the result of abuse should be made using the same criteria as those used for any critically ill child. These criteria include the reasonable medical certainty that LSMT will fail to maintain the child's life or the disproportionate burden of treatment in the face of irremediable and severe brain or other injury.<sup>3-6</sup> The primary consideration in forgoing LSMT ought to be the best interest of the child after carefully weighing the benefits and burdens of continued treatment. Decisions to forgo LSMT in cases of severe brain injury should not be limited to children in a persistent vegetative state.<sup>3,6</sup>

### RESOLUTION OF CONFLICT

The parent or guardian may be suspected or accused of the assault or may be protecting a friend or family member who is suspected or accused of the assault. If a physician suspects that a parent or guardian is not acting in a child's best interest, it is appropriate to seek further review and consultation in hopes of resolving the conflict. The hospital ethics committee may be one mechanism of conflict resolution. However, the complex legal issues may force the conflict into court.<sup>7</sup> Even so, an ethics committee consultation may be useful to assure the hospital administration and other interested parties that the hospital staff has pursued all possible avenues before asking for a court hearing. The hospital attorney also will need to be aware of the conflict to safeguard the interests of the hospital.

Parents and guardians often retain the right of making medical decisions, such as forgoing cardiopulmonary resuscitation or other LSMT, despite being suspected, accused, or even convicted of child abuse. Court proceedings that appoint a guardian ad litem for the purpose of protecting the abused child often limit the role of the guardian to determine appropriate placement of the child after discharge. A separate court proceeding may be necessary to ask for the appointment of a guardian ad litem for medical decisions—an appointment made necessary given the parent or guardian's conflict of interest for making such decisions. The physician should impress on the judge that the request for the appointment of a guardian ad litem does not prejudice the question of forgoing LSMT and that the guardian ad litem could not make an informed decision without visiting the child's bedside to obtain a first-hand understanding of the child's condition.

Prosecutors may not support a decision to forgo LSMT out of concern that the case against the alleged abuser may be weakened. Furthermore, because the

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The recommendations in this statement do not indicate an exclusive course of treatment or serve as a standard of medical care. Variations, taking into account individual circumstances, may be appropriate.

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prosecutor may bring a charge of manslaughter or murder after the child's death, the prosecutor has an apparent conflict of interest in arguing before the court in favor of forgoing LSMT. It also may be difficult to find a judge who is willing to hear a request for appointing a guardian ad litem for medical decision-making, given the notoriety that such cases often bring. Finally, the application of pertinent child abuse laws varies from state to state, county to county, and judge to judge, making it difficult to predict with any certainty the outcome of such court proceedings. The American Academy of Pediatrics (AAP) recommends the appointment of a guardian ad litem in all cases of child abuse requiring LSMT in which a parent or guardian may have a conflict of interest.

#### FAMILY SUPPORT

Decisions to forgo LSMT should be based on complete and compassionate communication with the family. The AAP endorses the role of parents of children receiving LSMT in helping to make these determinations, even if one or both parents are suspected of causing the injury.<sup>3,6</sup> Regardless of the cause, nature, and extent of a child's injuries and of the ongoing court proceedings, the parent(s) or guardian(s) should be treated with respect, compassion, and due consideration for privacy. As should be the case for all critically ill children, appropriate support for the parents should be offered, including a bereavement counselor, chaplain, or other persons identified by the parents as providing important psychological and spiritual support.<sup>8</sup>

#### TISSUE AND ORGAN DONATION

Although forgoing LSMT does not require the permission of the medical examiner or the district attorney, the medical examiner should be involved early and before the removal of LSMT in child abuse cases. There may be physical evidence, such as photographs of the injuries, that preferably would be obtained before the child's death.

Federal and state regulations require that the parent or guardian be given the option of tissue and organ donation. However, the permission of the medical examiner is absolutely necessary for tissue and organ procurement to take place, as valuable evidence may be altered or lost in the process. If tissue and organ donation are options, the physician should introduce the idea and then request that a person who is trained and comfortable in discussing tissue and organ donation describe the options and answer the family's questions. In addition, the medical examiner should be encouraged to attend the tissue and organ procurement to ensure that appropriate evidence is collected rather than routinely deny permission for procurement.<sup>9,10</sup>

#### RECOMMENDATIONS

1. Pediatricians, pediatric subspecialists, and pediatric surgeons should be aware of the legal and ethical issues in caring for children who have been seriously injured as a result of abuse.

2. Regardless of the cause, nature, and extent of a child's injuries, the parent(s) or guardian(s) should be involved, as appropriate, in all aspects of the child's care and treated with respect and due consideration for their privacy.
3. Decisions to forgo LSMT for a critically ill child whose injuries are the result of abuse should be made using the same guidelines as those used for any critically ill child.
4. A guardian ad litem for medical decision making should be appointed in all cases of child abuse requiring LSMT in which a parent, guardian, or prosecutor of the alleged abuser may have a conflict of interest.
5. The medical examiner's office should be involved early and before forgoing LSMT. Local procedures for collecting evidence and performing postmortem examinations should be developed to allow for organ and tissue donation.

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