

Emerging Medicolegal Issues in the Practice of Pediatric Sleep Medicine

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With the rapid growth in the field of pediatric sleep, health care providers need to be aware of several emerging legal issues that have the potential of impacting their clinical practice. Although there is limited case law related to the practice of pediatric sleep medicine, the emerging legal issues may have a significant impact potential in the future. This article provides an overview of emerging legal areas that have the potential to impact the practice of pediatric sleep medicine.

The article is divided into 3 parts. First, an overview of the various legal areas that may impact health care providers involved with taking care of children with pediatric sleep disorders is described, with particular emphasis on civil liability emerging from medical malpractice. Second, some of the unique issues that health care providers must be aware of, including issues related to providing care for minors, is discussed. Third, newer areas that relate to legal prosecution for health care fraud as it may relate to violations of quality of care are introduced, with relevance for the practice of pediatric sleep medicine.

The information contained in this article is for educational purposes and is not intended to provide legal advice. You should consult an attorney for individual advice regarding your situation.

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OVERVIEW OF LEGAL ISSUES FOR THE PRACTICE OF PEDIATRIC SLEEP MEDICINE

Health care providers may interact with the law in areas that span liability emerging from: tort claims, issues related to informed consent, contract law, including allegations of breach of contract, corporate law, related to mergers and acquisitions of health care systems; challenges to medical staff privileges, including issues related to impaired physicians; insurance regulations, with respect to managed care organizations and Employee Retirement Income Security Act (ERISA); and from the rapidly emerging area of health care fraud statutes including Stark laws, Anti Kickback statutes, and the potential application of the False Claims Act for violations of quality of care. A violation of this law could potentially involve a situation whereby an individual has ownership interest in a sleep center and refers patients to that sleep laboratory for studies.

CIVIL LIABILITY FOR HEALTH CARE PROVIDERS

Health care providers will be confronted most frequently with civil liability emerging from a medical malpractice claim. Medical malpractice claims typically relate to negligence claims, that is, there is no underlying intent for injury. A negligence claim requires the plaintiff (the injured party) to prove 4 distinct elements: duty, breach, causation, and harm. A typical claim follows some distinct process steps, which are depicted in **Fig. 1**.

As illustrated in **Fig. 1**, a plaintiff is limited in the ability to bring forth a lawsuit by the statute of limitations. The duration of the statute of limitations varies across states and for various claims. Accordingly, a plaintiff may not be permitted to sue the defendant if the lawsuit is brought after the permitted duration within the statute of limitations. The statute of limitations has unique implications in the pediatric setting, where this duration may be much longer than the typical time period in the adult setting. After the claim is filed, states may require mediation. The discovery phase involves the plaintiff seeking information from the defendant, which can include written questions (interrogatories) and depositions. Motions for summary judgment relates to a decision made by a court based on the evidence or facts without a trial and is generally used when there is no material dispute of facts and a party is entitled to a decision as a matter of law. Settlement opportunities for medical malpractice claims typically span the entire duration of a lawsuit. Expert testimony is crucial in determining the strength of the case. For the few cases that do result in a jury trial, there is a unique and important role of jury instructions, which relates to the guidelines provided by a court to the jurors in interpreting law when making their decisions. Even after a jury trial is concluded there may be an opportunity for appeal. Therefore, both parties typically make a record of their objections during the discovery and trial phase to ensure the opportunity for an appeal.

As indicated earlier, the plaintiff must prove all 4 elements related to negligence. In general, there is not much dispute with respect to duty, causation, and harm unless there is an underlying frivolous claim. Duty relates to the legal obligation that is created by a physician (or any health care provider) to patient relationship. Breach relates to a violation of the standard of care. This standard of care is typically established by an expert witness. Causation relates to the notion that the action of the physician or health care provider resulted in the alleged injury. Harm relates to the actual injury sustained by the plaintiff. This injury may potentially be physical or emotional.

Most litigation surrounds the issue of breach. The issue, related to breach, emerges from the concept of standard of care. The standard of care represents a national standard of care as articulated in the case *Hall v. Hillbun*.¹ In this case, the patient underwent an exploratory laparotomy that was complicated by a cardiorespiratory arrest, resulting in death. The issue in this case was the extent of liability incurred by the surgeon for postoperative care, as the surgeon was at home when this incident

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