

# Legal Issues in the Treatment of Pregnant Women with OUD

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*Disclaimer: this presentation is not legal advice*

Topics:

1. The duty to report abuse or neglect
2. Application to March 6 case presentation
3. Other legal issues for pregnant women in medication-assisted treatment for OUD

# Duty to Report Abuse or Neglect

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I.C. § 31-33-5-1:

In addition to any other duty to report arising under this article, an individual who has reason to believe that a child is a victim of child abuse or neglect shall make a report as required by this article.

## (a) “reason to believe”

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I.C. § 31-9-2-101:

“Reason to believe” ... means evidence that, if presented to individuals of similar background and training, would cause the individuals to believe that a child was abused or neglected.

(b) “a victim of abuse or neglect”

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I.C. § 31-9-2-133:

(1) “The child’s physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision.”

I.C. § 31-34-1-1.

(b) “a victim of abuse or neglect” con’t

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(2) “the child's physical or mental health is seriously endangered due to injury by the act or omission of the child's parent, guardian, or custodian.”

I.C. § 31-34-1-2.

## (b) “a victim of abuse or neglect” con’t

(3) The child is a victim of a criminal sex offense (rape, child molest, child solicitation, sexual misconduct with a minor, etc.), or if a parent or guardian allows a child to commit a sex offense.

I.C. § 31-34-1-3 through 5.

## (b) “a victim of abuse or neglect” con’t

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(4) “The child is born with:

- (A) fetal alcohol syndrome;
- (B) neonatal abstinence syndrome; or
- (C) any amount, including a trace amount, of a controlled substance, a legend drug, or a metabolite of a controlled substance or legend drug in the child's body, including the child's blood, urine, umbilical cord tissue, or meconium.”

I.C. § 31-34-1-10.



# Except!

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It is NOT neglect or abuse if:

- The child's mother had a valid prescription for the legend drug or controlled substance, and
- Made a good faith attempt to use the controlled substance according to the prescription instructions.

I.C. § 31-34-1-12 through 13.

# Report when?

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- “Immediately”
- 4 hours later is not immediately (*Smith v. State*, 8 N.E.3d 668, 687 (Ind. 2014)).

# Report to whom?

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- Department of Child Services: Indiana Abuse and Neglect Hotline **1-800-800-5556**
- Law Enforcement
- For those required to report “as a member of the staff of a medical or other public or private institution, school, facility, or agency”:
  - Report to DCS or LEA first
  - Then “immediately” to “ the individual in charge of the institution, school, facility, or agency or the designated agent of the individual in charge” I.C. § 31-33-5-2
- For those required to report “capacity as a member of the staff of a hospital”:
  - Report first to “individual in charge of the hospital or the designated agent of the individual in charge of the hospital” I.C. § 31-33-5-2.5
  - Obligated to report to DCS or LEA unless you know the hospital has done so

# What happens after a report is made?

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- DCS may investigate
- Result of investigation (substantiated or unsubstantiated) recorded in the Child Protective Index (CPI/CPS checks)
- DCS may file a CHINS, offer an informal adjustment agreement, refer to voluntary services, or take no further action
- DCS may remove a child without court order (hearing is required within 48 hours of removal)

What about the case  
presented on March 6?

Did the provider have a  
duty to report?

# Other legal issues

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# Civil Rights and Disability

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SUD is a disability under the ADA if the individual with SUD so long as he or she is not “currently engaging in the illegal use of drugs.” This means:

- Discrimination prohibited
- Reasonable accommodations required

# Employment

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- ADA applies to most private employers
- Pre-employment: potential employer cannot require disclosure of treatment for SUD unless directly related to job duties
- After job offer but before employment, can enquire, but only if same enquiry is made of all similarly situated
- During employment: only if job-related and “consistent with business necessity”



# Criminal justice and DCS involvement

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- Probation/parole/community corrections officers or DCS FCMs may require education about MAT
- Limited releases can preserve provider/patient relationship