

## **Child Abuse Defense**

**By: Brett A. Purtzer; 2011**

Child abuse cases involving serious injury or death are some of the most difficult criminal cases to defend. When a brain injury exists, and the shaken baby syndrome or blunt force trauma is raised, the defense becomes even more challenging. I have handled several of these cases and they are difficult for a variety of reasons. Often times, the allegations are accurate and most medical practitioners will agree that when they examine a child with a closed head injury, either with or without a skull fracture, non-accidental trauma, i.e. abuse, is often the diagnosis. Over the last several years, however, the shaken baby syndrome has come under attack, particularly when no other trauma is noted. Additionally, the mechanics of how skull fractures occur and the forces necessary to cause certain skull fractures varies. Although a variety of medical literature addresses other reasons for brain injuries in this area, two major problems arise when defending this type of case: 1) overcoming the default argument that the injury arose from non-accidental trauma, and 2) finding an expert or experts who can, and are willing, to assist you.

Overcoming the first hurdle is no small task. Although literature exists that other medically related reasons can be the cause of a child's closed head injury, convincing the trier of fact can be daunting. Most cases that are prosecuted arise from either a child's doctor appointment or emergency room visit and the injury being treated does not fit the claimed cause of injury, if any cause is offered. The primary problem that arises is that once the allegation of non-accidental trauma is proclaimed, that bell is hard to unerring, and the doctor or doctors who have made this diagnosis will not likely back off.

The secondary problem, but equally difficult, is finding a qualified expert or experts to assist in your defense. If you have an infant or child brain injury, at a minimum you may need the assistance of a pediatric neurologist, and these folks don't work for free. Generally, anatomical pathologists, which is the background of most medical examiners, are not particularly useful as they don't typically have the specialized training or experience to assist in a brain injury case. That's why you need a specialist. Unlike the

prosecution, which has the ER and ICU teams at its disposal once a charging decision is made, you need to find qualified experts. Even with qualified experts, you are fighting an uphill battle when defending this type of case and seeking to advance a non-criminal cause as the basis for the injury.

Your final impediment is convincing a jury that a reasonable doubt exists surrounding the claimed cause of injury and your client's innocence. Relying solely on the debates in peer reviewed medical literature as your defense will likely be insufficient to overcome a team of doctors' collective opinions that the cause of injury or death is from non-accidental trauma. Rather, you need to have your own medical experts to give life to the literature so that it has meaning that the jury can not only understand, but also put to use in the case.

As I indicated earlier, there is a vast amount of literature addressing claims of non-accidental trauma and child abuse. When you find yourself defending one of these cases, the first thing you must do is become learned in that literature so that you can understand the areas that you will face and the obstacles you need to overcome. Once educated, you need to have a meaningful discussion with your client about how the injury or death occurred, explain to your client the areas of concern, and then determine how to proceed.

Many child abuse cases are appropriately charged, Those cases are easy to defend. The tough cases are those where you intuitively believe your client is innocent of any wrongdoing, but you have medical and/or causation issues that you need to explain. These cases are not impossible, but you need to understand how significantly challenging they are to defend in order to succeed.

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Page 2 of 2