

## GLOBE REPORT

### Best interest vs. worst-case scenario

#### Critics charge that hospital, in zeal to protect children, did families harm

Joseph P. Kahn and Daniel Golden, (Boston) Globe Staff, *08/09/98*

The blue visor of Matthew Zola's Baby Slugger baseball cap matches the unnaturally pale blue tint of his eyeballs, a symptom of the rare bone disease that has caused multiple fractures in the 8-month-old. Yet even though Matthew fit the clinical profile of the disease, and his mother had it as a child, some doctors at Boston's Children's Hospital insisted that his injuries were "highly suggestive" of child abuse. As a result, for half of his brief life, Matthew and his twin brother, Michael, were taken from their parents and placed in state-sponsored foster care with no parental visitation allowed. The hospital's child protection team clung to its diagnosis of abuse despite vigorous dissent by other doctors inside and outside Children's as well as the absence of corroborative evidence. Moreover, the team revised its dating of Matthew's fractures in what critics suspect was an attempt to refute radiologic evidence that at least some of the fractures occurred while he was in foster care, or, more problematic for Children's, in the hospital itself.

"This was the most horrible thing any family could go through," says Dayna Zola, cradling her twin sons following months of expensive legal preparation and custodial uncertainty. "If we didn't have the means to fight back, we would not have our children now. We went to Children's Hospital thinking it was the best hospital in the world. Ten minutes later, we were in a nightmare situation."

The case was ultimately decided in the Zolas' favor in May by a Boston Juvenile Court judge. But the Zola case is only one of several that raise the question of how far one of the world's preeminent pediatric hospitals is prepared to go and at what cost to the accused to prove abuse.

Unquestionably, the hospital has provided a safety net for abused children, setting the tone for the Department of Social Services' philosophy of vigilance and intervention. By bringing attention to the heart-wrenching toll of child abuse, Children's has commanded respect and influence with DSS, the courts, and the news media.

But at the same time, critics say the hospital is so zealous about protecting children that it sometimes accuses parents and disrupts families on the basis of flimsy evidence. In a number of cases, it has constructed an abuse scenario and targeted a perpetrator, only to see a judge rule later that it was unclear who had committed the abuse - or whether there had been abuse at all.

Newton attorney Robert Weber has represented parents and children in abuse cases for 20 years and sits on the DSS Professional Advisory Committee. "DSS never questions Children's Hospital," he says. "So Children's has to question itself. It has to be better than good because

there's nobody checking them, and the consequences are so serious. They ought to be very, very careful when they make these decisions, and I don't think they are."

Children's administrators declined to discuss specific cases, provide statistics on its child protection team's performance, or make any doctors available for interviews. However, the hospital said that the team does not prejudge cases, and that every abuse allegation is carefully weighed and discussed.

"There may be cases where misjudgments are made, and that may be inevitable," said Richard Bourne, Children's<sup>1</sup> associate general counsel for patient care. "We can only do our best." Bourne said that just because a court fails to find evidence of abuse, it does not mean that the diagnosis was mistaken. "If the question is, 'Do we always find abuse when we're consulted on a case?' the answer is 'no'," Bourne said. On many cases where the child protection team is consulted and accident or disease seems the more likely explanation, he said, the hospital does not go forward with an abuse allegation.

"It's not something that is automatic," said Bourne, "which is why we have a team". Added Betty Singer, a social worker who chairs the team: "I would certainly hope that every one of us, as we're sitting and having these deliberations, is thinking not just about the child but about the parent, and about the implications, and about the safety and well-being of everyone."

Yet, rightly or wrongly, some parents feel victimized. As recently as late July, in a scenario reminiscent of the Zola case, the medical director of the hospital's child protection team, Dr. Eli Newberger, testified in a Maine courtroom that a local police chief's baby daughter, who has a fractured arm, had been abused.

Monmouth Police Chief Kenneth Latulippe has been on paid leave for four months while the case has been pending, and his daughter has spent that time in state custody. Meanwhile, at least two specialists from other hospitals disagree with Newberger, contending that the 8-month-old girl has the same bone disease - osteogenesis imperfecta - as Matthew Zola.

"These are absolutely straightforward, textbook cases that I would like to think a medical student could diagnose without difficulty," says Dr. Colin Paterson, a bone disease specialist from Scotland who has disagreed with Children's allegation of child abuse in testimony or depositions for both the Zola and Latulippe cases. "It's sad to see a tremendous hospital led astray by a few individuals who don't know what they're talking about."

### *Diagnosis of abuse is far from automatic*

According to the most recent national study, physical abuse seriously injured nearly 570,000 children in the United States in 1993. But the diagnosis of abuse, particularly in infants, is far from automatic. For example, the bones of premature babies are so small and fragile that radiologists often differ over how many fractures have taken place, or when the injuries occurred.

Even if X-rays show unmistakable fractures, they don't necessarily indicate the cause. Broken bones may result from accident or disease as well as from abuse. In the United States 30,000

to 50,000 children have osteogenesis imperfecta, or OI. Their brittle bones can easily break with normal handling. In addition, some specialists believe that premature babies may be prone to fractures because of deficiencies in minerals, such as copper, which accumulates late in pregnancy and strengthens connective tissue known as collagen.

Over the past 25 years, a host of medical studies - many of them conducted by specialists at Children's Hospital - have identified these conditions and their symptoms. By now, specialists say, major hospitals should have enough information at their disposal to help ensure that caution precedes a diagnosis of abuse. Nevertheless, these facilities sometimes rush to judgment.

"A while ago, the profession used to make more errors of omission, believing parents' denials when abuse had occurred," says Dr. Robert Reece, who heads the child protection team at the Floating Hospital at New England Medical Center and publishes a newsletter on child abuse. "Now, with the medical community being much more aware of the situation, there is the possibility of diagnosing abuse a bit too quickly."

Children's holds training sessions, according to Bourne and Singer, on how to differentiate abuse from disease or accidents. "Sometimes the data are very clear," Bourne said. "Sometimes the child is admitted with a palm print on the cheek.... Other times we're less certain, so we try to come to the best possible decision."

No hospital is more identified with the issue of child abuse than Children's. Other hospitals refer cases of suspected abuse there. Its doctors carry great weight both with DSS and the courts; their testimony can send an accused abuser to jail or place a child in foster care.

Whenever a baby is brought to the Children's emergency room with unexplained bruises, lacerations, fractures, or other injuries, the case is referred to the hospital's child protection team, which includes a social worker, a pediatrician, a lawyer, and a nurse. One of the oldest such teams in the country, it was founded by Newberger, who remains its medical director. He has become prominent in high-profile criminal cases, including the Louise Woodward trial, in which he testified that Matthew Eappen had been violently shaken. Depending on the injuries, the team consults radiologists or other specialists as well as the attending physician. It also may interview or conduct psychiatric evaluations of other family members.

After checking with a number of people, including legal and social services specialists, the team decides whether a report of suspected neglect or physical or sexual abuse - a so-called 51A - is warranted. Children's files about 400 51As with DSS each year, according to the department, which amounts to about 3.5 percent of all 51As filed by medical professionals statewide.

Bourne and Singer said that the team is cautious about filing 51As, even though state law requires only "reasonable cause to believe" that there has been abuse. "More often than not, we don't find abuse," Singer said. However, according to documents, one Children's radiologist, Dr. Carlo Buonomo, testified in the Zola case that he had examined about 15 patients as a member of the team. In all but one instance, the hospital filed a 51A, he said. Critics say that although the 51A is supposed to be only a preliminary finding, the Children's team becomes too wedded to its initial diagnosis of abuse, and neglects to examine other possibilities.

"They are predisposed to find abuse," says Rita Pollak, a former DSS attorney who now represents parents accused of abuse. "I don't know of any case I've been involved with where Children's Hospital hasn't found abuse. At least once, you would hope, a case would come out of that unit and they would say we don't see abuse here."

A decade ago, Children's doctors saw abuse in the fractured left leg of Norwell toddler Narelle Jordan. As a result, DSS took legal custody of Narelle, and her parents endured two years of court proceedings and the intervention of social workers. Then Dr. Michael Goldberg, chief of orthopedics at New England Medical Center, examined Narelle and recognized the symptoms of OI, a diagnosis confirmed later by testing. DSS ultimately dropped the case.

"Many people who devote themselves to child protection causes are very zealous about it," Goldberg says. "They feel they have seen the horrible consequences of abuse, and their first reaction is always to protect the child. That's the right first reaction. But then... they need to step back and say: 'Is it possible this is not child abuse?' They have to keep an open mind."

Last year, a state appeals court rejected another abuse allegation stemming from Children's Hospital. It struck down a lower court finding against the parents of a girl who had suffered a skull fracture as a 1-month-old in 1993. Iris, whose last name is sealed in court records, had been examined at Children's, where Newberger determined that abuse caused the injury. Yet the appeals court found that the evidence "was as consistent with the cause of the injury being accident as it was abuse." Bourne emphasized that there is a difference between medical and legal standards of proof. Even if a court throws out an abuse allegation, he said, "it doesn't mean there wasn't legitimate concern." The 51As outline not only medical evidence of abuse but also any information Children's has gathered pointing to a culprit. The information may range from a parent's admission to a family history or a psychiatric evaluation. During the judicial process to determine when or whether the victim should return home, Children's, at the request of the court or DSS, may again evaluate the fitness of parents and other caretakers. Defense attorneys complain that this review is inherently biased against the parents or other alleged abusers, because the hospital has an interest in reaffirming its Initial Diagnosis – thus compounding the error if the original finding of abuse was mistaken.

Since DSS requires abusers to admit their misdeeds before their families can be reunited, wrongly accused parents face a diabolical choice: Either confess to abuse they never committed, or bid goodbye to their children - possibly forever. "DSS and Children's set up this impossible construct," says Pollak, the former DSS attorney. "Either you come up with an explanation satisfactory to us, or you can't have your child back."

### *Night in ER causes weeks of anguish*

Inez Diaz was hoping to soothe her 3-month-old daughter when she brought the baby to Children's one evening in June 1996 with diarrhea, vomiting, and right leg pains. Instead, she ended up losing her. Born two months premature, the baby had been so fussy that Diaz had taken her to a Jamaica Plain health clinic seven or eight times. The pediatrician there recommended changing the infant's formula or using a pacifier, but neither worked. So, with her three sons in tow and her baby in her arms, Diaz went to the Children's emergency room. At first, the Santo Domingo, Dominican Republic native was told that the infant had a bone

infection. Finally, at 1 a.m., two DSS social workers appeared. They asked whether anyone else had taken care of the baby, and whether the child had fallen. Bewildered, Diaz said no. Then the social workers explained why they were questioning her. Her baby had 28 fractures, they said, and would stay in the hospital while DSS took custody of Diaz's three sons. The boys screamed and clung to their mother's leg and clothes until police pried them away. During an interview in her Roslindale apartment, Diaz seems haunted by the memory. Near tears, she reenacts the scene, gesturing to demonstrate how her children clutched her skirt.

"It was like I had entered a nightmare," she says through an interpreter. "I went there looking for help, and I felt rejected. No one talked to me. I felt discriminated against for not knowing English, for not having medical insurance, for being Hispanic. It's the worst thing that ever happened to me." Diaz's sons were soon returned, but the baby girl went from the hospital to foster care, where she stayed for a year. Diaz, who said she was not allowed to visit her daughter for the first three weeks and then saw her only one or two hours a week, was so anguished that she lost weight and had menstrual problems. Her hair began falling out.

According to records obtained by the Globe, Diaz owed this ordeal to an unequivocal diagnosis by the hospital's child protection team. While conceding that the girl had no bruises or other "cutaneous manifestations of past or current maltreatment," Newberger wrote, "there is no doubt in my view from the radiographs that this is a case of abuse." Newberger, who Children's said is unavailable for comment because he is writing a book, may have had no doubts. But other specialists did. Hilda Iris Lopez, Diaz's court-appointed attorney, sent the medical records to Dr. Philippe Walravens, a bone specialist at the University of Colorado. According to Walravens, the baby's premature birth, low blood counts, and nursing with soy formula, which binds metals before they can be absorbed, all suggested copper deficiency.

Walravens offered to testify for Diaz for free, but his services were not needed. Last year, when DSS moved to declare Diaz unfit, a Boston Juvenile Court judge threw out the case for lack of evidence, without even waiting to hear her defense. Even a doctor from Children's testified that the baby did not have 28 fractures but only five or six.

And Diaz's daughter came home at last. "Children's should absolutely know how their mistakes hurt people," Diaz says. "This mistake changed my life. I can't be the same Inez I was three years ago. It was so sudden that it's hard for me to overcome it. It's hard for me to let the children just play. I'm afraid if they hurt themselves playing, someone will say I did it."

To the bitter end, Children's doctors were pushing an abuse scenario in the case of Matthew Zola, too. While the hospital now concedes that the child has a mild form of OI, two physicians testified in a May trial, which could have led to the Zolas' losing permanent custody of Matthew, that the baby's injuries nevertheless were consistent with deliberately inflicted injury-or what they called "negligent handling."

Paterson, the OI expert from Scotland who testified for the Zolas, strongly disagrees. "In any ordinary world, there was more than enough evidence to make the diagnosis" of OI, he says. "One strong feature of these fractures is that they were not deliberately caused by anyone."

Moreover, says Paterson, who reviewed more than 100 X-rays taken of Matthew between early January and late April, it was evident that the child continued to fracture both in the hospital

and in outside care, when the Zolas had no access to either of the twins.

Hospital radiologists "rewrote their own report to give the effect that all the fractures occurred earlier," asserts Paterson. "I find that incredible." Children's physicians denied during the Zola proceedings that they revised their report to reinforce the child abuse diagnosis. They continued to maintain that there were no new fractures during hospitalization or foster care. They accounted for fractures that appeared new by saying that they had missed evidence of them on earlier X-rays. Paterson and other specialists speaking on behalf of the Zolas' case countered that these fractures were not found on earlier X-rays because they did not exist. As for allegations of negligence lodged against the Zolas, Paterson says, "There was no evidence of negligent handling. And if that were the case, the same charge could be leveled against the hospital staff and foster parents who took care of this child."

An educated, dual-career couple together making six figures annually, Dayna Zola worked for the chairman of a large direct-marketing firm before her children were born, and Steven Zola owns a real estate development company based in Mansfield. The couple had difficulty starting a family, and underwent three years of fertility treatment before conceiving twins through in-vitro fertilization. The babies were delivered prematurely, at 34 weeks. Michael's birth was relatively uneventful. Matthew, however, had to be extracted feet first and was visibly bruised at birth.

The ensuing drama over allegations of child abuse was chronicled in a May 17 Globe Sunday Magazine profile of a DSS investigator. The Zolas' names were disguised in the article, but the family since has agreed to be identified. On Jan. 8, Matthew was evaluated at Children's for a broken right femur, or upper leg bone. X-rays revealed four other small fractures. The hospital referred the case to DSS, which subsequently supported a finding of abuse. According to medical records, however, only Buonomo, the radiologist, who was handling his first case as a member of the child protection team, pointed to abuse as the likely cause of Matthew's injuries. Three others noted strong indications of OI, a disease with many variations from severe to mild and a 50-50 chance of being passed from parent to child. Dayna Zola told the hospital that she too had been diagnosed with brittle bones - at Children's - when she was 11. Like other people with mild OI, Dayna has been far less susceptible to fractures in adulthood.

Dr. John Hall, the orthopedic surgeon who set Matthew's cast, wrote, "Under the circumstances, I wanted to doubt the diagnosis of child abuse. My diagnosis would be mild OI until proven otherwise." Dr. Melvin Glimcher, a bone researcher and head of the Skeletal Disorders and Rehabilitation lab at Children's, agreed with Hall. Neither doctor, however, belonged to the child protection team. Glimcher reviewed Matthew's chart as a favor to Zola attorney Alan Geismer, and accepted no fee for appearing in court as an expert witness.

Glimcher took the unusual step of contradicting the testimony of his hospital's child protection team at a Jan. 14 hearing in Boston Juvenile Court. There is "no doubt in my mind," he said, that Matthew had mild OI, which is typically diagnosed one of two ways: clinically, through a combination of family history, unexplained fractures, and blue eye coloring; or in time-consuming (and only 80 percent reliable) lab tests examining DNA samples and collagen levels.

Buonomo admitted he had not examined Matthew, only the boy's X-rays. Still, it was his testimony that four of the five fractures were "highly specific for non-accidental trauma." Judge

Paul Lewis initially sent the boy home, saying, "I think this child is suffering from brittle-bone disease." More testing of Matthew was ordered. When the Zolas brought their son back to Children's on Feb. 8 to have his cast checked, the drama deepened. Another full skeletal survey was ordered, and five or six new fractures were diagnosed. The DSS initiated a second investigation, which again supported an abuse finding. Bourne said that Children's welcomes dissenting opinions from its physicians and passes them along to DSS, yet the DSS investigator did not interview Glimcher, Hall, or any other proponent of an OI diagnosis. During a Feb.13 meeting at Children's, Betty Singer told the investigator that in the view of radiologist Robert Cleveland, who was covering for Buonomo while the latter was away, if 1,000 radiologists examined Matthew's X-rays, all would agree that the injuries were inflicted. "Dr. Shapiro nodded in agreement," noted the investigator, referring to Frederic Shapiro, an orthopedic surgeon who had been put in charge of Matthew's care at Children's.

*As hospital care continued, drama deepened for Zolas*

The twins were admitted to Children's and kept there until Feb.24, when another hearing took place before Judge Lewis. The principal witness this time was Shapiro, who had never testified in a court case before. He stated that the type of fractures Matthew had sustained were more typical of abuse than OI. "Corner fractures are simply not a picture of mild or moderate OI." said Shapiro, who doubted the child had the disease - yet admitted he could not be sure until test results were available.

Shapiro also brushed aside the Zolas' concern that some of Matthew's bones may have broken during an earlier X-ray session at the hospital; Dayna testified that she had seen the infant being "pulled and twisted" while technicians positioned his arms and legs for X-ray. Said Zola, "I kept saying, 'Be careful. You're being too rough.' They were pretty much like, 'Get out of here, lady'," she testified. Shapiro would reiterate his assumption that "the usual precautions were taken" by the technicians.

The Zolas would not see their children again until May 15. Lewis ended the Feb.25 hearing by ordering both babies into foster care for 30 days, without family visitation. Although the judge did not explain his decision, its implications were plain: Should Matthew continue to fracture, suspicion would be shifted from parental handling to brittle-bone disease as the cause. Should he remain fracture-free, abuse would be the more plausible explanation.

On March 25, Matthew was X-rayed again per Lewis's order. Radiologists Cleveland and Buonomo signed reports stating they saw no evidence of new fractures.

The Zola matter returned to juvenile court the next day. Shapiro testified he had "no idea" how the boy's injuries had occurred. If the DNA laboratory tests for brittle-bone disease came back positive, he was asked, would he feel comfortable with the OI explanation for these fractures? "Yes," he replied. But there were no DNA test results yet. And no reason, apparently, for Lewis to allow custody or visitation.

Desperate to do something - anything - to get their children back, Dayna and Steven Zola undertook a crash course in OI. "I couldn't sleep or eat for two weeks after they left," Dayna recalls. "Fortunately, our family and friends gave us lots of support. They said, you have to be strong now so you'll be strong when your babies finally come home."

The Zolas located every OI specialist they could find and visited the libraries of all the major Boston hospitals, including Children's, to sift through the latest literature on OI and child abuse. After reading one of Paterson's articles, Dayna tracked down the doctor at home in Scotland and explained the family's situation. Paterson agreed to review Matthew's records. Dayna said she told him, "If you think Matty has been abused, please tell us. We want to know what happened here."

Paterson subsequently volunteered to testify on the Zolas' behalf. For the family, this was a hopeful development, yet by no means did it guarantee that the court would reject the Children's abuse hypothesis. The hospital, meanwhile, gave no signs of backing off its contention of abuse. At a pretrial hearing on April 7, Zola attorneys Geismer and Belle Soloway brought in medical records that challenged the hospital's no-new-fractures theory. According to court documents, a meeting was held at Children's that day. Present were Buonomo, Cleveland, and Bourne. On April 8, Buonomo issued an "amended report" that, according to the hospital, superseded twin previous radiology' reports signed by Cleveland and himself, dated March 25 and April 1 respectively. The April 8 document mentioned evidence of a healing pelvic fracture yet revised its dating of the healing process to Feb.25 or earlier - before Matthew entered foster care. The effect of the change was to keep alive the possibility the baby's parents had abused him.

At least one other fracture that had not been detected on one of the previous Children's reports was also referred to. Altogether, as many as five of Matthew's fractures - to his tibia, fibula, pelvis, and two toes - showed evidence of having taken place sometime between his admission to the hospital on Feb.10 and March 25, the end of his first month in foster care.

Court transcripts describe yet another internal debate at the hospital over the dating of the fractures. At an April 8 meeting, Glimcher, the bone specialist, reportedly tried to persuade Cleveland and Buonomo that they were "misreading" Matthew's X-rays by ignoring evidence of more recent fracturing. Glimcher's opinion was supported by Goldberg of NEMC, who had also reviewed the child's X-rays.

Thus three senior medical experts who studied Matthew's radiological record - Paterson, Glimcher, and Goldberg - had reached the same conclusion: that the infant had continued to fracture in the hospital and in foster care, and not, as Children's radiologists maintained, at home and only at home, a key argument in the state's case to keep custody of the boys.

Yet three other Children's radiologists consulted by Cleveland staunchly supported the hospital's position. Their reports, dated between April 9 and 15, were attached to Matthew's medical file. All repeated the no-new-fractures diagnosis. All pointed toward child abuse as the likely cause of the injuries. And all three reports were notarized. According to hospital sources, such reports are seldom notarized - unless the hospital fears future legal action. Children's doctors and legal counsel refuse to discuss the Zola case, citing the need to protect patient privacy. Glimcher also declined an interview request.

*A family's ordeal ends; anger and worry linger*

The Zolas' ordeal effectively ended in late April, when lab results confirmed that Matthew had a

mild form (Type 1) of OI. At a trial in early May, however, doctors Cleveland and Shapiro testified they remained unconvinced - notwithstanding the OI diagnosis - that non-accidental trauma could be ruled out. Buonomo, the child protection team radiologist whose diagnosis had helped set the custody matter in motion, was dropped from the state's witness list at the last moment. In pretrial deposition, Buonomo had been questioned about a Feb. 10 report he had signed. "In retrospect", he answered, several bones labeled "normal" later showed what he now asserted were "abnormalities." Ultimately, it did not matter. Judge Lewis declared that the state had failed to prove its case, and the twins went home to their parents that day.

Though relieved, the Zolas are still angry and worried. Angry at the hospital's zeal to mark them as abusers, and worried about the long-term consequences, medical and otherwise, that the events of the past six months may have visited on their sons. Says Steven Zola, "Children's Hospital wanted and needed to prove this was child abuse. It wasn't about the best interests of our child for them. It was about winning or losing. They only got caught because it turned out to be a case of OI."

Dayna voices other worries: about the lost opportunity to nurture her infants through the first stages of life and, especially, about Matthew's well being. No one can tell her what effect the 120 X-rays he has received might have on his health later. His injuries have healed, but her wounds are fresh.

"We were in the fight of our lives," she says. "We spent our life savings to get these kids back. I think we were the ones being abused. I know Matty was abused. And I know who did it."