

CLC PRACTICE POINT

No. 29

May 15, 2013

Thank you to CLC's law student interns Eikoku Ikeno and Katie Choi for their research and work on the development of this practice point.

Fetal Alcohol Spectrum Disorders (FASD)

Fetal Alcohol Spectrum Disorders (FASD) is a broad term that covers the continuum of physical, mental, and behavioral deficits observed among individuals with prenatal alcohol exposure.¹ Fetal Alcohol Syndrome (FAS), Partial Fetal Alcohol Syndrome (pFAS), Alcohol Related Neurodevelopmental Disorder (ARND), and Alcohol-Related Birth Defects (ARBD) are conditions within the FASD “umbrella.”² Some children with FASD have both physical and neurological abnormalities and others have severe cognitive and behavioral deficiencies without physical signs of disorder.³ According to the National Organization on Fetal Alcohol Syndrome, prenatal alcohol exposure may impact up to 70% of children in foster care.⁴ Many children are not properly diagnosed and instead are either undiagnosed or misdiagnosed.⁵ A proper diagnosis is essential to provide a child with the most appropriate care.⁶ It is important for attorneys to have a basic understanding of FASD to advocate appropriately for clients with FASD.

Challenging Conditions Associated with FASD

Youth with FASD are at risk for developing secondary conditions, which may arise if disabilities related to prenatal alcohol exposure are not addressed.⁷ Common secondary conditions associated with FASD include mental health problems, delinquency involvement, alcohol and drug problems (which may ultimately require inpatient treatment),

¹ NOFAS, *FASD: What Everyone Should Know*, <http://www.nofas.org/wp-content/uploads/2012/10/NOFAS-FASD-What-Everyone-Should-Know-2012.pdf> (last visited May 14, 2013).

² *Id.* FASD is not meant to be a clinical diagnosis. SUSAN J. ASTLEY, UNIVERSITY OF WASHINGTON, DIAGNOSTIC GUIDE FOR FETAL ALCOHOL SPECTRUM DISORDERS: THE 4-DIGIT DIAGNOSTIC CODE 1 (3rd ed. 2004).

³ ABA ET AL., REPORT TO THE HOUSE OF DELEGATES (FASD) 4 (2012).

⁴ NOFAS, *FASD: What the Foster Care System Should Know*, <http://www.nofas.org/wp-content/uploads/2012/05/fostercare.pdf> (last visited May 14, 2013) [hereinafter *NOFAS Foster Care*].

⁵ *Id.*

⁶ See NIAAA, ALCOHOL ALERT NUMBER 82: FETAL ALCOHOL SPECTRUM DISORDERS 3 (2011), <http://pubs.niaaa.nih.gov/publications/AA82/AA82.pdf> (last visited May 13, 2013) (discussing the need to differentiate FASD from ADHD).

⁷ MOFAS, *FASD and the Justice System: Modify Your Approach for Improved Outcomes* 56 (Fall 2011)(Power Point presentation)(on file with MOFAS).

education problems, and difficulties with achieving independent living.⁸ These secondary behavioral conditions seen in youth with FASD often have a negative effect on a child's ability to adapt into and out of foster homes.⁹ Since children and youth in foster care are already at risk for these conditions, it is even more crucial for foster children with FASD to receive appropriate treatment.

Children with FASD have challenges with controlling their anger, interacting with and understanding the motivations of other people, and comprehending the consequences of their actions.¹⁰ Typically, children with FASD are readily manipulated by others, which may lead them to participate in delinquent behavior without understanding that what they are doing violates the law, due to their executive functioning deficiencies.¹¹ Children with FASD are also at a heightened risk for experiencing physical and sexual abuse.¹²

Moreover, children with FASD are at higher risk of disrupting from school.¹³ One study found that about 53% of adolescents with FASD have been suspended from school, 29% have been expelled, and 25% have dropped out.¹⁴ For many children with FASD, removal from school is frequently due to high rates of truancy and difficulty getting along with other children due to their behavioral challenges.¹⁵

In order to mitigate or prevent secondary conditions, it is imperative to intervene early.¹⁶ Though disabilities caused by central nervous system damage cannot be cured, secondary conditions can be minimized or prevented with appropriate treatments.¹⁷

Treatments & Protective Factors

Protective factors and early intervention treatment services may improve a child's development.¹⁸ Protective factors include early diagnosis before the age of six; loving, nurturing, and stable home environments; absence of violence; and involvement in special education.¹⁹ Children with FASD who receive special education geared toward their specific needs and learning style are more likely to reach their full potential. Children who live in loving, stable, non-abusive households are much less likely to develop secondary conditions than children who have been exposed to violence. Unfortunately, foster children with FASD often lack some of the protective factors that would help to improve their development.

Many treatment options are available, such as behavior and education therapy, special education, parent or caregiver training, medication (to alleviate some symptoms), and other alternative approaches such as yoga.²⁰ No one treatment

⁸ CDC, *Secondary Conditions*, in *Fetal Alcohol Spectrum Disorders (FASD)*, <http://www.cdc.gov/ncbddd/fasd/secondary-conditions.html> (last visited May 14, 2013) [hereinafter *CDC Secondary Conditions*]. See also ABA ET AL., *supra* note 3 at 7.

⁹ *NOFAS Foster Care*, *supra* note 4.

¹⁰ *CDC Secondary Conditions*, *supra* note 8. ABA ET AL., *supra* note 3 at 7.

¹¹ *CDC Secondary Conditions*, *supra* note 8. ABA ET AL., *supra* note 3 at 7.

¹² ABA ET AL., *supra* note 3 at 4-5.

¹³ *CDC Secondary Conditions*, *supra* note 8.

¹⁴ ANN P. STREISSGUTH, FRED L. BROOKSTEIN, HELEN M. BARR, PAUL D. SAMPSON, KIERAN O'MALLEY & JULIA KOGAN YOUNG, *Risk Factors for Adverse Life Outcome in Fetal Alcohol Syndrome and Fetal Alcohol Effects*, 25 J. DEVELOPMENTAL AND BEHAVIORAL PEDIATRICS 228, 233 (2004).

¹⁵ *CDC Secondary Conditions*, *supra* note 8.

¹⁶ *Education on Fetal Alcohol Syndrome from the Semel Institute at UCLA*, <http://www.fascme.com/c107.php> (last visited May 14, 2013).

¹⁷ CDC, *Treatments*, in *Fetal Alcohol Spectrum Disorders (FASD)*, <http://www.cdc.gov/ncbddd/fasd/treatments.html> (last visited May 14, 2013).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* Behavior and education therapies include friendship training, specialized math tutoring, executive functioning training, parent-child interaction therapy, and parenting and behavior management training. *Id.* at 3-4.

is right for every child. Each treatment plan should include close monitoring, follow-ups, and changes as needed along the way.²¹

Advocacy Tips for Child Clients with FASD

- When communicating with your client, be simple and concrete. Children with FASD are often unable to understand abstract or figurative language and often interpret common idioms and expressions literally (e.g., “it’s a zoo out there”; “you’re in hot water”; “bite me”; “over my dead body”; “straighten the room”).²²
- It is crucial that services, placements, and dispositions for foster care youth with FASD are tailored to their needs. Advocate for an individualized plan that caters to the child’s ability.²³
- If you have a client with FASD who also has a delinquency case, make sure, with your client’s permission, that you communicate with the attorney representing your client on the delinquency case about your client’s diagnosis.
- Refer to CLC’s November 2010 practice point “How to Effectively Advocate for a Foster Child with Mental Health Issues” for more practical ways to advocate for mental health services in a child protection case. Refer to CLC’s July 2011 practice point “Education Advocacy” for tips on working with clients in special education.

Conclusion

Children with FASD may benefit from early intervention treatment services and specialized programs that meet their specific needs. Attorneys should develop enhanced awareness and understanding of FASD in order to best advocate for individualized and appropriate services consistent with their clients’ needs and wishes.

²¹ CDC, *Facts*, in *Fetal Alcohol Spectrum Disorders (FASD)*, <http://www.cdc.gov/ncbddd/fasd/facts.html> (last visited May 14, 2013).

²² MOFAS, *supra* note 7 at 74-75.

²³ MOFAS, *supra* note 7 at 74.