

NACC envisions a justice system wherein every child has his/her voice heard with the assistance of well-trained, well-resourced independent lawyers resulting in the child's rights being protected and needs being met.

# Psychotropic Drugs: How Much is Too Much?

By Selina Baschiera

The United States Government Accountability Office (GAO) recently released a study spanning from 2008 through October 2011 which examined rates of psychotropic prescriptions for both children outside and within the foster care systems of Florida, Massachusetts, Michigan, Oregon and Texas.<sup>1</sup> The extended study supported previous data indicating increased prescription of psychotropic drugs for foster children when compared to non-foster children in the Medicaid system.<sup>2</sup> A complete report was released with additional data on medications, prescriptions and adherence to recommendations.

Factors that contributed to increase the risk of inappropriate use of psychotropic medications among children and adolescents included being poor, living in group care, being hospitalized in psychiatric inpatient units, and being incarcerated. Children prescribed these medications were also more likely to be subject to potential health risks related to the prescriptions, such as the concomitant use of five or more psychotropic drugs despite no evidence supporting such a drug regimen.<sup>3</sup> In Texas,

for example, thousands of foster and non-foster children were prescribed doses higher than the maximum levels cited in state guidelines based on U.S. Food and Drug Administration (FDA) approved labels.<sup>4</sup> This increases the risk of adverse side effects without increasing the efficacy of the drugs themselves.<sup>5</sup>

› [Read the full article](#)

**Many of the Cold Case Project's policy recommendations were reiterated in the AACAP's guidelines to states for best practice.<sup>6</sup>**

1. A psychiatric evaluation is completed before initiating pharmacotherapy
2. A medical history is obtained, and a medical evaluation is considered when appropriate before starting pharmacotherapy regimen
3. The prescriber is advised to communicate with other professionals involved with the child to obtain collateral history and set the stage for monitoring outcome and side effects during the medication trial

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## Cases

### ***People in the Interest of A.M., a Child, and Concerning A.C. and N.M.* Case No. 08JV28 (Colo. App., Dec. 22, 2011)**

*The Colorado Court of Appeals considers the foster parents' role in the prior judicial determination terminating mother and father's parental rights with respect to their child, A.M.*

Mother and father challenged the right of the foster parents to fully participate as parties in the termination hearing. The Department separately appealed the judgment terminating mother's parental rights, but supported the judgment terminating father's parental rights. In the trial court, A.M.'s foster parents were permitted to intervene pursuant to § 19-3-507(5)(a), C.R.S. 2010, allowing foster parents having a child in their care for more than three months to intervene "as a matter of right following adjudication." Mother objected, citing a conflict of interest as the foster parents had expressed a desire to adopt A.M. The Department indicated that the foster parents' position should be limited to factual testimony of which they had personal knowledge. The trial court, however, ordered that the foster parents be named interveners "with full party status" including the ability to cross-examine witnesses, oppose motions, and advocate for the

termination of the parents' legal relationship with A.M. This advocacy was in stark contrast to the testimony of professionals who had been working with the mother in treatment, though not the father, whose progression had deteriorated since the parents' separation.

The Appellate Court held that the foster parents should not have been full participants in the termination hearing. Where a statute is ambiguous, the court may look beyond its language to other rules of construction for interpretation. *People v. Terry*, 791 P.2d 374, 376 (1990). The statute here is ambiguous with regard to the scope and timing of permissible intervention because of its language and placement under the heading "Dispositional Hearing." The Court determined that if foster parents are permitted to fully participate in a termination hearing, they will be involved in a part of the case where they have no direct, immediate interest. In contrast, the foster parents do have an interest in a dispositional hearing where the potential adoption of a treatment plan and other visitation provisions are being determined. Foster parents also have the right to receive notice of all hearings as well as have a right to be heard; however, the Court noted that if the general assembly had intended for their full participation, it would have inserted such language in a more general statute and not under the "Dispositional Hearing" heading. The Court went on to note that the statute's language changed in 2004 after *People in Interest of A.W.R.* was decided. *People in the Interest of A.W.R.*, 17 P.3d 192 (Colo. App. 2000). In *A.W.R.*, the court held that until parental rights were terminated or the goal of reunification of parent/child had been abandoned, foster parents could only provide direct testimony concerning child's best interests. Assuming that the legislature takes judicial decisions into account

when creating new law, the Court concluded that the legislature was aware of *A.W.R.*'s determination and did not disagree with its interpretation.

The Court further elaborated that a foster parent's relationship with a child does not give rise to a constitutionally protected liberty interest at termination hearings. It follows that they are not entitled to the protection of the Due Process Clauses under the federal or state constitutions. Without this protection, foster parents are not entitled to full participation in a termination of parental rights hearing, nor can they advocate for the termination of the mother and fathers' parental rights. The Court noted that a child's natural parents do have a fundamental liberty interest in the care and management of their children under the Due Process Clause, which does not "evaporate simply because they have not been model parents or have lost temporary custody of their child to the State." *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982)).

In light of this determination, however, the Court only reversed the termination of the mothers' parental rights. It found that the admitted testimony was a substantial influence affecting the fairness of the termination proceeding with respect to the mother, and only harmless error unworthy of reversal with respect to the father.

[› Read full opinion](#)

### ***In re Mays, Minors***

*The Michigan Supreme Court considered whether the father "failed to successfully complete and benefit from... parenting classes" and whether the termination of his parental rights was in his children's best interests.*

After review, the Court determined that the Father successfully completed parenting classes evidenced by his submission of a certificate of completion from the parenting classes to the trial court. Furthermore, some of the facts supporting the statutory basis for terminating the Father's rights were established using hearsay testimony. It went on to state that there was an insufficient factual basis for the Court to make a determination on the best interests' issue. The Court temporarily restored Father's parental rights and ordered the trial court to review the merits of the Father's case.

The NACC filed an amicus curiae brief in this case focused on the constitutionality of the "one-parent doctrine," which requires a non-offending parent to prove their fitness. Unfortunately, the Court found that since Father did not raise the issue in the lower appellate court he had waived it. On dissent, Justice Kelly indicated that the "one-parent doctrine" is both significant and central to the case as it dealt with the Father's inherent responsibility for the children's neglect, his resultant treatment plan, and his adherence to this plan which ultimately resulted in termination of his parental rights in the lower court. The "one-parent doctrine" was at central issue, Kelly argues, even if it was not specifically raised because it precipitated the chain of events surrounding this litigation.

» [Read full opinion](#)

**Adoption of Meghan, SJC-10915 (Jan. 31, 2012)**

In *Adoption of Meghan*, the Massachusetts Supreme Judicial Court addressed a question of whether there is a right to counsel for both parents and children in privately-initiated adoption proceedings that are contested. Although the court had previously held there is a right to counsel in

adoption cases (in a case called *In re JKB*), the prior case had involved the state as a party. The *Meghan* court held that the parents and children were both entitled to counsel in private adoptions as a matter of due process and equal protection, relying in part on its prior *JKB* decision. Regarding the parent's right to counsel, the court commented, "Where the petitioner is a private party, the same fundamental, constitutionally protected interests are at stake, and the cost of erroneously terminating the parent's rights remains too high to require an indigent parent to risk it without counsel." As to the child's right to counsel, the court stated, "The decision whether or not to terminate is of enormous consequence to the child. The child cannot have a meaningful opportunity to be heard in a contested proceeding without the assistance of counsel, regardless whether the case is initiated by the department or other agency or by a private party. Moreover, as CPCS points out, children are entitled to appointed counsel in a variety of circumstances where the parent-child relationship is at stake."

» [Read full case](#)

**NOTICE TO READERS** : Decisions reported herein may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice. Featured cases are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.

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4. The prescriber develops a psychosocial and psychopharmacological treatment plan based on the best available evidence
5. The prescriber develops a plan to monitor the patient, short and long term (Prescribers should be cautious when implementing a treatment plan that can't be appropriately monitored)
7. Prescriber provides feedback about the diagnosis and educates the patient and family about the child's disorder, and the treatment and monitoring plan
8. Complete and document the assent of the child and consent of the caregivers before initiating medication treatment and at important points during treatment (The assent and consent discussion focuses on the risk/benefits of the proposed and alternative treatments)
10. Implement medication trials using an adequate dose and for an adequate treatment period (The prescriber reassesses the patient if the child does not respond to the initial medication trial as expected)
12. Prescriber needs a clear rationale for using medication combinations
13. Discontinuing medication in children requires a specific plan

- 1 U.S. Govt. Accountability Office, *HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions*, Dec. 1, 2011, available at <http://www.gao.gov/products/GAO-12-270T>.
- 2 *Id.* at 6.
- 3 *Id.* at 7, 12.
- 4 JoAnne Solchany, A.B.A. Center on Children and the Law, *Psychotropic Medication and Children in Foster Care: Tips for Advocates and Judges* 15 (October 2011) available at [http://www.americanbar.org/content/dam/aba/administrative/child\\_law/PsychMed.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/child_law/PsychMed.authcheckdam.pdf).
- 5 *HHS Guidance Could Help States Improve Oversight of Psychotropic Prescriptions*, *supra* note 1, at 7, 15.
- 6 AACAP guidelines are available at [http://www.aacap.org/galleries/PracticeInformation/FosterCare\\_BestPrinciples\\_FINAL.pdf](http://www.aacap.org/galleries/PracticeInformation/FosterCare_BestPrinciples_FINAL.pdf).

## Member Feature

# El Paso's Child Welfare Law Specialists Dream Team

By Judge Oscar G. Gabaldón, Jr., CWLS

*"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they can grow up in peace."*

This sentiment by 2001 Noble Peace Prize winner, Kofi Annan, is precisely at the heart of what motivated four attorneys and one judge in El Paso, Texas, to become certified as Child Welfare Law Specialists.

The five individuals represent all the critical legal roles involved in a typical child protective services court case: Lyda Ness, Mark Briggs, and his sister, Alison Gutierrez, are among the most competent, proactive, and involved parent and child attorneys in El Paso. Additionally, Mark Briggs is also a highly respected child protective services Mediator. Assistant County Attorney Richard Deck is a prominent child protective services prosecutor, and I am the Associate Judge of the El Paso 65th Judicial District Child Protection Court and Preservation Family Drug Court. On occasion, one can find all five of us involved in the same court case. When that happens, a sense of magic seems to fill the court room.

Richard Deck, as prosecutor, begins the presentation of his case with true class. Always a true

gentleman and one to keep abreast of the latest developments in child welfare law, he helps to create an intellectual, yet down to earth, ambience in the court room. Richard Deck is a "prosecutor par excellence," an ideal example of a person wholly dedicated to justice and fair play in all respects. As the other CWLS attorneys begin to present their sides in the case, they too help to sustain this level of first-rate advocacy on behalf of their clients. Mark Briggs, a wise and reflective thinker with a healthy dose of solid common sense, and who encourages others to think outside the box, enters the presentation of his case with a persuasive and confident, yet cautious, demeanor. Lyda Ness, truly an equal to the rest in her admirable skills as a lawyer, she very firmly, clearly, and in a very knowledgeable manner makes her case. Admired for her ability to articulate so well and think fast on her feet, Lyda Ness takes her stance. Next comes Alison Gutierrez, well known for her intuitive and discerning abilities. She brings to the child welfare court arena a heart of gold, an unwavering commitment to professionalism, and one of the finest legal brains in our community.

As I behold from the bench the caliber of child welfare law practitioners before me, I sigh with a smile and think, "Wow, this is a dream team!" I have the privilege to be part of a child welfare court experience, where all the parties and the children are represented by the cream of the crop, the best of the best — the Child Welfare Law Specialists!

It has been my observation that all of us, the five Child Welfare Law Specialists, though very unique in

style and approach to our child protective services work, are in solidarity and of one mind when it comes to our unwavering commitment and passion for child welfare law. We are in love with our calling to serve the needs of children, who often times are the most vulnerable members of our community. Serving them and their families is a privilege and an honor for us. We believe that the practice of child welfare law is perhaps the noblest area in the practice of law, for there is nothing more precious than contributing to the future of mankind by making a positive impact on our children, whose lives will then impact other lives.

I, for one, feel so fortunate to walk side by side with my child welfare law specialist colleagues as we go about serving our child welfare families every day. I know that our community is the recipient of a level of child welfare law expertise and experience that not all jurisdictions enjoy.

The five of us adhere to the belief that we have a moral duty to be vigilant in the protection of our children and to be committed to the uplifting of our families. After all, it is helping to bring well-being to the families we serve that is at the core of what we do, for in doing this, the best interests of children are served. It is the healthy family that best nurtures its children. It seems Winston Churchill recognized the importance of this when he said, "There is no doubt that it is around the family and the home that all the greatest virtues, the most dominating virtues of human society, are created, strengthened and maintained."



## Policy & News

### Judge John Romero Jr. of Albuquerque, New Mexico Honored

Judge Romero was presented with the Governor's Lifetime Achievement Award for his volunteer contributions to New Mexico. The award, presented by the Governor of New Mexico and the New Mexico Commission for Community Volunteerism. Judge Romero is Presiding Judge of the Children's Court Division in Albuquerque and has been on the bench more than eight years. A graduate of the University of New Mexico School of Law, Judge Romero practiced family and children's law for 18 years before his appointment and election to the bench. He serves as co-chair of the Children's Court Improvement Commission, is a member of the Tribal-State Judicial Consortium, and is a Wings Ministry Board Member, providing guidance for families of prisoners. Judge Romero received the 2007 Spirit Advocacy Award from the New Mexico Coalition Against Domestic Violence, and was named 2001 Lawyer of the Year by the Albuquerque Bar Association. Judge Romero was also one of the first Juvenile Court judges to become a NACC certified Child Welfare Law Specialist.

### Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change

Nominations for the recipient of the first annual Mark Hardin award will be accepted until March 30, 2012. The award will be presented during the annual National Child Welfare Court Improvement meeting in Washington, DC, June 27–29, 2012.

› [Learn more](#)

### Grant Funding for Case Management Software for Dependency (and Other Cases)

Based on growing interest, a local Pittsburgh foundation has recognized AnyCase's tremendous potential to transform advocacy case management and is allowing up to five qualifying legal advocacy offices and law school clinics to receive a 2-year grant to subsidize AnyCase user fees — with no risk, as there is no obligation to use AnyCase after the 2-year grant period.

› [Learn more](#)

### Frequent Residential Mobility and Young Children's Well-being

More than nine million children in the United States changed residence in 2011. Child Trends' latest brief, *Frequent Residential Mobility and Young Children's Well-being*, examines demographic characteristics of young children identified as "frequent movers," as well as how the experience of frequent moves is associated with their mental and physical health, compared with children who have experienced more residential stability.

› [Read brief](#)

## Awards Nominations

The NACC is now accepting submissions for the following:

### 2012 Law Student Essay Competition

› [Submission Guidelines](#)

### Outstanding Legal Advocacy Award

› [Information and Nomination Form](#)

### Stephen M. Cahn —

### Outstanding Young Lawyer Award

› [Information and Nomination Form](#)



# Professional Resources

## ARTICLES

### **NACC Certification, Child Welfare Law Specialists Fill an Essential Role in Dependency Court**

The NCJFCJ Winter edition of *Today* magazine features this article by Amanda Donnelly.

> [Read article](#)

### **Legal and Ethical Issues Confronting Guardian ad Litem Practice**

Marcia M. Boumil, Cristina F. Freitas and Debbie F. Freitas, *Journal of Law & Family Studies*, 13 J. L. Fam. Stud. 43 (2011),

> [Read article](#)

## BRIEFS

### **Psychotropic Medication and Children in Foster Care**

This brief prepares advocates and judges with the latest information on psychotropic medication use, benefits and risks, critical questions to ask, and recommendations for best practice.

> [Read brief](#)

## TIPS FOR PRACTITIONERS

### **Finding Your Way: Guides for Fathers in Child Protection Cases**

Increased father engagement in children's lives results in better outcomes for children and families. Nine short guides give tips for noncustodial fathers involved in child protection cases.

> [View guides](#)

## TRAINING CALENDAR

**Mon, March 12 – Wed, March 14, 2012**

> [NITA – Deposition Skills](#)  
Houston, TX

**Mon and Tue, March 19 and 20, 2012**

> [26th Annual Conference on the Prevention of Child Abuse](#)  
Houston, TX

**Mon, March 19 – Thu, March 22, 2012**

> [28th National Symposium on Child Abuse](#)  
Huntsville, AL

**Mon, April 16 – Fri, April 20, 2012**

> [Children's Bureau – 18th National Conference on Child Abuse and Neglect](#)  
Washington, DC

**Mon, May 14 – Fri, May 18, 2012**

> [Rocky Mountain Child Advocacy Training Institute – RMCATI](#)  
Boulder, CO

**Wed, June 27 – Sat, June 30, 2012**

> [American Professional Society on the Abuse of Children's 20th Annual Colloquium](#)  
Chicago, IL

## SAVE THE DATE

**Tuesday, August 14 through**

**Thursday, August 16, 2012**

Pre-Conference August 13

> [NACC 35th National Child Welfare, Juvenile, and Family Law Conference](#)

Historic Palmer House Hilton

Downtown Chicago, IL



## Thank You to our Sustaining Members!

James Louis

Lon Taubman

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Karen Jones-Mason

Barbara Woodhouse

Howard Davidson

Cynthia Spencer

Sandra Baxter

Karen Worthington

Janet Wiig

Kathy Richards

Joan Freeman

L. Michael Clark

Leonard Edwards

Martin Feinman

Robert Ackley

James Ottesen

Evelyn Cox

James Cargill

### And a big thank you to Southwest, the preferred airline of NACC!

Through the generosity of Southwest Airlines, NACC has been able to develop a Member Emergency Assistance Program (MEAP). A limited number of travel vouchers are available to current NACC members for work-related travel.

[› Learn more about this exciting member benefit](#)



## NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

- Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake
- Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy
- Advancing systemic improvement in child-serving agencies, institutions and court systems
- Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families