National Advocates for Pregnant Women

N A P W

Open Letter to the Tennessee Medical Association

Should pregnant women trust doctors who defend laws that will lead to their arrest?

The position taken by the Tennessee Medical Association (TMA) in the May 5, 2014 commentary, "Drug-Addicted Mothers Need Access to Treatment,"[1] represents a radical departure from mainstream health care and basic human rights. To our knowledge, it is unprecedented for any medical association to collaborate in the development of legislation that establishes grounds for arresting women who become pregnant and use certain drugs or whose newborns experience "bodily injury."

As the TMA is aware, *every leading medical group* to address the issue of drug use and pregnancy, including the American Academy of Pediatrics[2], the American Medical Association[3], and the American College of Obstetricians and Gynecologists[4], has concluded that threatening pregnant women with arrest discourages open communication between patients and health care providers, deters women from seeking care and, as a result, undermines maternal, fetal, and child health.

The commentary fails to address physicians' role in the increase of prescription opiate use, demonstrates a disturbing disregard for the dignity and wellbeing of pregnant patients and their families, and reveals a lack of basic medical knowledge about Neonatal Abstinence Syndrome and its treatment.

To begin with, the commentary places the blame for an apparent increase in opioid use in Tennessee solely on mothers, failing to acknowledge the doctors who prescribe these drugs (and the pharmaceutical companies that push them).[5] The commentary claims that infants in Tennessee experience Neonatal Abstinence Syndrome (NAS) "*because their mothers* exposed them to narcotics during pregnancy," and identifies a need to "educate *women* about the danger of using narcotics while pregnant" (emphasis added). The commentary conveniently ignores the fact that in Tennessee, 60 percent of the babies that develop NAS have mothers who have been prescribed the opioids by their physicians.[6] One wonders whether the TMA's cooperation in developing this law was designed, at least in part, to deflect attention from physicians' role in increased opiate use in Tennessee.[7]

The commentary also suggests that medical concern about prenatal exposure to opiates somehow justified the TMA's participation in developing a law that criminalizes its patients. For example, according to the TMA commentary, "Last year, 855 infants spent their first few days, weeks and even months of life in agonizing withdrawal from prescription and non-prescription drugs . . . ." The TMA and its representatives in the state house have a professional duty to avail themselves of medical research and existing health standards before supporting punitive laws and publishing articles in their defense. As even a cursory examination of the medical literature would have revealed, medical protocols for identifying and effectively treating NAS have existed for more than forty years. According to long standing guidelines for medical management, no newborn

with NAS should be experiencing "agonizing withdrawal" unless they are receiving inadequate care by poorly trained medical staff.

The TMA commentary also inexplicably refers to NAS as a "disease" rather than what it is: a transitory and treatable set of observed clinical signs that can and should be managed and that with or without the need for treatment do not result in long-term harm. In fact, studies have shown that a culture of care that allows mothers to breastfeed and have skin-to-skin contact with their babies reduces NAS as well as the need for additional treatment and the costs associated with that treatment.[8]

In addition, the commentary inappropriately labels and thus stigmatizes newborns by claiming that they are born with "addiction." Medical experts have long recognized that newborns can be born dependent as a result of prenatal exposure to opioids as well as other prescription drugs like anti-depressants. These children, however, are not prone to "relapse," do not seek out drugs, and exhibit none of the compulsive drug seeking behaviors that are key characteristics of the condition labeled "addiction." We would hope that an influential statewide medical organization would take care to use proper medical terminology and avoid labels that are stigmatizing and harmful to children and their mothers.

Rather than take a principled position on behalf of its patients, and one consistent with medical ethics and the recommendation of every leading medical organization, the TMA instead accepted the concept of criminalizing patients and "advocated for . . . modifications" to the proposed law.

The TMA asserts that its efforts resulted in a law that will "only" charge women with misdemeanors. That is not true; the law does *not* limit prosecutors to filing misdemeanor charges. Moreover, the TMA fails to acknowledge that women arrested and charged with a misdemeanor will be arrested, booked, fingerprinted, required to make repeated court appearances, and, if convicted, subjected to penalties that include actual jail time, fines, and the lifelong consequences that go with having a criminal record. It is difficult to see how any measure that "only" turns women into criminals for continuing a pregnancy to term can be construed as support for pregnant and parenting women

Indeed, the TMA commentary is particularly misleading in its suggestion that the law will somehow make it more likely that women will now receive "appropriate treatment" and that by doing so a mother can get the "assault charge . . . expunged." The commentary, however, fails to acknowledge that the law effectively precludes opiod dependent pregnant and post-partum women from getting the kind of treatment most likely to help them. That treatment includes methadone and other medication assisted treatments (MAT) that are ongoing, and therefore would not satisfy the affirmative defense that requires a mother to have "successfully completed the program." MATs are recognized by the World Health Organization[9], the Substance Abuse and Mental Health Services Administration of the US Department of Health and Human Services[10], and the American College of Obstetricians and Gynecologists[11] as the "gold standard" of treatment for pregnant women, mothers, and babies.

The TMA helped develop this law and now defends it despite the fact that the state did not first engage in a comprehensive study of the existing treatment available and the barriers to it.

Now, Tennessee has a criminal law in place that not only precludes the gold standard of treatment for pregnant women, it does nothing to increase the availability of that or any other treatment for pregnant women and parents who need it.

The commentary also suggests that an amendment that permits the law to "sunset in two years" somehow minimizes the harm the law will do. It is, however, no comfort to the women who are arrested during those two years. Furthermore, two years is plenty of time to do irreparable harm to women's trust in their doctors, and to children and families who have had their mothers turned into criminals.

According to the TMA commentary, "Right or wrong, at least we are doing something in Tennessee to try to deal with NAS."

We think that it is unquestionably wrong to use pregnant women and mothers as guinea pigs in what can only be understood as a dangerous experiment—one that flies in the face of decades of expert medical advice and all existing standards of medical care.

The right thing for a medical group to do is to advocate for the highest quality, evidence-based health care, and to ensure that its members are properly trained. If health care professionals are unprepared to treat newborns diagnosed with NAS, then it is the TMA's ethical obligation to help ensure that they learn how to do so, not work with prosecutors to turn a health care issue into a crime.

On one point, we do agree with the TMA commentary: the best option for women addicted to narcotics includes "a healthy, trusting relationship with their personal physician." But it is hard to imagine how that can happen when women's own physicians have collaborated with legislators and law enforcement to turn them into criminals.

Therefore, we urge the TMA to join efforts to *repeal* this law, to educate health care providers, policymakers, judges, and the public about the value of Medication Assisted Treatments, and to reaffirm their commitment to confidential and compassionate health care -- not punishment -- for all pregnant women and new mothers.

Sincerely,

National Advocates for Pregnant Women

National Perinatal Association

National Women's Health Network

American Association for the Treatment of Opioid Dependence

National Alliance of Medication Assisted Recovery

National Alliance of Medication Assisted Recovery – Tennessee

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