

Topic 8: Confirming Physical Abuse

Link to [Policy](#)

Physical abuse can take a variety of forms. While all instances of physical abuse result in injury to the child, not all child injuries are a result of physical abuse. It is important to analyze circumstances around an injury to determine whether or not the injury constitutes physical abuse.

To confirm any allegation of physical abuse, gather and document credible evidence that the following factors are present:

- Factor 1:** The victim is a **child**.
- Factor 2:** The person responsible for the abuse was a **caretaker** for the child at the time of the abuse.
- Factor 3:** A **physical injury** to the child has occurred.

Examples of credible evidence of physical injury include:

- ◆ Visual observation by the protective worker of external visible injuries including, but not limited to:
 - Abrasions
 - Lacerations
 - Scalds
 - Burns
 - Eye injuries (including detached retina)
 - Bruises
 - Welts (raised area on surface tissue, caused by blow)
 - Hyperemia (reddening of surface tissue) lasting 24 hours or more
(**Note:** This is the only injury that involves the 24 hour standard.)

Supportive documentation must include a precise description of the size, shape, color, type and location of the injury.

If minor injuries occur, consider consulting with a physician to determine whether these injuries would have required a healing process.

- ◆ Visual observation by a credible person of visible external injuries. If possible, information obtained from the person should include a precise description of the size, shape, color, type, and location of the injury.

- ◆ Photographs of visible external injuries, as long as:
 - The photograph was taken by a credible person who has maintained possession;
 - You can document the date the photograph was taken through information obtained from a credible person;
 - The identity of the subject of the photograph can be determined; and
 - The photograph adequately depicts the injury.
- ◆ Diagnosis or verification by a medical practitioner of the presence of an external or internal injury or an injury which is not readily visible, including but not limited to:
 - Brain damage
 - Damage from intentional poisoning
 - Dislocations
 - Eye injuries
 - Evidence of smothering
 - Fractures
 - Internal abdominal or chest injuries
 - Other central nervous system damage
 - Ruptured ear drum
 - Shaken or slammed baby syndrome
 - Sprains
 - Subdural hemorrhage or hematoma

Information from the medical practitioner should include a complete description of the injury and, if possible, the practitioner's best professional judgment of the cause of the injury.

For fractures and some other injuries, obtain the practitioner's estimation of the amount of force necessary to cause the injury, if possible.

- ◆ Observation of or verification by a credible person of the presence of scar tissue or other change in bodily tissue that results from healing of an injury.

- ◆ X-rays or other diagnostic tests which verify the presence of injury, if:
 - The tests were taken by a competent professional who has maintained possession,
 - A credible person can document the date of tests, and
 - You can document that tests were taken on the child who is the subject of the assessment.

Factor 4: The injury is **nonaccidental** or the history given is at **variance** with the injury.

Nonaccidental means that a reasonable and prudent person would have been able to foresee that injury to a child might result from the caretaker's acts.

Note: When minor injuries (red marks, faint bruising, etc.) occur because of the acts or omissions of a caretaker, consider whether the minor injuries could have been accidental in nature and not readily foreseen. If minor injuries occur, consider consulting with a physician to determine whether these minor injuries would have required a healing process.

To conclude that the injury is **at variance** with the history given for the injury, you must have credible evidence that the injury occurred in a manner which is not physically possible or which is incongruous with the injury itself.

Factor 5: The injury resulted from the **acts or omissions** of the responsible caretaker.

Examples of credible evidence include:

- ◆ Admission by caretaker that the caretaker's act or omission resulted in the injury or could have resulted in the injury.
- ◆ Visual observation by a credible witness of acts or omissions of the responsible caretaker that (as the witness believes) resulted in the injury.
- ◆ Establishment through circumstantial information that the injuries occurred during the time that the caretaker was in actual control of the child and that injuries could not have occurred in the absence of abuse.

Physical Abuse by Omission

Physical abuse by omission may also be a valid determination. In order to establish physical abuse by omission, there must be a confirmation that:

- ◆ Physical abuse (or physical assault, if the assailant was not a caretaker) was committed against a child.
- ◆ The abuse or assault took place after the child's caretaker knew or should reasonably have known that the child was in danger of being physically abused by this person.
- ◆ The caretaker continued to allow the person access to the child or failed to take reasonable action to protect the child from being abused.

Injury During Discipline or Restraint

In no case is the statement that an injury occurred in the course of discipline or restraint a sufficient reason, in and of itself, for determining that physical abuse has occurred.

Restraint may be necessary when other methods fail to control a child's violent, aggressive, or destructive behavior. Restraint may be determined to be physical abuse when applied with cruelty or excessive force, or when used in a situation in which the child's behavior does not warrant such measures.

For example, use of physical restraint may be considered a form of physical discipline. A child may receive an injury while a caretaker is attempting to restrain the child from hurting himself or others or from destroying property. If this discipline technique was commensurate with the child's behavior and warranted under the circumstances, then the incidental injury is not considered physical abuse.

You must document and analyze:

- ◆ The behavior of the child that prompted the caretaker to use physical restraint.
- ◆ The type of restraint and degree of force that was used.
- ◆ Whether agency guidelines or professional advice sanctioned the type of restraint.
- ◆ Other types of nonphysical discipline that could have been used instead.

- ◆ The immediate outcome of the restraint tactic.

A caretaker is attempting to spank a child's buttocks with a hand. Although no injury has occurred in previous spankings, the child in this instance moves in such a way as to lose balance. This causes both the child and the caretaker to fall onto a table, resulting in injury to the child.

Even though it occurred while the caretaker was using physical discipline, the injury could under these circumstances be considered accidental.

- ◆ Whether both the child and the caretaker have basically the same perceptions as to the severity of past physical discipline and the circumstances of the present injury.

The caretaker states there was no previous injury, but the child says that there have been bruises in the past from spankings. The child says the caretaker pushed the child into the table, but the caretaker says they both fell.

Under these circumstances, if the child is considered more credible, the injury might more likely be inflicted than accidental, and an abuse finding is probably more appropriate.

- ◆ Whether the caretaker was disciplining with a higher degree of anger, energy or force than that used in previous discipline, or than that which a reasonable and prudent person would use. (This does not apply directly in the case above, but should be considered when analyzing the child's reaction to the discipline tactic.)
- ◆ Whether a reasonable and prudent person would have:
 - Been able to foresee in the child's speech or behavior that the child might act in such a way as to lead to injury, and then
 - Been able to change disciplinary tactics soon enough to avoid causing injury.

For example, knowing that a child was so emotionally distraught as to be on the verge of being out of control, a reasonable and prudent person would probably not attempt a physical intervention, unless there was no other alternative to prevent injury to the child or others.

- ◆ Whether the child was physically assaulting the caretaker, and the caretaker had no alternative but to respond physically in self-defense.

Injury During Self-Defense

People responsible for the care of child may exercise such reasonable force as may be, or appear at the time to be, necessary to protect themselves from bodily injury. Self-defense that results in injury to a child is not physical abuse if it can be established that the caretaker had no available alternative response to stop the child's assault.

However, in no case is the statement that an injury occurred in the course of self-defense a sufficient reason, in and of itself, for a finding that physical abuse has not occurred. Self-defense is tested by whether the force used to repel the attack was reasonable. The privilege is lost if the force becomes excessive. Abusive language is not sufficient to justify an assault and battery.