

Child Abuse: Emergency Room Personnel Not Entitled To Good-Faith Legal Immunity.

The parents brought their eight year-old daughter to the hospital's emergency room with a high fever.

A routine urinalysis in the emergency room at first showed trace amounts of spermatozoa in the child's urine. The police were called. They came to the emergency room and began questioning the mother.

The mother insisted the urinalysis be redone. It was redone. The second urinalysis came back completely negative for spermatozoa. The hospital's emergency-room physician insisted on doing a vaginal exam on the child, which proved entirely negative for evidence of sexual abuse.

Then the mother was assured, in light of the negative vaginal exam, that the first urinalysis sample must have belonged to another patient. An apology was offered to her for the whole mix-up.

Abuse Not Reported

Hospital Launched An Investigation

Unspecified emergency room personnel employed by the hospital, however, insisted on admitting the child. The child was given repeated vaginal exams while they continued to interrogate the mother.

Hospital personnel informed the mother she could not take her child home until child protective services allowed her.

However, after the parents sued it came to light that no protective-services case file or case number could be located to substantiate that the hospital actually filed a report, the Court of Appeals of Illinois pointed out.

No Presumption of Good Faith Hospital Has Burden of Proof

For filing a report with protective services there is a legal presumption of good faith. The plaintiff trying to sue has to prove the defendant did not act in good faith. Otherwise, as in this case, the defendant has to prove good faith. The party who has the burden of proof on the issue of good faith usually loses in court. Lipscomb v. Sisters of St. Francis, __ N.E. 2d __, 2003 22127891 (Ill. App., September 15, 2003).

The traditional common law gives parents an inherent right to the care and custody of their own children.

At the same time the government has the right and the obligation to protect children from abuse, even from their own parents.

The government may curtail the natural parent-child bond only in very special circumstances, like when there is clear evidence of child abuse.

To balance the common-law right of parents to keep their children and the government's right to prevent child abuse, the law says that any person or institution who in good faith reports child abuse to appropriate government authority has legal immunity from a parent's lawsuit for intruding into the natural bond between parent and child.

Reporting and investigating child abuse are two very different things.

When a private individual or institution takes up the task of investigating possible abuse there is no legal immunity from a parent's lawsuit.

COURT OF APPEALS OF ILLINOIS
September 15, 2003

Hospice Care: CMS Re-Approves CHAP For Medicare, Medicaid.

On September 26, 2003 the US Centers for Medicare & Medicaid Services (CMS) re-approved the Community Health Accreditation Program (CHAP) as a national accreditation program.

Re-approval extends from November 21, 2003 through November 21, 2009.

CHAP accreditation is an optional alternative to state survey certification for hospices that wish to participate in Medicare or Medicaid.

It should be noted that CHAP, at CMS's insistence, has made certain changes to its accreditation standards since April, 2003 to make them equivalent to CMS's most current regulations.

We have placed the full text of the CMS announcement from the Federal Register on our website at <http://www.nursinglaw.com/CHAP.pdf>.

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