

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Child Abuse: Care Providers Can Be Liable To The Child For Failure To Detect And Report.

A six year-old child was brought to the hospital with severe head trauma. Fifty-four other traumatic injuries were found.

Child protective services were notified. Their investigation resulted in the arrest and conviction of the mother's boyfriend for child abuse.

The child now has severe brain damage and is a quadriplegic.

Lawsuit Faulted E.R. Visit Three Months Earlier

The child's natural father and a court-appointed legal guardian together filed a lawsuit against the hospital, the physicians and their medical practice groups over what happened and what did not happen in a visit to the same emergency room three months earlier.

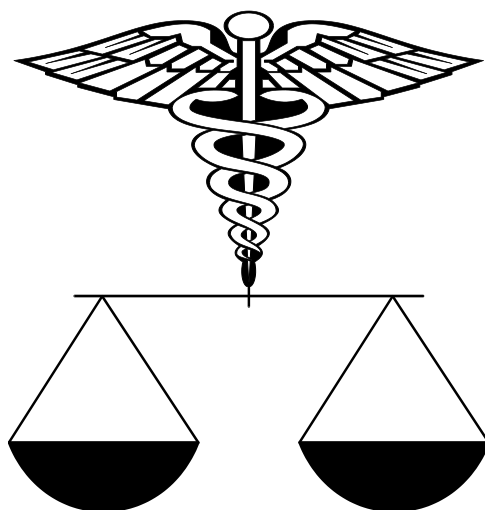
The hospital's nurses as well as the physicians were faulted in the lawsuit for failing to detect and report signs of child abuse that were fairly obvious during the earlier visit to the E.R.

Questionable Explanations for Injury

At the time of the earlier visit the child had a wrist injury the child said came from falling down at home.

When the child was seen separately by the E.R. physician, by a nurse practitioner and by a pediatrician the child gave them three different accounts of how it happened.

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Non-accidental trauma is always something to be considered when a child comes in with a significant injury. A fracture is a significant injury.

The presence of both new and old injuries, particularly new and old fractures, means that a thorough evaluation is warranted. If abuse is not reported, the child is at risk for further injury.

COURT OF APPEALS
OF NORTH CAROLINA
April 6, 2010

Child Abuse Reported: Nurse Ruled Immune From Civil Suit.

An emergency room nurse witnessed the father strike his twelve year-old son, the older brother of the child for whom treatment was being sought.

The nurse asked the father to leave the examination room. When he became aggressive and refused to leave, the nurse summoned hospital security.

A hospital security officer removed the father, detained him and placed him under arrest. He spent the next seventy-two hours in jail.

After charges of disorderly conduct were dismissed, the father sued the clinic and the nurse for defamation, false imprisonment, malicious prosecution, false arrest, negligence and negligent infliction of emotional distress.

Civil Lawsuit Dismissed

The Court of Appeals of Ohio upheld the local county district court judge's ruling which threw out the father's lawsuit against the nurse and her employer.

Nurses are mandatory reporters of child abuse. Along with the mandatory duty to report child abuse to child protective services and/or local law enforcement the law provides immunity from a civil lawsuit for such a report.

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Child Abuse: Providers Liable.

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Old Fractures Found

Two separate chest x-rays were ordered after the child vomited in the E.R. The chest x-ray showed old rib fractures. However, the child had already been discharged before the x-rays were read, with a diagnosis, “Wrist fracture. Falling from residential premise, undetermined if accident/purposely inflicted.”

After the x-rays were read after the child had left nothing was done by way of follow-up on the issue of child abuse.

The Court of Appeals of North Carolina ruled the evidence pointed to a case of negligence against the caregivers who saw the child the first time in the E.R., all mandatory reporters of child abuse. They failed to see signs and should at least have suspected abuse and reported what they observed during the first E.R. visit. Gaines v. Cumberland Co. Hosp., __ S.E. 2d __, 2010 WL 1306429 (N.C. App., April 6, 2010).

Hospitals’ nursing and medical personnel are mandatory reporters who must report abuse to child protective services.

The report does not have to come from a primary care physician; it can be any health care provider in the hospital setting.

Caregivers need not wait to report until they know for certain that abuse has occurred. There must be an index of suspicion.

This hospital had policies in place that all staff were expected to report cases in which there was reasonable cause to believe that a child has been a victim of maltreatment or may be in need of protective services.

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Child Abuse Reported: Nurse Ruled Immune From Civil Suit.

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The Court reviewed the pertinent state statutes in Ohio which are similar to laws on the books elsewhere in the US.

Mandatory Reporter Defined

Mandatory reporters of child abuse include physicians, nurses and a long list of other licensed healthcare professionals.

Mandatory Reporters

Legal Duty Defined

No person designated by law as a mandatory reporter who is acting in an official or professional capacity and knows, or has reasonable cause to suspect, based on facts that would cause a reasonable person in a similar position to suspect, that a child under the age of eighteen years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability or condition that reasonably indicates abuse or neglect of the child shall fail to immediately report that knowledge or reasonable cause to suspect to the children’s protective services agency or to a municipal or county peace officer.

Mandatory reporting laws also apply to physicians’ and nurses’ patients who are not children, but are likewise acutely vulnerable to abuse and neglect. These persons include developmentally and mentally challenged adults and frail elderly persons who are being cared for as the physician’s or nurse’s patients.

Abuse of these other vulnerable persons can be physical, mental, psychological or financial.

Permissible Reporters

The mandatory reporting laws do not apply in every situation. For a healthcare worker, only the worker’s patients come under the healthcare worker’s mandatory obligation to report abuse and neglect.

The law does not penalize non-reporting in non-mandatory-reporting situations. However, the law does extend the protection of the law to any person who, acting in good faith, voluntarily chooses to report abuse or neglect of a child, disabled or vulnerable person to protective services or local law enforcement.

That would apply, for example, to a nurse’s or physician’s neighbor or other person who is not a patient and for whom no mandatory reporting duty exists.

Legal Immunity From Civil Lawsuit Given to Reporter

Reporting in Good Faith

The benefit to society from prevention of abuse of children and other vulnerable persons outweighs the harm that might occur from the filing of an occasional false report, the Court pointed out.

Any mandatory or permissible reporter of child abuse or abuse of other vulnerable persons who reports such abuse to legal authorities in good faith, or who participates in legal proceedings connected with a report of such abuse, is immune from civil or criminal liability for losses suffered by other persons as a result.

In this case, the Court pointed out, it was clear the emergency room nurse was a mandatory reporter of child abuse.

Good Faith Defined

A healthcare provider facing a lawsuit over a report of abuse must come to court and answer to the lawsuit.

In doing so, however, the provider has the right to insist the person who filed the lawsuit come forward with evidence of bad faith on the provider’s part. The healthcare provider does not have to prove his or her own good faith. The other side has the burden of proof to show bad faith.

The father had no evidence to offer to the court of bad faith on the part of the nurse or the hospital security officer. They were entitled to dismissal of the father’s civil lawsuit.

The nurse directly witnessed the father strike his child. She reported what she saw to a hospital security officer who was a peace officer with comparable authority to a police officer.

The nurse’s only motivation was to be able to continue treating her patient and to protect the other child from further abuse.

The father had no proof to offer the court that the nurse had a dishonest purpose, intent to deceive or to mislead, an ulterior motive or malice toward the father.

The Court did not seem to find any relevance in the fact that the other child whom the father did not strike was the one for whom treatment was being sought at the E.R. Workman v. Cleveland Clinic Foundation, 2010 WL 1611102 (Ohio App., April 22, 2010).