

## Child Abuse: Nurse Upheld For Reporting Physician Who Treated His Own Child.

An emergency room nurse was sued by a physician (podiatrist) for reporting the physician to child protective services after the physician elected to treat his own six year-old child for a finger laceration instead of taking the child immediately to a hospital emergency room.

The nurse believed the one-day delay in seeking emergency medical care for the child fit the definition of child abuse. In general terms a parent or other custodian who denies or delays proper medical care for a child is by law considered to have committed child abuse.

After consulting with her nursing supervisor and the emergency room physician on duty, the nurse reported the parent/physician to child protective services.

Child protective services determined the allegations of abuse were unfounded and dropped the investigation. The parent/physician sued the nurse for defamation. The New York Supreme Court, Appellate Division, dismissed the suit, finding no bad faith on the part of the nurse.

### Mandatory Reporting

The court pointed out that healthcare providers such as emergency room nurses have no discretion whether or not to file a report when they believe child abuse has occurred. They face sanctions and possible civil liability for failing to report.

### Legal Immunity From Civil Liability

The other side of the coin is that healthcare professionals with a mandatory duty to report child abuse cannot be sued successfully in civil court unless they are guilty of willful misconduct or gross negligence in making a report.

The nurse in this case had a good-faith belief that the child had been abused by being denied prompt and proper medical care, even under the unusual circumstance that it was a physician's child. The nurse could not be held to answer in a civil lawsuit. Lentini v. Page, 2004 N.Y. Slip Op. 01649, 2004 WL 438973 (N.Y. App., March 11, 2004).

***Child protective services investigated and found "no credible evidence" to support the nurse's charges.***

***The parent/physician sued the nurse. The only relevant issue in his lawsuit is the nurse's good faith.***

***The adequacy of the parent/physician's treatment of his child is not the issue.***

***Other physicians' expert medical opinions are irrelevant. A plastic surgeon who later treated the child stated that the parent/physician's initial treatment was perfectly appropriate. Even if that is true it is beside the point.***

***The radiologist on call for the E.R. at the hospital stated the parent/physician had rendered proper care. That is likewise irrelevant.***

***The nurse was fulfilling her mandatory legal duty. Genuinely believing a parent had denied a child proper medical care, the nurse had a mandatory legal duty to file a report.***

***The nurse is entitled to legal immunity from this lawsuit. The parent/physician has shown no proof the nurse acted in bad faith.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
March 11, 2004

## Fluid Intake: Nurses Must Monitor, Record Carefully Before Surgery.

The patient was admitted to the hospital for abdominal pain with exploratory abdominal surgery scheduled ahead two days later.

On the operating table, prior to administration of general anesthesia, the patient vomited into her oxygen mask. The mask and her airway were cleared and the surgery went ahead.

After surgery, however, the patient was unable to resume breathing on her own. She died two weeks later from aspiration pneumonia. The family sued.

***The physicians elected not to order restriction of oral fluids prior to surgery.***

***The patient's nurses had a strict duty to record carefully the precise quantity of fluids the patient was consuming prior to surgery.***

NEW YORK SUPREME COURT  
APPELLATE DIVISION  
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The family's lawsuit faulted all the physicians involved in the patient's care as well as the hospital's staff nurses.

The New York Supreme Court, Appellate Division, agreed the hospital's staff nurses, knowing two days ahead of time that the patient would be having surgery under general anesthesia, should have carefully recorded the precise quantities of fluids the patient was drinking.

However, the physicians went ahead knowing the patient was not NPO. According to the court, any possible error or omission by the nurses prior to that point in time was not the legal cause of harm to the patient. Postlethwaite v. United Health Services Hospitals, Inc., 2004 N.Y. Slip Op. 01637, 2004 WL 438724 (N.Y. App., March 11, 2004).