

Skin Care: Two Sets Of Medical Records, Jury Awards Damages.

The sixty year-old patient was admitted to the nursing home from the hospital with congestive pulmonary failure, pulmonary edema, diabetes and nephritic syndrome.

Due to immobility and generally poor health she was at increased risk for breakdown of skin integrity. When she came to the facility she already had a Stage II sacral bedsore that apparently had started in the hospital.

After a month in the nursing home she had to be transferred back to the hospital with a Stage IV lesion which healed after treatment in the hospital.

The patient's lawyers had two copies of the chart, one obtained before the lawsuit was filed and another obtained during the lawsuit.

The second chart, but not the first, seemed to show that the patient actually was being repositioned every two hours.

DISTRICT COURT
QUEENS COUNTY, NEW YORK
August 26, 2010

The jury in the District Court, Queens County, New York awarded the patient \$305,000 from the nursing home and nothing from the hospital.

The nursing home should not have accepted a difficult patient with a Stage II sacral lesion if the facility was not able to meet her needs.

Nursing care flow sheets in the chart were apparently rewritten retroactively after the lawsuit was in progress to show that q 2 hour repositioning was being done. The patient's lawyers were allowed to show both sets of records to the jury and invite the jury to come to the conclusion that proper care was not being performed. **Questelles v. Highland Care Center, 2010 WL 5760852 (Dist. Ct. Queens Co, New York, August 26, 2010).**

Child Abuse: E.R. Nurse Who Reported Is Cleared Of Parents' Allegations Of Wrongdoing.

Healthcare providers must take action when child abuse is suspected. It is a crime to fail to do so.

There must be an immediate verbal report to child protective services or to local law enforcement.

A mandatory reporter of child abuse is immune from being sued for making a report, assuming the reporter did not make the report maliciously or in bad faith.

The immunity covers the act of reporting as well as the diagnoses or other impressions or conclusions expressed in the report.

If sued, a mandatory reporter does not have to prove he or she acted in good faith.

Bad faith or malice must be proved by the party who filed the lawsuit.

The burden of proof is not on the mandatory reporter.

The healthcare provider is under no legal duty to believe or give any credit to a parent's explanation of possible signs of child abuse.

A healthcare provider, a nurse for example, is not required to involve a physician in the decision to report or the report itself.

UNITED STATES DISTRICT COURT
INDIANA
January 25, 2011

The preschool teacher called child protective services about a child who seemed to have a vaginal infection.

A worker from child protective services told the child's mother to take the child to the E.R.

A nurse practitioner in the E.R. found a vaginal tear that she believed could have been caused by digital penetration. The child would not talk to her about how it happened.

The nurse practitioner related what she found to the child protective services worker. The nurse practitioner later admitted the tear could have been caused by the child having an infection and scratching herself.

However, the fact of the injury and the strong suspicion of sexual abuse required the nurse practitioner to report what she found, even if the diagnosis was not absolutely conclusive.

The nurse practitioner did not share her findings or impressions, one way or the other, with the mother. Nor did she contact the child's doctor or recommend the mother contact the doctor for an evaluation and a second opinion. She was not required by law to do either of those things.

Charges of child abuse were sustained against the father who is now a registered sex offender.

The mother and father sued the preschool teacher, the case worker and the nurse practitioner. The United States District Court for the Northern District of Indiana dismissed their case.

**Nurse Practitioner
Mandatory Reporter**

The E.R. nurse practitioner was required to report her findings candidly to child protective services. She would have been guilty of a crime if she did not.

There was no evidence of conspiratorial intent on her part as was alleged in the parents' lawsuit. The parents had the burden of proof to prove bad faith. The nurse practitioner did not have to prove she acted in good faith to escape liability in the lawsuit. **Massenberg v. Richardson, 2011 WL 294843 (N.D. Ind., January 25, 2011).**