

LEGAL EAGLE EYE NEWSLETTER

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For the Nursing Profession

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Child Abuse, Neglect: Suit Dismissed Over Child's Vaccination Over Parents' Objections.

The parents brought their young son to the hospital emergency department and reported that he had burned his toes and feet in a fire pit in their back yard.

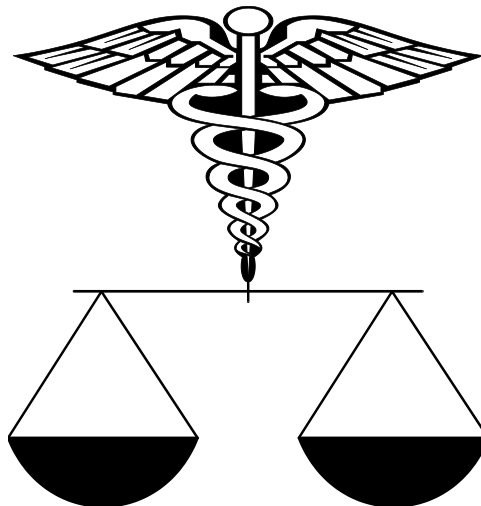
The next morning when it was time for surgery to debride the wounds and perform skin grafts, the parents refused to allow a tetanus shot, even though they had signed general consent forms for treatment and surgery.

A physician and the nurse manager then told the parents that the surgery had to be postponed to accommodate a more urgent patient, but in fact they were stalling while the physician contacted the police to report suspected child abuse and neglect.

The police called family and child services who went before a juvenile court judge who signed a court order for the boy's tetanus vaccination.

The judge signed the order based on information how the boy's feet had been burned, that the parents were refusing a tetanus shot and that the boy apparently had never received any other immunizations in his lifetime.

A staff nurse went in with armed hospital security officers and a deputy sheriff, handed the parents the judge's order and minutes later the tetanus shot was given with no interference from the parents who were allowed to stay.



The parents have no legal claim against the hospital.

The nurse manager worked with the physician to delay the child's surgery until a court order could be obtained for him to receive a tetanus shot over the parents' objections, while telling the parents the delay was due to another patient with a more urgent case.

UNITED STATES DISTRICT COURT
GEORGIA
May 30, 2014

Soon after surgery was performed, family and child services took legal custody of the child and removed him from the hospital to a location which was not disclosed to the parents. The parents eventually got the child back after agreeing to parenting classes and supervision.

Parents' Civil Rights Lawsuit Dismissed

The US District Court for the Middle District of Georgia dismissed the civil rights lawsuit the parents filed against the hospital on their own behalf and on behalf of their son.

The Court expressly exonerated the hospital's nurse manager for the subterfuge involved in telling the parents that the boy's surgery was being delayed due to a more pressing case, while in fact the proper authorities were being contacted for a court order.

The nurse manager also assured the parents that the hospital's CEO would be contacting them that day or the next, which was not exactly true, and then refused to provide further information about the hospital's complaint process.

The nurse manager also asked the deputy to check the father's ID card which seemed altered, which was also no grounds for him to sue.

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Child Abuse: Mother's Lawsuit Against Nurses Dismissed.

On a Saturday evening the mother brought her daughter to the emergency room for treatment because the daughter was "out of control."

The psychiatric triage nurse performed the initial assessment and evaluation. The daughter told the nurse her mother had been hitting her with a belt and that day had pushed her and scratched her arm. A scratch was visible on the upper arm.

The nurse then interviewed the mother who confirmed that she physically disciplined her daughter with a belt, since the girl only responded to physical force. The mother also reported the girl may have been sexually abused by a friend's son and indicated further that there may be a history of mental illness in the family.

The psychiatric triage nurse completed a suspected abuse/neglect reporting form and phoned Child Protective Services (CPS) at 8:20 p.m. that Saturday evening. No caseworker was available but the nurse left a message and noted in her triage record that a return call was expected.

The E.R. physician found marks on the girl's body that confirmed she had been struck with a belt. The physician and the psych triage nurse decided it was best to admit the girl to the psychiatric unit.

The next day, Sunday morning, the mother approached a nurse on the psych unit and said she wanted to take her home. The nurse contacted the medical director of the psych unit, informed him the girl had been admitted based on suspicion of abuse and that CPS had not called back.

The medical director said he was ordering a seventy-two hour involuntary psychiatric hold. The nurse told the mother she could not take her daughter home.

Later that day a child psychologist interviewed the daughter at length. She confirmed that the mother and father both routinely hit the child with a belt. The psychologist faxed another report to CPS.

The next day a CPS worker ordered the child returned to the parents.

The Court of Appeals of Kentucky dismissed the lawsuit the mother filed against the physicians and nurses who were involved in the girl's care. **White v. Norton Healthcare**, __ S.W. 3d __, 2014 WL 2619973 (Ky. App., June 13, 2014).

Any healthcare provider who knows or has reasonable cause to believe a child has been abused or neglected must immediately make a report to local or state law enforcement or child protective services.

Anyone acting upon reasonable cause in the making of such a report in good faith, or who participates in a judicial proceeding resulting from such action, shall have immunity from any civil or criminal liability.

Making a false report of child abuse or neglect is a misdemeanor.

The evidence is overwhelming that the girl's caregivers had reason to suspect child abuse and did not act in bad faith.

A healthcare provider may take photographs to document abuse and may perform x-rays and other medical tests for diagnostic purposes or for use as evidence in subsequent judicial proceedings.

Healthcare providers have the same legal immunity for such photographs and for films and tests obtained in good faith, provided the diagnostic testing was not performed in a manner inconsistent with accepted medical practice.

COURT OF APPEALS OF KENTUCKY
June 13, 2014

Fall: Nurse Found No Water On The Floor Where The Patient Fell.

Two days after knee replacement surgery a hospital patient tried for the first time to go to the bathroom to urinate.

Previously she had had a catheter and then progressed to a bedside commode which she had used earlier that same morning.

Without using her call light to request assistance she went into the bathroom. She turned on the light and did not see any water on the floor.

She took two small steps to approach the toilet. When she turned to sit down her walker flew out of her hands and she fell.

She got up, went back to bed and used her call light.

The nurse who responded inspected the specific spot where the patient said she fell and found nothing on the floor. The nurse stooped over and did see water along the baseboard behind the toilet that had dripped from the sprayer used to flush out bedside commode receptacles.

The aide who had emptied her bedside commode earlier said she saw no water on the floor when she was in the bathroom.

The housekeeper had made his rounds earlier that morning. His routine was to mop the floor whether there was anything there or not.

Building maintenance conceded that some of the old sprayers did leak and were promptly repaired or replaced when the problem was reported.

Court Finds No Liability

The Court of Appeals of Wisconsin dismissed the patient's lawsuit.

In a civil lawsuit for injuries from a slip and fall incident in a commercial building such as a hospital, it is necessary for the victim to prove that there was a dangerous condition due to a foreign substance on the floor and that the owner or the owner's employees knew about the dangerous condition, or should have known about it, and had the opportunity to take corrective action and failed to take corrective action, before the victim fell. **Eesley v. Howard Young Med. Ctr.**, 2014 WL 2579689 (Wisc. App., June 10, 2014).

Sexual Assault: Hospital Ruled Not Liable.

A patient was sexually assaulted by a hospital employee while she was recovering from anesthesia and was still heavily sedated.

The patient sued, claiming that the hospital had a legal duty to protect a highly vulnerable patient from a criminal act by a hospital employee or other persons who were allowed access to her.

The patient's lawsuit also alleged a legal duty not to allow a person with a history of sexual assault or other violent conduct to have access to patients.

Further, the hospital was required to have policies and procedures in place for assaults and other misconduct toward patients to be reported and investigated and for records to be maintained of such reports and investigations.

There simply is no evidence of any sexual assault or other violent conduct by this perpetrator prior to the assault on this patient.

Nor is there any evidence the hospital did not have or did not carry out policies and procedures for reporting, investigating and maintain records of such incidents that actually did occur.

UNITED STATES DISTRICT COURT
ALABAMA
June 3, 2014

The US District Court for the Middle District of Alabama said that the allegations in the patient's lawsuit were a valid, albeit only theoretical statement of the hospital's legal responsibilities owed to her.

There was no evidence the hospital did know or should have known from his background or history that this individual posed a known risk of harm to vulnerable patients. The patient's case had to be dismissed. Willett v. US, ___ F. Supp. 2d ___, 2014 WL 2504575 (M.D. Ala., June 3, 2014).

Breakdown On Duty: Aide's Disability Discrimination Case Dismissed.

An emergency department tech asked for and was denied a fifteen minute break. A few minutes later he suffered what he called a breakdown due to stress and anxiety and was found on the floor of an exam room curled up crying and hyperventilating.

He was allowed to go home and then allowed to go out on medical leave. While he was on leave it was learned he made comments about "going postal" on the job and that co-workers feared for their safety.

When it was time to return to work he was told he could not come back to the E.D. but could come back as a clerk in medical records. On his first day in medical records he started complaining and had to be terminated for disrespectful, intimidating and threatening behavior.

The hospital was not required to restore the tech to his previous position in the emergency department.

An investigation while he was out on leave revealed that his behavior made that an inappropriate placement for him.

UNITED STATES DISTRICT COURT
GEORGIA
June 16, 2014

The US District Court for the Northern District of Georgia turned down the tech's disability discrimination case he based on his history of cerebral palsy and hydrocephalus. His disruptive and threatening behavior, not his medical history, was the reason for his termination.

His Family and Medical Leave Act right to reinstatement to his previous position was not violated. The hospital had good reasons not to offer him that job back. Carlson v. Wellstar, 2014 WL 2711924 (N.D. Ga., June 16, 2014).

Child Abuse, Neglect: Child Vaccinated Over Parents' Objections (Cont).

Continued from page one.

The Court also found no fault with the hospital for fact that a nurse vaccinated the child pursuant to a valid court order from the local juvenile court judge who had legal jurisdiction over the issue.

A nurse came into the room accompanied by two armed hospital security officers and a local deputy sheriff, told the parents that the child was going to be given a tetanus shot whether or not they agreed and told them they could leave the hospital if they did not want to remain in the room, or they could stay with their child.

After a twenty-five minute delay another nurse took the child to another room where he was vaccinated in his parent's presence.

The parents had no grounds to argue with hospital administration or hospital staff about the court order.

Any disagreement with the court order for the child's vaccination should have been brought by the parents to the attention of the juvenile court judge, or the appropriate legal appeals process should have been taken up by the parents to reverse the judge's ruling, the Court said.

Admissions Process Medicaid Application

The hospital had already accepted the child for treatment, had decided to perform surgery and had begun treatment before the admissions director asked the father to fill out a Medicaid application form.

The Court dismissed the allegations in the parents lawsuit about being asked to apply for Medicaid. They had objected because it would involve divulging information about them and releasing confidential medical information about their son.

Other Defendants Dismissed

The Court also dismissed the lawsuit as it applied to the physician, the deputy sheriff, the juvenile court judge, an assistant state attorney general and the child protective services caseworkers involved in the case. Cross v. Doctors Hosp., 2014 WL 2440544 (M.D. Ga., May 30, 2014).