

LEGAL EAGLE EYE NEWSLETTER

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Child Abuse: US Appeals Court Validates Hospital's Testing In Suspicious Cases.

The parents of three children from three separate families sued the same hospital for violation of their children's rights after the children received medical testing in the emergency department for injuries suspicious for parental child abuse.

The children ranged in age from nineteen days to six months. Two had suffered skull fractures and one a fractured femur.

The US Court of Appeals for the Sixth Circuit (Ohio) dismissed the parents' lawsuit.

Standard of Care

Treatment for Apparent Child Abuse

The Court accepted the testimony of two physicians on behalf of the hospital, one a professor of clinical pediatrics and one a practicing board-certified emergency physician.

It is critically important for emergency department personnel to diagnose child abuse in the emergency setting in order to prevent future injury. Physical examinations, CT scans and blood tests are all medically indicated when child abuse is suspected.

Duty to Report Child Abuse

The Court agreed with the parents that the case challenged their children being tested, not the hospital's staff fulfilling their legal responsibilities as mandatory reporters of child abuse.



When child abuse is suspected it is within the standard of care for medical personnel fully to explore that possibility with examinations and diagnostic testing to be sure that proper treatment is afforded a pediatric patient.

The parents signed the hospital's standard consent paperwork before their children were examined and tested.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
February 14, 2018

However, according to the Court, the laws which require physicians, nurses and other healthcare professionals to report child abuse implicitly allow them a degree of latitude to ascertain if child abuse has occurred or whether there is a more innocent explanation for the trauma seen.

Parental Consent

The Court gave great legal weight to the fact that each parent signed the hospital's standard paperwork giving express parental consent to the treatment measures hospital personnel deemed appropriate for their children.

In each case the parents also gave implied consent when they did not object to the child being given a CT or x-ray or having blood drawn.

Only after the fact when they realized the legal import of what was being done did the parents object.

No Governmental Action

Hospital personnel were not acting at the behest of or in concert with a governmental investigation when they performed the testing on these children.

Had they been asked beforehand by the police or another governmental authority to examine or test the children, hospital personnel would have needed a search warrant. ***Thomas v. Children's***, ___ F. 3d ___, 2018 WL 844672 (6th Cir., February 14, 2018).

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