

Failure To Report Child Abuse: Nurse Faulted In Child's Death.

A hospital nurse was charged with the criminal offense of failure to report child abuse. Her lawyers argued in her defense that she could not be prosecuted because the state criminal statute is unconstitutionally vague. The Supreme Court of Missouri took jurisdiction of the case to rule on the Constitutional issue.

The court noted that the "reasonable cause to suspect" or "reasonable cause to believe" language in mandatory child-abuse reporting statutes in Texas, Minnesota, Michigan and Wisconsin has been expressly ruled not unconstitutional, and upheld Missouri's law.

Health care personnel are expected to know what reasonable cause to suspect or to believe evidence of child abuse exists means without further explanation by the legal system, the court ruled.

Evidence of Abusive Head Trauma No Report Filed

Fire and rescue personnel were summoned to the home where a two year-old was in foster care. They found him unconscious, not breathing and posturing, which the court pointed out is an abnormal rigidity of the body which indicates serious brain damage has occurred. They also found a series of bruises running parallel along his spine and a red bruise under his eye. They transported him to the hospital.

All their findings were relayed to the nurse at the hospital. However, the child was treated and released. He was returned two days later and died at the hospital from abusive head trauma.

The nurse admitted she was aware of her legal obligation to report child abuse and knew there was a phone hotline for reaching the proper child-welfare authorities.

She also admitted she had elected not to document the trauma to the child in her nursing notes, which likely would have alerted a physician or other hospital caregiver to make a report, a violation of her own duty to report abuse to the physician in charge as well as to child welfare authorities. **State v. Brown**, __ S.W. 3d __, 2004 WL 1729445 (Mo., August 3, 2004).

Any physician, nurse, hospital or clinic personnel involved in the examination, care, or treatment of children or persons with responsibility for the care of children, who has reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or who observes a child being subjected to conditions or circumstances which could reasonably result in abuse or neglect must immediately report or cause a report to be made to the division of family services.

Reasonable cause to suspect or reasonable cause to believe is the operative language, as that is what sets in motion the health care provider's legal duty.

As a general rule it is a violation of the Constitutional right to Due Process of Law to prosecute someone for a criminal act that is so vaguely defined in the law that someone would not know they are committing a violation.

Courts in other states that have had to rule on the issue have found the "reasonable cause" language not unconstitutionally vague.

SUPREME COURT OF MISSOURI
August 3, 2004

Removal Of Dentures: Court Declines To Fault Nurses.

The elderly patient was admitted to the hospital for surgery on his foot ulcers. He was noted to be suffering from severe senile dementia.

Prior to the procedure the nurses doing the prep tried to remove his dentures. When they encountered difficulty they went to talk to the patient's son in the waiting room.

The son advised the nurse his father did not have dentures. He went into the prep area to find out what was going on.

The son observed one nurse holding his father's shoulders down while a second nurse was tugging at his mouth, while his father was moaning. He told them his father's teeth did not come out.

After the surgery his teeth, actually a fixed partial denture that had a dentist had cemented in place, were cracked and hanging loosely in his mouth.

The son sued the hospital as probate administrator on his father's behalf.

A nurse can testify regarding the nursing standard of care. A nurse cannot offer an expert opinion as to the cause of the patient's dental injuries.

COURT OF APPEALS OF OHIO
July 29, 2004

While not endorsing what happened the Court of Appeals of Ohio had to rule in the hospital's favor.

The son's lawyer's nursing expert could testify it was wrong for the nurses not to have known or ascertained that the patient's dentures did not come out. However, she was not qualified to testify as to the cause of the dental damage observed after the surgery. The patient's dentist, although qualified to testify, had not examined patient. **Hager v. Fairview General Hosp.**, 2004 Ohio 3959, 2004 WL 1688537 (Ohio App., July 29, 2004).