

# **Mandatory Reporting of Child Abuse and/or Neglect: A Liability Concern?**

written by Nancy Brent | February 15, 2018

## **Avoiding Liability Bulletin - February 15, 2018**

As you are hopefully aware, nurses are among the health care providers who are required to report a good faith belief or suspicion that a child has been abused or neglected. This mandate is included in the state statute that governs the reporting (such as a Child Abuse and Neglect Act). In addition, state nurse practice acts list a failure to report such abuse or neglect as a ground for discipline of the nurse licensee.

Many times, nurses, as well as other mandated reporters listed in the state statute, are hesitant to inform the designated state agency for reporting because of concerns that they may be sued by the parents or guardians of a child so reported.

In the following 2017 Kansas case<sup>1</sup>, a report to the state agency that a 9-month-old female had been severely and chronically sexually abused illustrates how this court interpreted the reporting statute and its specific protections of those who in good faith report child abuse.

T.H. and C.C. took their 9-month-old daughter, R.N.C., to the University of Kansas Hospital ED for a respiratory infection. The ED physician suspected that R.N.C. experienced long-term sexual abuse.

The physician alerted the police. ED nurses conducted HIV and STD tests on the child.<sup>2</sup>

After an investigation, the physician's suspicions were not founded. The parents filed a suit against the physician and the hospital—but not the ED nurses—and sought monetary damages for pain, suffering, mental anguish, medical intrusion, outrage, humiliation, medical expenses and the economic loss they experienced due to the physician's report. They also alleged that the physician misdiagnosed sexual abuse, no factual or medical basis existed for the physician's belief of sexual abuse, and that the physician's reporting "intentionally and/or recklessly inflicted emotional distress" on them.<sup>1</sup>

The Hospital filed a Motion to Dismiss the suit due to a failure to state a claim upon which relief could be granted. The parents did not amend their complaint but instead argued that the complaint contained enough facts for the court to infer malice (a requirement for liability of a reporter who did not report in good faith).

After a hearing, the judge dismissed the lawsuit, opining that the parents failed to allege the physician acted with malice and granted statutory immunity to the Hospital and the physician. The parents appealed the decision.

Carefully reviewing Kansas law and a Missouri case that applied Kansas law, the appeals court held that immunity under the state statute does apply to “doctor misdiagnosed abuse”. The court went on to state that this policy goal is to provide for protection for children who have been abused by encouraging the reporting of suspected child abuse and neglect.

Without this protection of immunity, the court continued, health care providers would “face a dilemma. By reporting suspected abuse, they would open themselves up to malpractice actions, but by declining to make a report, they could be guilty of a misdemeanor.”

The court also cited other states with the immunity protection for health care providers also applying to both the diagnosis and reporting of suspected child abuse.<sup>1</sup>

Moreover, the court continued, the statute requiring reporting of child abuse or neglect and its immunity protections must be liberally construed and applies to “all who participate in the making of a report” as well as anyone “who participates in any activity or investigation relating to the report”.

The court also held that the parents’ allegation that the physician made the report with malice was without merit. No such facts were plead in the complaint. Rather, simple conclusions about their responses to the making of the report existed in the complaint.

Malice, defined in Kansas as a specific intent to injure when making a report, must be supported by a fact or facts. A court cannot infer malice when a report is made without fact or facts allegations.

The appeals court affirmed the dismissal of the suit in the lower court.

It is not clear why the nurses were not named in the suit. They were involved in the care and testing of the infant and may have provided information to the police as witnesses as well. However, the parents elected to name only the physician.

Even so, this case should be helpful to you if you ever are faced with a good faith belief of suspected child abuse or neglect of whatever nature and you need to report your concerns. Statutory protection exists when a report is made in accordance with the statute’s guidelines.

### **Implications for you include:**

1. Know your state child abuse and reporting statute and adhere to its requirements;
2. Know your employer policy when child abuse or neglect of any kind is suspected in good faith;
3. Comply with reporting requirements as quickly as possible, heeding directions from the state statute;
4. Remember that if you do not report your good faith suspicions as mandated, you face disciplinary action by your state board of nursing;
5. If you are a nurse manager, supervisor, or CNO, never prevent a nursing staff member from reporting suspected child abuse or neglect; you will face discipline by your state board of nursing;

6. Be honest, factual, and furnish complete details about your suspicion, whether orally, in writing, or both;
7. You do not need to be certain abuse or neglect has occurred, but you must have a good faith belief that it has occurred;
8. Remember that nurse-patient confidentiality does not apply when reporting child abuse or neglect; and
9. Immunity protection is broad based and if sued, the suit will be dismissed if you followed your obligations under applicable state statutes.

#### **FOOTNOTES**

1. T.H. and C.C., Individually, and R.N.C., by and through Her Next Friend and Natural Mother, T.H. v. University of Kansas Authority d/b/a University of Kansas Hospital and Francesca Perez-Margues, MD., No. 114,285, Court of Appeals of the State of Kansas, January 6, 2017.
2. "Child Abuse: Mandatory Reporter Immune From Lawsuit", Legal Eagle Eye Newsletter for the Nursing Profession, February 2017, 2.

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