

Follow up Q/A, March 11, 2020 webcast, *Pitfalls, Perils and Protections in Child Abuse*

From a child abuse pediatrician:

Question - 1983 topic-What if the child is medically cleared, but CPS has not determined their plan for the child yet? This child may end up in limbo in the hospital because there is no determined safety plan yet despite being medically cleared.

Answer: Certainly the way in which the 2nd Circuit Court of Appeals has interpreted this issue, if a child has been medically cleared for discharge but is kept, the hospital and/or physicians involved may be deemed “state actors” for purposes of §1983 litigation. Under these circumstances, having a court-order in place may generally relieve the hospital/physician of this determination, though, where the court has directed that the child remain until suitable placement can be effectuated.

From a child abuse pediatrician:

Question: To a reasonable degree of medical certainty – Can you recommend language to use in medical record versus in court?

Answer: The “reasonable degree of medical certainty” language is definitely an outgrowth of litigation. That is the language utilized to present an “opinion,” and – arguably – has no place in a medical chart. Physicians should continue to document as they normally would, as trained, documenting observations, a plan of care, diagnostic test results, etc..

From a child abuse pediatrics nurse practitioner:

Question: I was the provider at a CAC for 17 years, retired in august. I now have 4 subpoenas for trials for the next 4 weeks. My previous employer, risk management informed me that I am no longer an employee so they are not able to advise or support me. What kind of protection should I expect from the employer?

For any providers who change institutions or retire, what about time frame for insurance coverage?

What kinds of support can providers expect after leaving one institution, for the time period while they were still in practice at that institution?

Answer: On the issue of support and coverage, those are both a little beyond my area of expertise. Coverage issues are generally governed by whether the policy is a claims-made or occurrence policy, and institutions/hospitals are really the best one to address questions of coverage and support.