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CAUTION: FAILURE TO REPORT CHILD ABUSE MAY COST MILLIONS

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Last month, a North Carolina state court jury awarded $25 million in a child abuse case in which a six-year-old boy (now age 14) was rendered quadriplegic and unable to speak when battered by the mother's boyfriend, an all too familiar tragedy these days. What was unusual in this case was that the award was rendered against a North Carolina hospital and physicians practicing at the hospital.

The case was originally filed in 2005, two years after the brutal abuse occurred. The essential allegation was that the boy was seen in the emergency department in April 2003 for a wrist fracture, but numerous other prior injuries went undetected. A chest x-ray at the time did reveal a prior rib fracture, but hospital staff and physicians did not follow the hospital's adopted procedures for assessing and reporting possible child abuse. Three months later, the boy was admitted with a traumatic brain injury inflicted by the boyfriend on July 3, 2003.

In 2007, the trial court dismissed the case when it granted the defense motion for summary judgment. After another two years went by, the North Carolina Court of Appeals in a cursory opinion affirmed the dismissal on the basis that it was entirely speculative whether the subsequent brain injuries would have been prevented had the hospital staff and physicians detected and reported the abuse to the North Carolina child protective services in April.

In a very unusual reconsideration of the case by the North Carolina Court of Appeals, the same three-judge panel reversed their earlier decision. *See Gaines ex rel. Hancox v. Cumberland County Hospital Systems, Inc.*, 692 S.E. 2d 119 (N. Car. Ct. App. 2010). This opinion offers excellent guidelines on how child abuse should be assessed and reported in a hospital setting.

The specific legal issue addressed by the Court of Appeals was whether there was sufficient expert testimony to submit the question to the jury whether the abuse in July "more probably than not" would have been prevented had the earlier abuse been detected and reported in April. Based on a thorough re-review of the evidence, the Court of Appeals held that it was for the jury to decide the "probably" versus "possibly" abuse prevention issue. A key to the Court's reconsideration of this issue was that the expert witness for the boy was properly qualified to testify not only that the standard of care was violated by not detecting the abuse during the April hospital visit, but also that, based on her many years of experience in working with child protective services in North Carolina, the child would probably have been removed from the dangerous home environment prior to the July 3rd battering. The Court of Appeals distinguished an earlier opinion where there was no such expert testimony regarding the effectiveness of the state's child protective services.

In view of the detailed facts set out in the Court of Appeals' second opinion, the $25 million jury award comes as no surprise. This is a tragic failure to report case. This recent jury verdict and last year's Court of Appeals opinion provide a recipe for taking the right measures to avoid such a tragic and costly outcome.