

ANALYZING, PREPARING, AND TRYING CASES INVOLVING MEDICAL ACCUSERS

Darice Good, JD, CWLS

Diana Rugh Johnson, JD, CWLS

WHY WE MUST GET IT RIGHT

Physical abuse cases are among our most serious

Removal of a child to foster care is sometimes necessary but always traumatic

Reunification after a dependency adjudication based on unexplained injuries can be very difficult to achieve

THESE CASES ARE COMPLICATED

Your defense doesn't have to be!

ROLE OF THE ATTORNEY

Client care

Client engagement

Factual analysis

Trial advocacy

CLIENT HOMEWORK



WRITE OUT A
TIMELINE



TAKE/COLLECT
PHOTOS



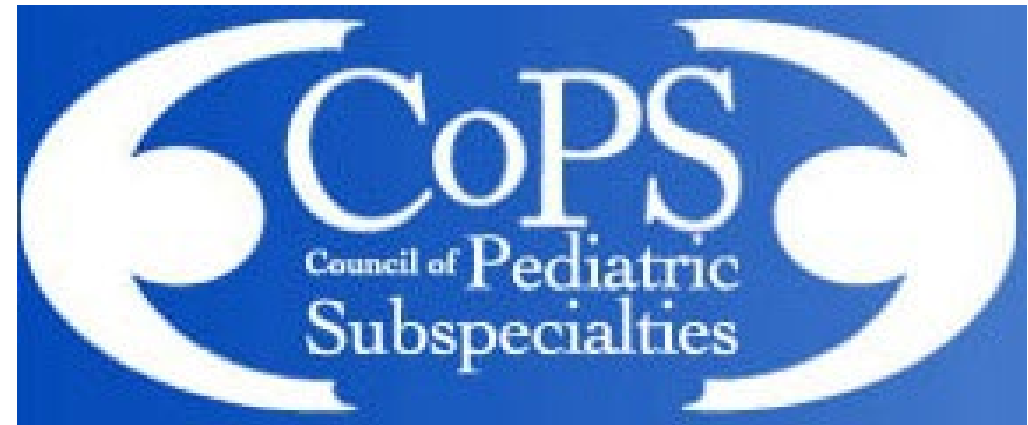
GATHER MEDICAL
RECORDS



READ MEDICAL
RECORDS AND
MAKE NOTES

CHILD ABUSE PEDIATRICIANS

- Subspecialty created by the American Academy of Pediatrics in 2006
- Child Abuse Pediatricians are responsible for the diagnosis and treatment of infants, children, and adolescents who are suspected victims of any form of child maltreatment
- 350 Child Abuse Pediatricians nationwide
- Fewer than 5 in Mississippi





DRAMA QUEEN
Overly dramatic. Has never met a non-abused child.



DR. BORING
Never prepares for court. Mumbles on the witness stand.



THE WEASEL
Has an answer for everything. Never ask this weasel an open-ended question.



PRINCE CHARMING
Engaging, charismatic, smooth talker, convincing liar.

GET TO KNOW YOUR CAPS



AT FIRST GLANCE,
THESE CASES SEEM
UNSURMOUNTABLE



THOROUGH INVESTIGATION
CAN REVEAL A PATH TO JUSTICE

ATTORNEY CHECKLIST



Get the medical records – all of them!



Read the medical records – you and the client



Make a timeline – integrate with your client's timeline



Accept nothing at face value – hearsay



Non-medical investigation

ON-LINE RESOURCES

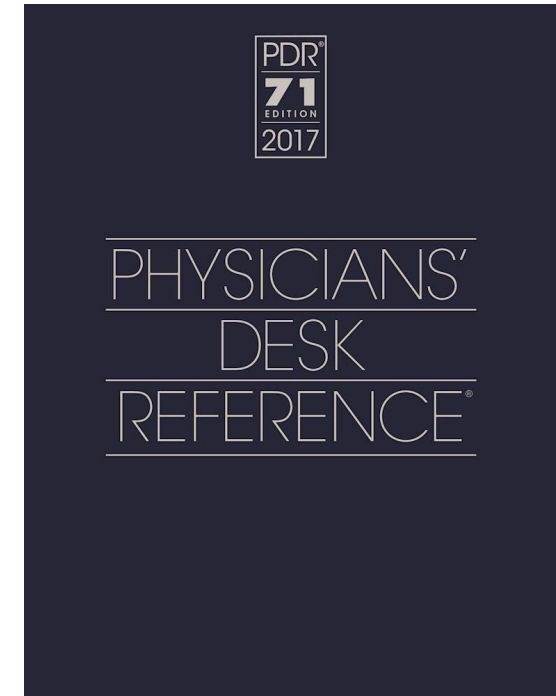
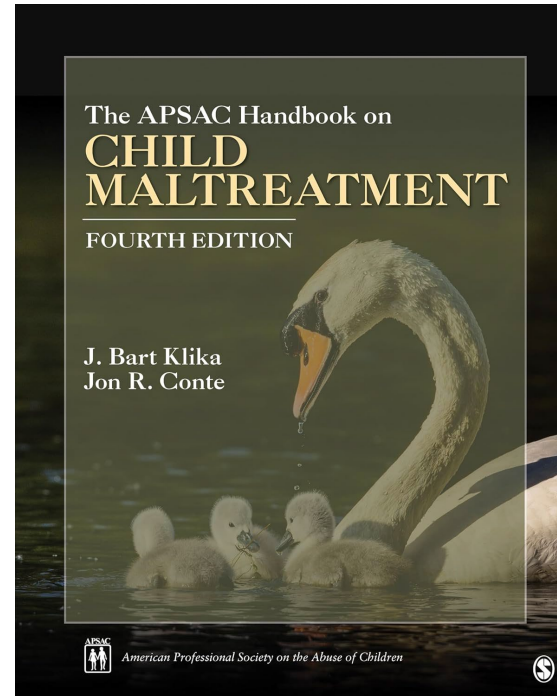


American Academy
of Pediatrics



DEDICATED TO THE HEALTH OF ALL CHILDREN™

PubMed.gov



BOOKS

INVESTIGATIVE TIME FRAME

The hours leading up to the diagnosis of non-accidental trauma are NOT the most important!



LOOK BACKWARD AT THE CHILD'S MEDICAL HISTORY



LOOK FORWARD AT THE CHILD'S ONGOING TREATMENT

Prenatal care

Birth hospital

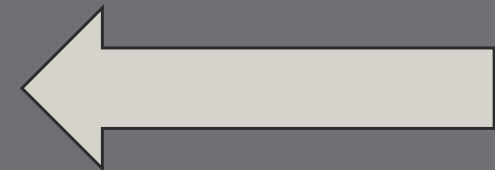
Pediatrician

Previous injuries

Previous hospitalizations

Urgent care facilities

GET ALL
OF THE
MEDICAL
RECORDS



Continued hospitalization

Subsequent hospitalizations

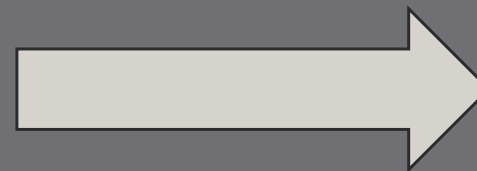
Follow-up radiology

Therapies

Pediatric appointments

Developmental assessments

GET ALL
OF THE
MEDICAL
RECORDS



WHERE DO MEDICAL RECORDS HIDE?

MEDICAL RECORDS
DEPARTMENT

RADIOLOGY DEPARTMENT

PATHOLOGY DEPARTMENT

EMERGENCY
DEPARTMENT

EMERGENCY TRANSPORT
SERVICES

EARLY INTERVENTION
PROVIDERS

PHYSICAL/OCCUPATIONAL
THERAPY PROVIDERS

SCHOOLS

NOW WHAT?

- Read the records front to back
- Construct a medical timeline for the child
- Carefully reread the portion of the records that covers the diagnosis of non-accidental trauma
- Pay special attention to the child abuse pediatrician's report
- Don't skip over the nursing notes!
- Look up every medication the child was administered

A TIMELINE MAKES ORDER FROM CHAOS

- 4mo medically fragile infant
- Hospitalized since birth
- While home for 1 week, sustained facial bruising and rib fxs
- The injuries are unexplained



BIRTH

- Cardiac emergency
- Life flight to ATL

HOME

- Multigenerational care

HOSPITAL

- DFCS custody
- 6 rib fxs (11 total)

HOSPITAL

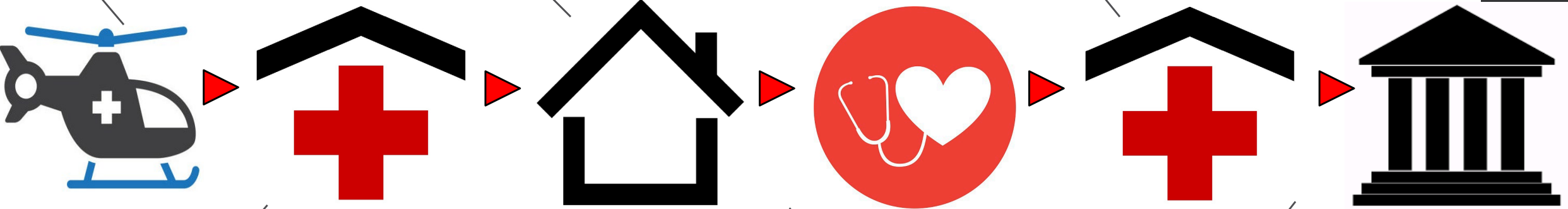
- Dilated cardiopathy dx
- Transplant list
- 1 rib fracture

TRANSPLANT CLINIC

- Facial bruise
- Abuse work-up
- 4 rib fxs (5 total)

TRIAL

- Each fx was acquired in hospital setting
- VICTORY!



CHILD ABUSE PEDIATRICIAN'S REPORT

- Full of hearsay
- Do not take the hearsay at face value!
- Review the specialist reports that are “summarized” in the CAP’s report
- Review the CAP’s report for internal inconsistencies

EXAMPLE OF UNRELIABLE HEARSAY IN CAP REPORT

CAP:

CT scan shows likely subdural hematoma

RADIOLOGIST:

Hyperdense material along posterior falx is nonspecific but may represent a small amount of extra-axial blood products. Recommend repeat imaging in 24-48 hours.

RADIOLOGIST:

Follow-up of previous hyperdensity along poster falx cerebri again demonstrated as a thin area of high density with no significant interval change. Area represents either dural thickening or possibly tiny amount of subdural blood.

ANOTHER EXAMPLE OF UNRELIABLE HEARSAY

CAP:

Per Dr. X, staff noted that the mother was behaving very negatively toward the child, acting condescending and demeaning toward her. Apparently, the sitter in the room reported that mom was negative and belittling.

Dr. X:

Per sitter, mother tends to have negative interactions with the patient, which upsets the patient and makes her angry. Likely stemming from provider burnout as patient needs constant monitoring and supervision. I discussed with mother at length about lack of inpatient resources due to patient's age and insurance.

INTERNAL INCONSISTENCIES IN CAP REPORT

5 day old neonate who was apparently well upon discharge except for having some fussiness with diaper changes that the parents attributed to his recent circumcision, found to have R thigh swelling after dad noticed baby was not moving his one leg when he played with his feet. On x-ray, baby has an oblique, displaced mid-shaft femur fracture with significant swelling. The history of this neonate not being irritable with diaper changes is not consistent with the fracture being present at that point in time...This injury needs to be considered non-accidental in nature, as there is not an accidental mechanism to account for the injury.

MEDICAL RECORDS DON'T TELL THE WHOLE STORY

- Scene investigation
- Client interview
- Family interviews
- Medical providers
- Hospital staff
- Criminal history
- Social services history
- Parenting style



VICTORY BY SCENE INVESTIGATION

PARENTS REPORTED:

Crib mattress on its highest setting.
Crib bumpers were on.

CAP CONCLUDED:

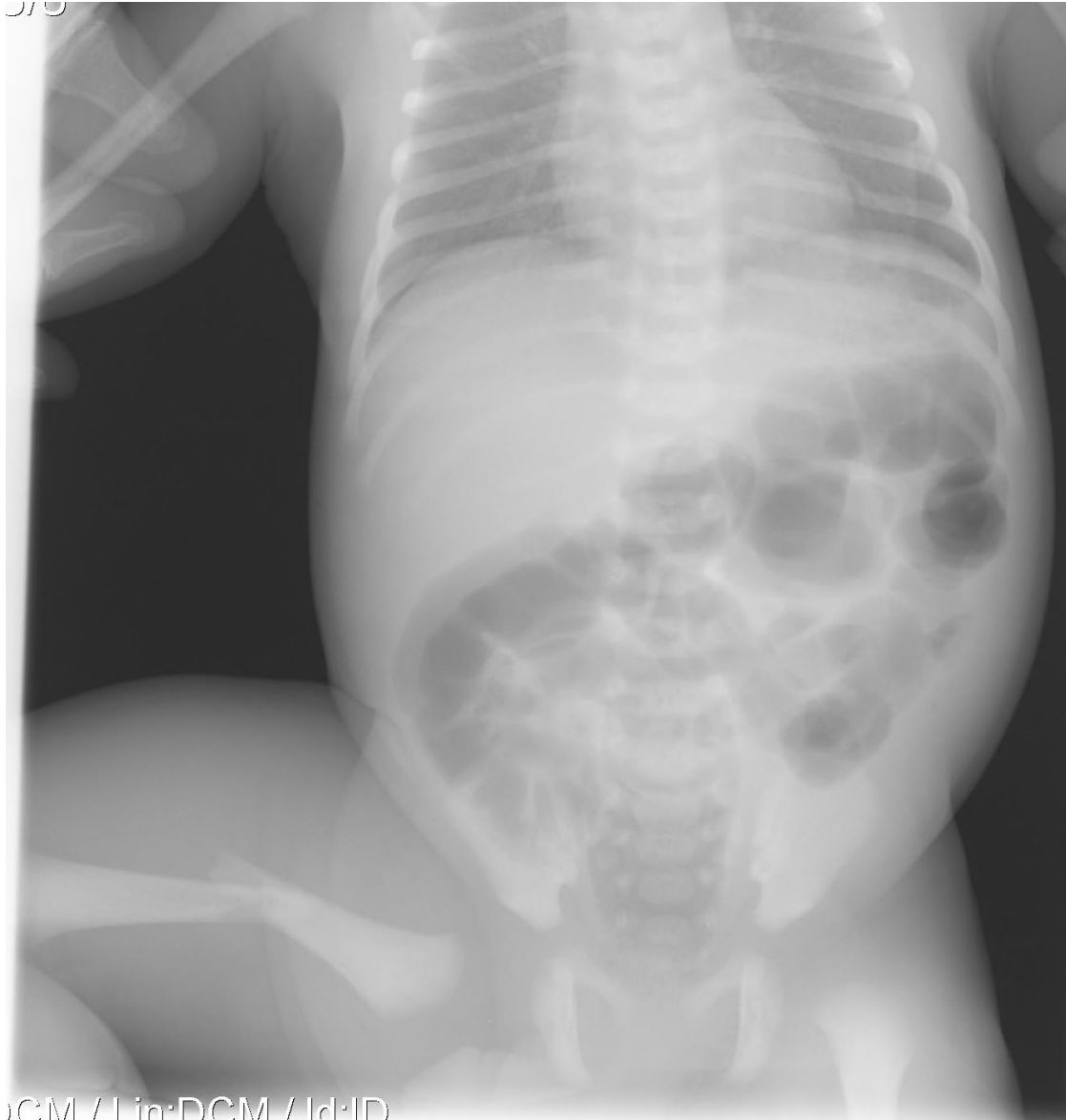
Parents' story is implausible. 17-month-old sibling could not have reached into the crib to grab the baby. The baby's fractured humerus was the result of child abuse.



SOMETIMES YOU
HAVE TO SEE
TO BELIEVE



- Crib mattress on highest setting
- Crib bumpers tied on
- Big brother was not deterred



VICTORY BY FAMILY INTERVIEW



A RELATIVE TOOK THIS PICTURE
IN THE BIRTHING ROOM

AT TRIAL

- Make an opening statement
 - Introduce your theory of the case
 - Give the judge a road map to the verdict you want
 - Paint a picture of the family
 - Talk about everything your client did right
 - Talk about what the state and the child abuse expert failed to do
 - Introduce your theory of non-abusive injury
- Know the medical records and the timeline of the case like the back of your hand
- Prepare exhibits
 - X-rays make great Power Point slides
 - If dates are important, use a calendar

“FRACTURE”
IS A SCARY WORD



DISARM THE WORD WITH A PICTURE

TRIAL SKILLS

Foundation

Direct

Cross

Objections



PLAY THE LONG GAME

A wise judge once said...

Well, this case
shows how
dangerous it can be
to take your infant
to the hospital.



QUESTIONS?