

Preparing and Presenting Cases Involving Unexplained Injuries

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GETTING IT RIGHT

- Unexplained injury 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
- In the Interest of J.V., 241 Ga. App. 621 (1999)
- In the Interest of J.D.A., 267 Ga. App. 103 (2004)

DON'T DO THIS

I have an expert witness
who says it's abuse.
My work is done.



I read the complaint. It's bad.
We should definitely stipulate.



DO THIS!



REMOVAL

- Safety decision
- Often made in a time crunch
 - Ex: child pending discharge from hospital
- Based on information known at that time

INFORMATION IS POWER? INFORMATION IS EVIDENCE!

- Information comes from many sources
- No single source has all the information the court needs to decide the case



MEDICAL INFO AVAILABLE AT REMOVAL IS OFTEN PRELIMINARY

- Child's physical appearance
- First skeletal survey
- Hospital social worker's initial impressions
- Child Protection Team's initial assessment
- Some lab tests pending results
- Limited medical history

FAMILY INFO AVAILABLE AT REMOVAL IS OFTEN LIMITED

- Initial parental interviews
- Determining if father is legal or putative
- Confirming legal relationships to the child in cases where the child is in the care of a legal guardian
- Limited collateral contacts
- Identifying relative and/or fictive kin placement resources
- Home evaluations pending

CASE STUDY

- 16mo toddler appeared at daycare with marks and bruises on her legs and stomach, two bruises/knots on head, large bruise behind ear
- Child transported to CHOA and taken into custody
- Parents not present at removal

- Head CT and skeletal survey negative
- Blood work showed low platelets
- Medical hx obtained from parents and pediatrician showed ongoing concerns about easy bruising
- Dx: idiopathic thrombocytopenic purpura
- Rx: IVIG
- Outcome: DFCS moved to dismiss @ PPH



**CPS INVESTIGATION
DOES NOT END AT REMOVAL**

**PARENT ATTORNEY'S INVESTIGATION
BEGINS AT REMOVAL**

WHAT HAPPENED?

- A parent intentionally or unintentionally caused the child's injuries
- A non-parent intentionally or unintentionally caused the child's injuries
- There is an alternative medical explanation for the injuries

PHYSICAL ABUSE

or ...

- Birth trauma
- Prematurity
- Nutritional disorder
- Metabolic disorder
- Blood disorder
- Medication toxicity
- Infection
- Neuromuscular defect
- Skeletal dysplasia

INVESTIGATION

Medical

Family

Collateral contacts

Home

MEDICAL INVESTIGATION

- Obtain ALL of the child's medical records
- The investigative timeframe is longer than the hours leading up to the diagnosis of suspected abuse
- Obtain the complete hospital record
- Child has a medical history
- Were there previous injuries?
- Child may receive ongoing treatment
- Were there any subsequent injuries?

PRE-INJURY RECORDS

- Prenatal clinic
- Birth hospital
- Pediatrician
- Previous injuries
- Previous hospitalizations
- Urgent care facilities

POST-INJURY RECORDS

- Urgent care facilities
- Continued hospitalization
- Subsequent hospitalizations
- Follow-up radiology
- Therapies
- Pediatrician
- Developmental assessments

KNOW WHERE TO LOOK FOR MEDICAL RECORDS

- Medical Records Department
- Radiology Department
- Pathology Department
- Emergency Department
- Emergency Transport Service
- Early Intervention Services
- Schools

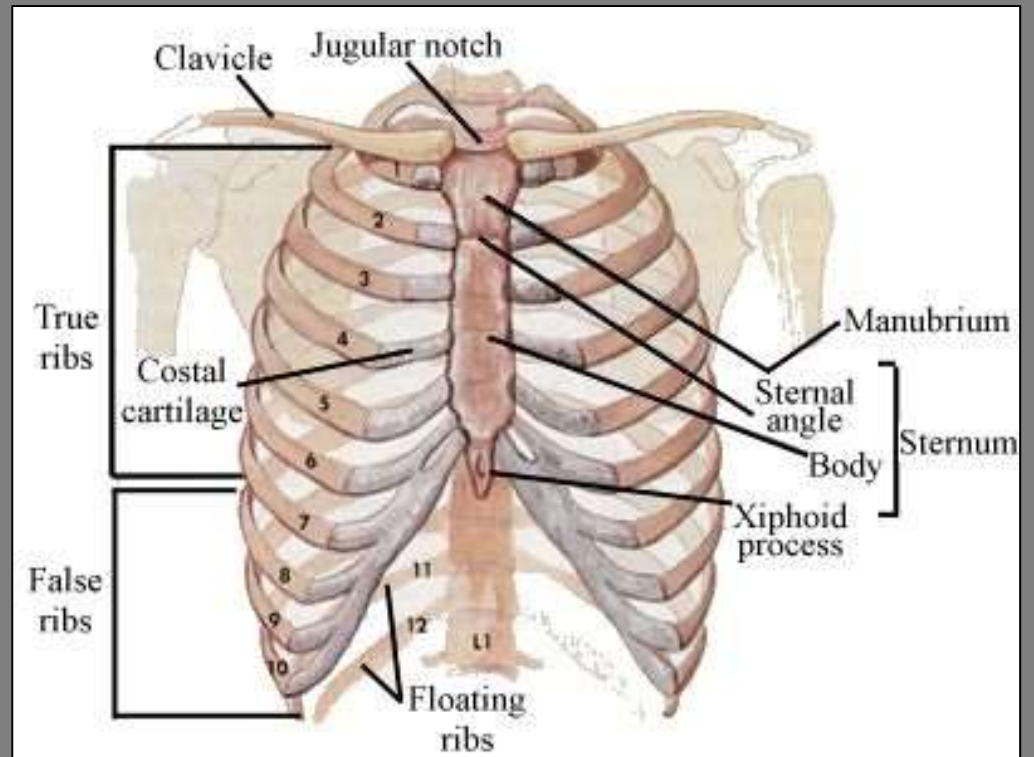
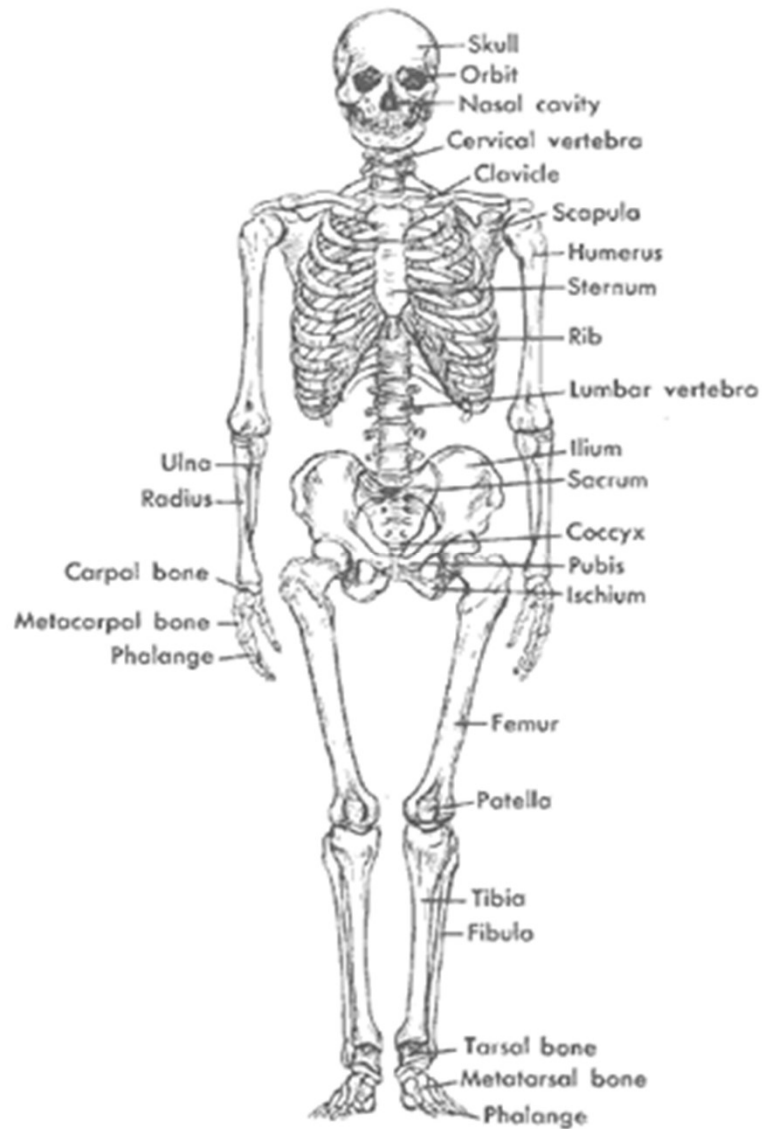
YOU HAVE THE MEDICAL RECORDS. NOW WHAT?

- Read the records front to back
- Construct a medical timeline for the child
- Carefully reread the portion of the record that covers the injury and diagnosis of non-accidental trauma
- Don't skip over the nursing notes
- Look up every medication the child was administered
- Be your own translator

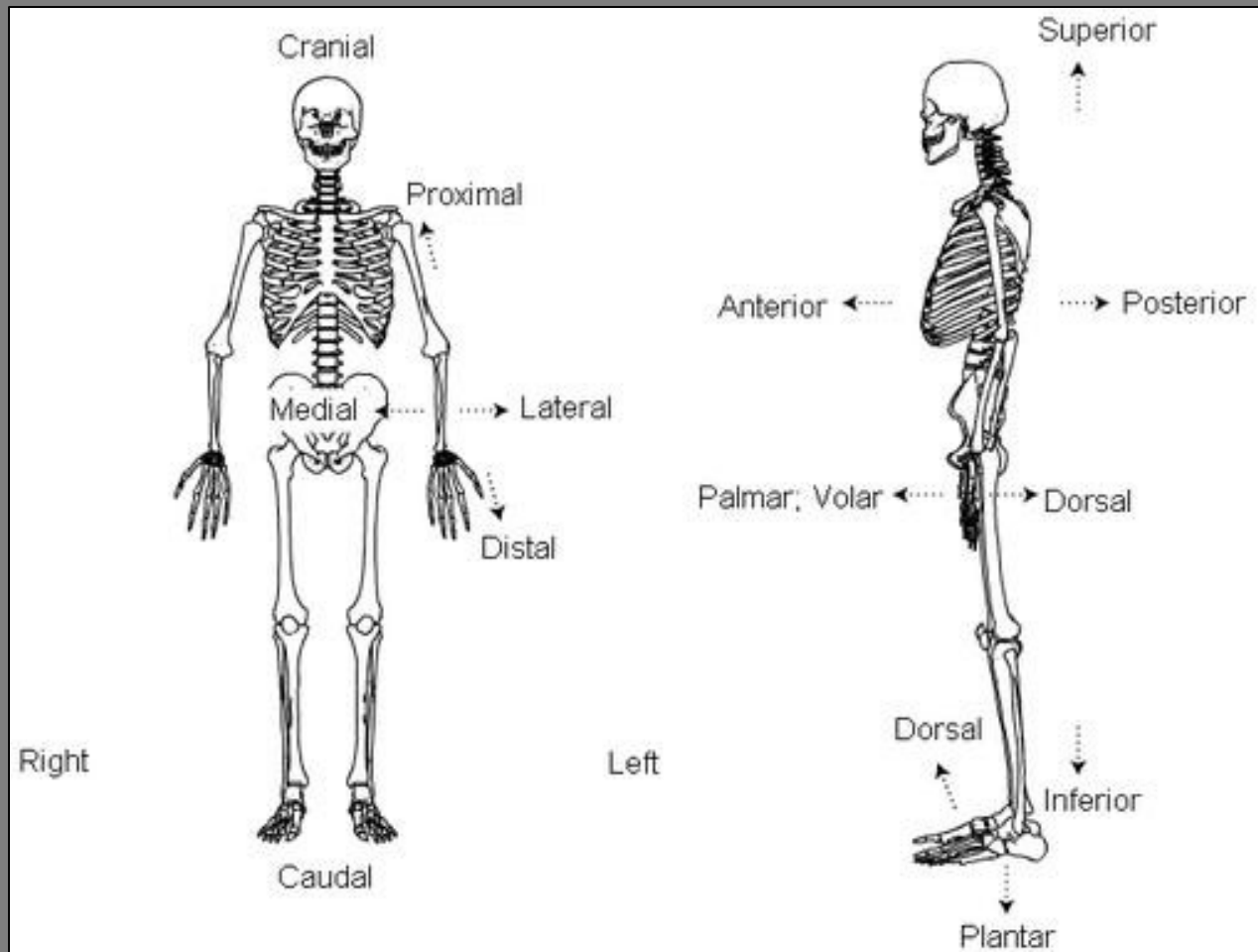
LEARN THE LANGUAGE

| | | | |
|-------------------|----------------------------|----------|--------------------------|
| ADENO- | gland | CEREBRO- | cerebrum (part of brain) |
| ADRENO- | adrenal gland | CHEILO- | lip (mouth) |
| ANGIO- | vessel | CHONDRO- | cartilage |
| ANO- | anus | CILIA- | hair |
| ARTERIO- | artery | CLEIDO- | collarbone |
| ARTHRO- | joint | COLPO- | vagina |
| BALANO- | glans penis | COXA- | hip |
| BLEPHARO- | eyelid | CRANIO- | head |
| BRONCHO- | bronchus (windpipe) | CYTO- | cell |
| CAPIT- | head | DERMA- | skin |
| CARDI- or CARDIO- | heart | EMIA- | blood |
| CARPO- | wrist | ENTERO- | intestines |
| CEPHALO- | head | GASTRO- | stomach |
| CEREBELLO- | cerebellum (part of brain) | GINGIVO- | gums |

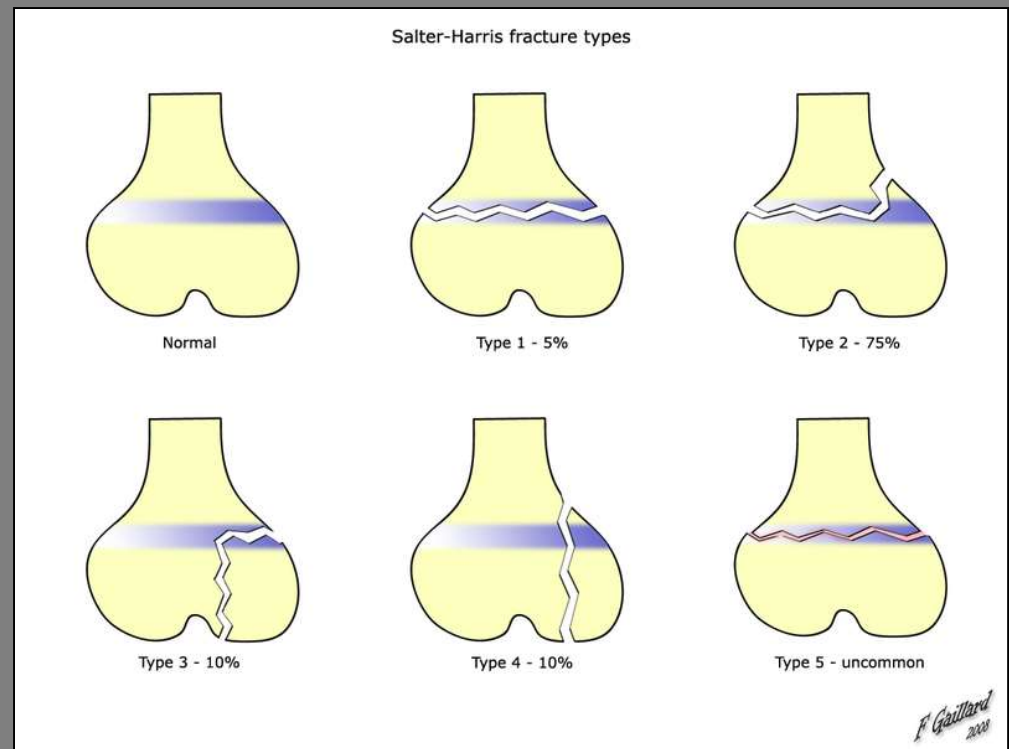
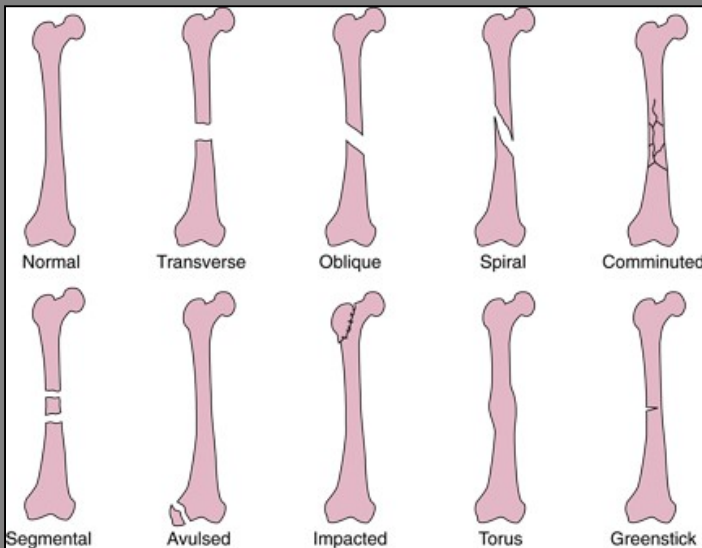
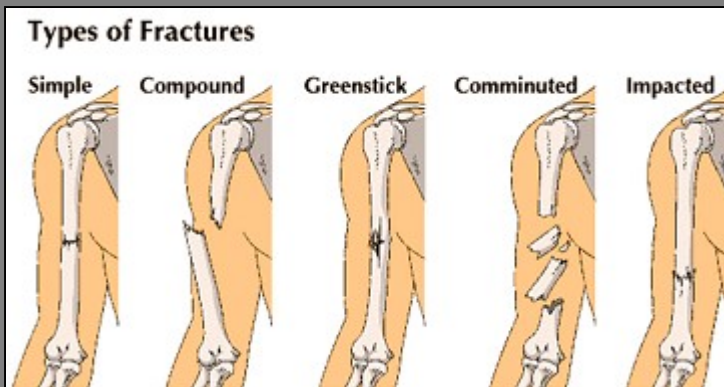
LEARN THE PARTS



LEARN THE DIRECTIONAL WORDS



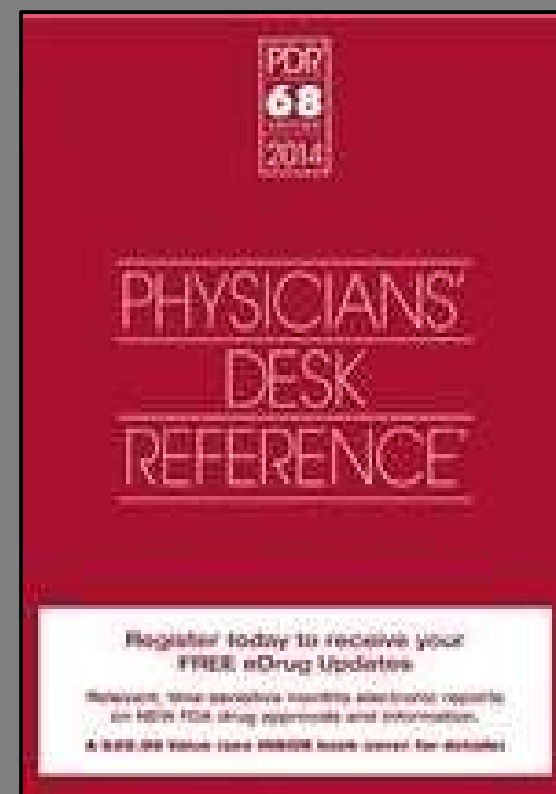
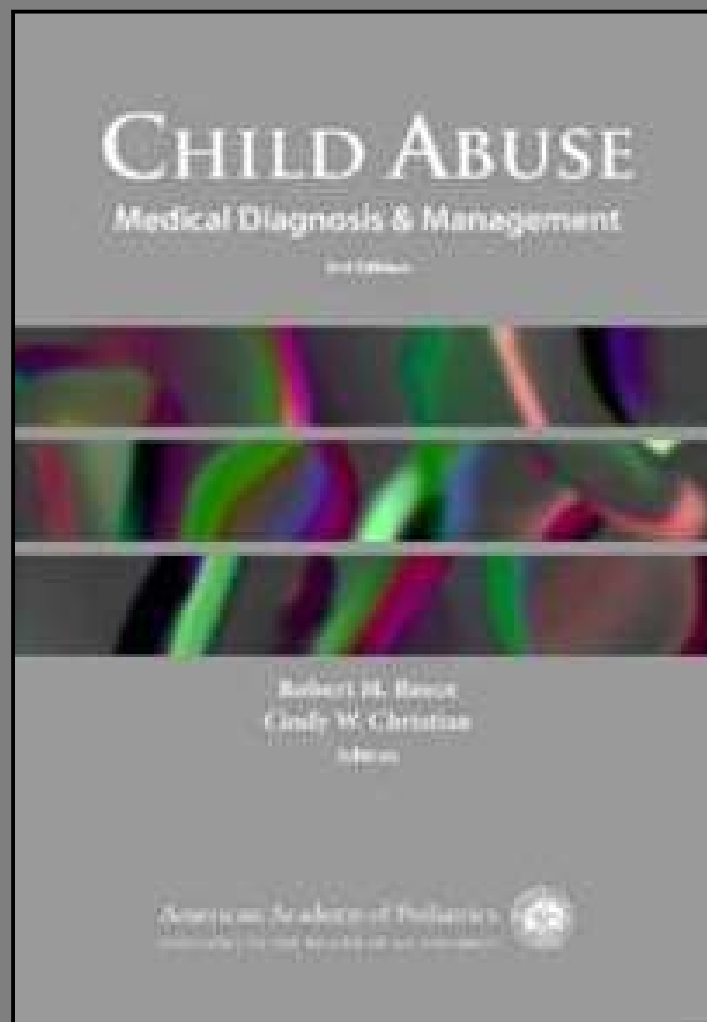
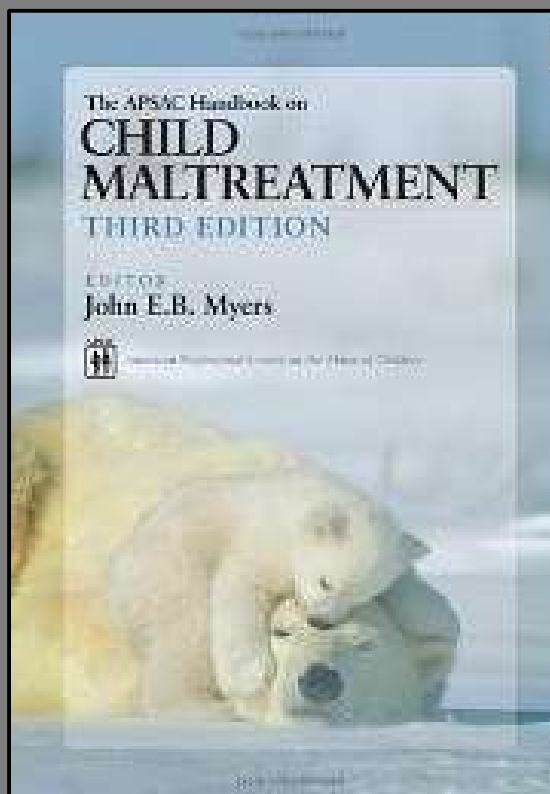
LEARN THE TYPES OF FRACTURES



LOOK FOR THE IMPORTANT LABS

- Blood calcium (Ca)
- Vitamin D
- Alkaline phosphatase (ALP or alk phos)
- Parathyroid hormone (PTH)

USE REFERENCE BOOKS



USE THE INTERNET



American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



AAP POLICY SUBSPECIALTY COLLECTIONS

- Pain Insensitivity Syndrome Misinterpreted as Inflicted Burns
- Evaluating Children With Fractures for Child Physical Abuse
- The Evaluation of Children in the Primary Care Setting When Sexual Abuse Is Suspected
- Evaluation for Bleeding Disorders in Suspected Child Abuse
- Prevalence of Retinal Hemorrhages in Critically Ill Children
- Symptoms and Time to Medical Care in Children With Accidental Extremity Fractures
- Vitamin D Status in Abused and Non-abused Children Younger Than 2 Years Old With Fractures
- Bruising Characteristics Discriminating Physical Child Abuse From Accidental Trauma

DOES THE PARENT NEED AN EXPERT WITNESS?

- **INEFFECTIVE ASSISTANCE OF COUNSEL**

- Holloman v. State, 293 Ga. 151 (2013) – failure to call expert witness to advance Δ 's theory that child's injuries were caused by CPR not ineffective assistance of counsel because trial counsel contacted a pediatrician who reviewed the information and concluded CPR could not have caused the injuries

- **ABUSE OF DISCRETION**

- Williams v. State, 303 Ga. 474 (2018) – trial court did not err in denying defendant funds to obtain medical expert because defendant made no showing at trial re what the expert proposed to do regarding the evidence or what the anticipated cost for services would be

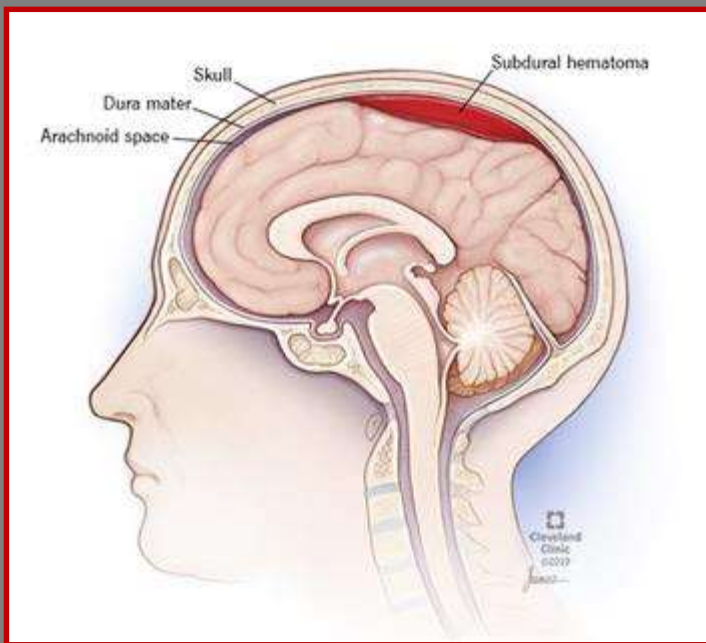
WATCH OUT FOR HEARSAY IN THE MEDICAL RECORD

- Statements of parents or other caregivers
- Descriptions of behaviors
- References to conclusions of other medical specialists
- Summaries of other reports

CASE STUDY

CHILD ABUSE CONSULT

- CT scan shows likely subdural hematoma



RADIOLOGY REPORT

- Hyperdense material along posterior falx is nonspecific but may represent a small amount of extraxial blood products. Recommend repeat imaging in 24-48 hours.
- Follow-up of previous hyperdensity along posterior falx again demonstrated as a thin area of high density representing either dural thickening or possibly a tiny amount of subdural blood.

CASE STUDY

CHILD ABUSE CONSULT

- 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 the mother was negative and belittling.

PSYCHIATRIST

- 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.

WATCH OUT FOR INTERNAL INCONSISTENCIES

CHILD ABUSE CONSULT

- 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.

LATER IN SAME CONSULT

- 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 discharge.

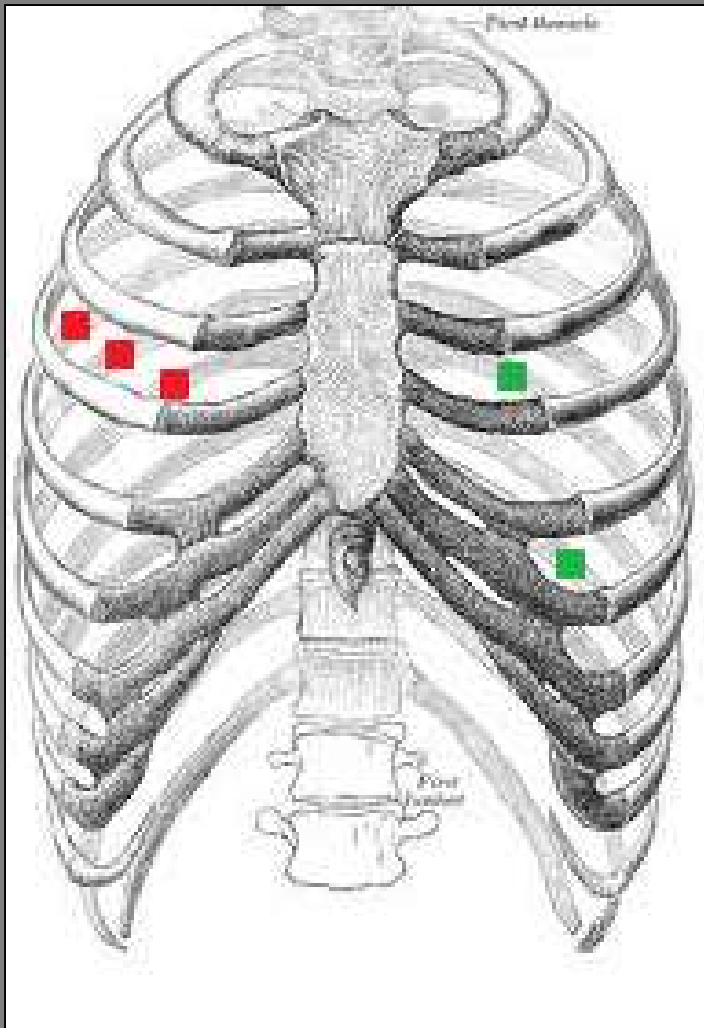
TIMELINES CAN REVEAL IMPORTANT FACTS

- Delay in seeking treatment
- Relationship between injuries and medical procedures or treatments
- Timing of subsequent injuries
- Patterns and prevalence of marks or bruises

CASE STUDY

- Baby born needing heart transplant
- Spent 100 days on transplant list
- Posterior rib fx while in hospital
- Discharged home after successful transplant
- Returned to hospital 7 days later for check-up
- Small v-shaped bruise on cheek
- Skeletal survey showed 3 new posterior rib fxs
- Abuse suspected
- Baby removed and rehospitalized

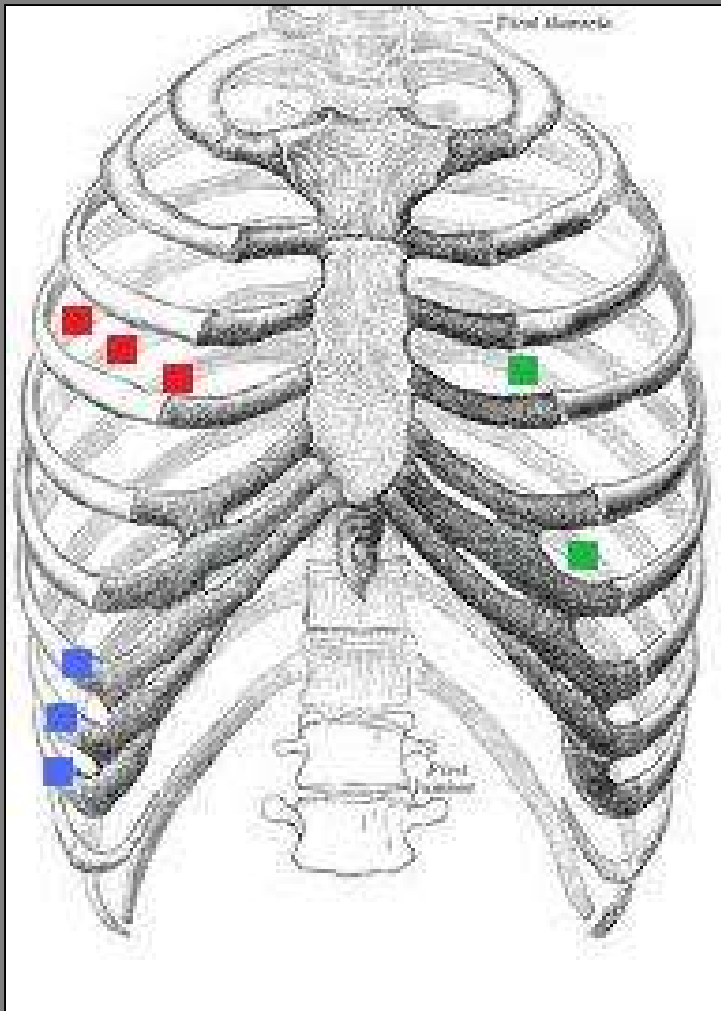
DAY 1



RADIOLOGY REPORT

- Healed posterior L 7th rib fx once again identified
 - Slightly bulbous medial aspect of L 9th posterior rib represents healed fx
-
- Minimally displaced healing rib fxs of R 5th, 6th, and 7th posterior ribs

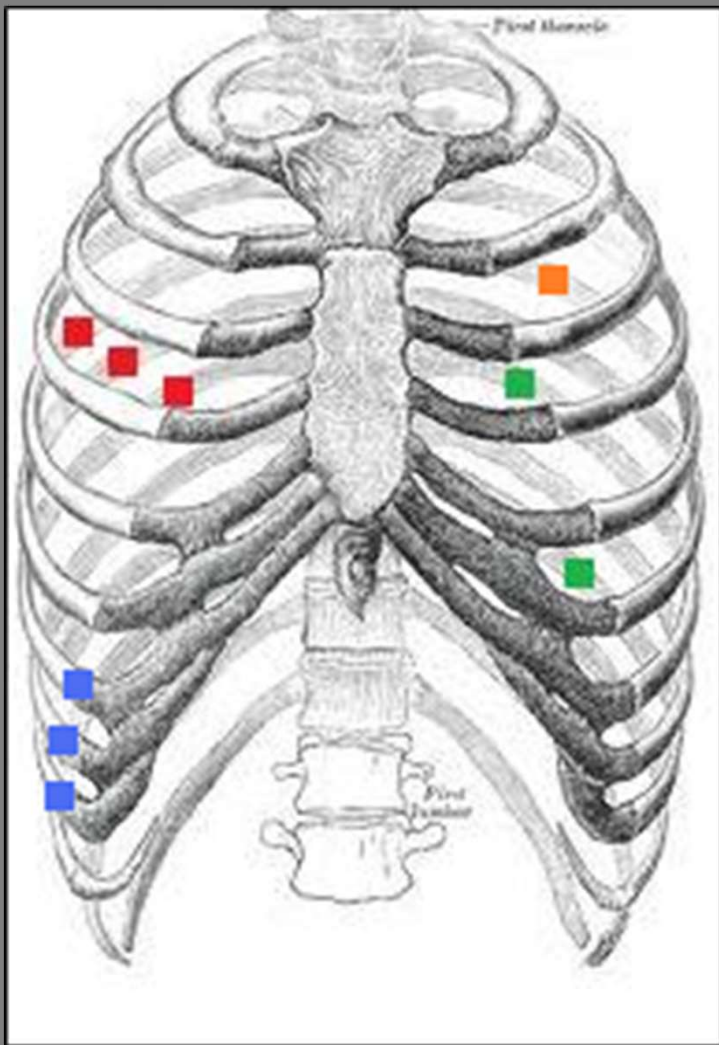
DAY 8



RADIOLOGY REPORT

- L posterior 7th and 9th rib fxs are the old ones previously reported
- R posterior 5th, 6th, and 7th rib fxs still visualized
- Possible fxs on anterior aspect of R 7th, 8th, and 9th ribs

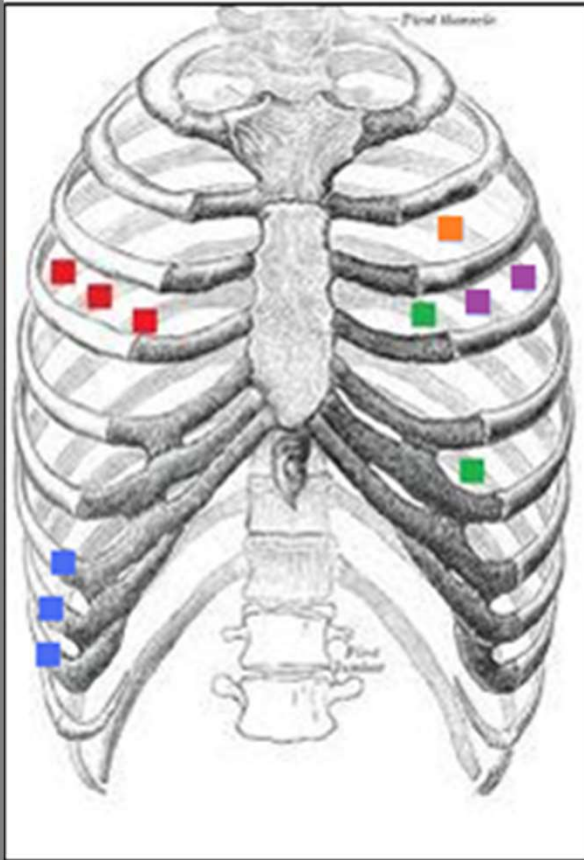
DAY 11



RADIOLOGY REPORT

- Healing L 5th rib fx noted
- Fxs of L 7th and 9th ribs demonstrate continued callus formation
- Callus formation also continues on R 5th, 6th, and 7th ribs
- Continued healing of R 7th – 9th ribs

DAY 23



RADIOLOGY REPORT

- All previous healing fxs noted
- New periosteal bone formation at L 6th and 7th ribs that may represent new healing fxs

TOTAL NEW RIB FRACTURES SINCE REMOVAL = 6

MEDICAL RECORDS DON'T TELL THE WHOLE STORY

- Don't forget about old-fashioned lawyering!
 - Scene investigation
 - Detailed interview of the parent(s)
 - Criminal history
 - Social services history
 - What kind of parents are these?
 - Collateral interviews

Think about RED FLAGS



UNRELATED MALE IN HOME

CHILD WITH SPECIAL NEEDS

CRIMINAL HISTORY

PRIOR TERMINATION

PRIOR REMOVALS

SINGLE PARENT

ANGRY

CPS HISTORY

UNEMPLOYMENT

UNPLANNED PREGNANCY

SCENE INVESTIGATION

PARENTS' REPORT

- The crib mattress was on the highest setting
- The crib bumpers were on



CAP CONCLUSION

- Parents' story is implausible
- 17-month-old sibling could not have reached into the crib to cause the injury
- Baby's fractured humerus was the result of non-accidental trauma

Pictures from the home showed:



COLLATERAL INTERVIEWS



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
 - Introduce your theory of the injury
- Prepare exhibits
 - X-rays make great Power Point slides
 - If dates are important, use a calendar
- Prepare your witnesses

BE WARY OF CONCLUSORY STATEMENTS IN TESTIMONY

- This type of injury is pathognomonic for abuse
- The parents gave multiple conflicting explanations for the injury
- Bone density appears normal

BONE DENSITY APPEARS NORMAL

- Mulugeta et al., Determination of osteopenia in children on digital radiography compared with DEXA reference standard. Academy of Radiology. June 2011: 722-5.
 - Blind study
 - Poor interobserver agreement re bone density when correlated with DEXA reference diagnosis
 - Radiologists should exercise caution with regard to discussing bone mineralization in pediatric appendicular skeleton radiographs

Use of Demonstrative Evidence

| DATE | TIM E | .pdf PAGE | MED RECORDS PAGE | LOCATION | DESCRIPTIO N |
|---------|-------|----------------|------------------|-----------------------|-----------------------|
| 2/8/10 | 1854 | 17288 17368 | 16536 16616 | NO BRUISES | NO BRUISES |
| 2/8/10 | 2300 | 17292 17373 | 16540 16621 | NO BRUISES | NO BRUISES |
| 2/9/10 | 0023 | 18168 | 17416 | Right side of neck | <i>No description</i> |
| 2/9/10 | 2330 | 18168 | 17416 | Right side of neck | <i>No description</i> |
| 2/10/10 | 0023 | 17751 17807 | 16999 17055 | Right side of neck | <i>No description</i> |
| 2/10/10 | 0121 | 17756 17814 | 17004 17062 | NO BRUISES | NO BRUISES |
| 2/11/10 | 0153 | 17772 17833 | 17020 17081 | Groin, neck, chest | Purple |
| 2/11/10 | 0918 | 17784 17848 | 17032 17096 | Groin, neck, chest | Purple |
| 2/11/10 | 1224 | 17789 17854 | 17037 17102 | Groin, neck, chest | Purple |
| 2/12/10 | 2212 | 18183 18212 | 17431 17460 | <i>No description</i> | <i>No description</i> |
| 2/13/10 | 2125 | 18192 18223 | 17440 17471 | Left hand | Purple |
| 2/14/10 | 0827 | 18196 18227 | 17444 17475 | Left hand | Purple |
| 2/14/10 | 2135 | 18202 18235 | 17450 17483 | Left hand | Purple |
| 2/15/10 | 0821 | 18472 18505 | 17720 17753 | Left hand | Purple |
| 2/15/10 | 1949 | 18477 18510 | 17725 17758 | Right arm | Black |
| 2/15/10 | 2211 | 18481 18515 | 17729 17763 | Right arm | Purple |

February 2010

| | | | | | | |
|--|---|--|------------------------------------|---|--------------------------------|--------------------------------|
| 1 No bruises noted in chart | 2 No bruises noted in chart | 3 No bruises noted in chart | 4 No bruises noted in chart | 5 No bruises noted in chart | 6 No bruises noted in chart | 7 No bruises noted in chart |
| 8 No bruises noted in chart | 9 Right side of neck No description | 10 Right side of neck No description | 11 Groin, neck, chest Purple | 12 No location given No description | 13 Left hand Purple | 14 Left hand Purple |
| 15 Left hand Right arm Black & purple | 16 No data | 17 No data | 18 No data | 19 No bruises noted in chart | 20 No data | 21 No data |
| 22 HOME | 23 HOME | 24 HOME | 25 HOME | 26 HOME | 27 HOME | 28 HOME |

SHORT GAME vs. LONG GAME



SHORT GAME

- Zealous advocacy in the present case
- Keeping this child safe
- Reunification when child's safety is established/achieved

LONG GAME

- Preserve your reputation as an advocate
- Be diligent, reliable, trustworthy
- Pick your battles
- Learn and practice excellent trial skills
- Be mindful of the reputations of your witnesses

QUESTIONS?