

Defending The Inexplicable Child Injury

By Brad TenBrook

A spiral fracture of a leg bone is caused by torsion (twisting force) applied to the leg and occurs most frequently when the foot is stationary. The result is a fracture that runs almost parallel along the bone. In adults, these types of fractures are commonly seen in skiing accidents. In children, a twist and fall in an inflatable bouncy house can cause a spiral fracture. However, with children, spiral fractures frequently result from child abuse. Because of their severity, and the sheer force required to cause such an injury, many pediatricians jump to the conclusion that spiral fractures in children are always caused by abuse. Further, due to their statutory Mandatory Reporting obligation, doctors must report injuries they feel were caused by non-accidental trauma to Arizona Child Protective Services (“CPS”) or law enforcement.

Suspected non-accidental traumas (“SNAT”) can come in many forms. A SNAT could be a hand-print bruise on a child’s lower back or a circular burn on a child’s forearm. In other words, a bruise that resembles physical abuse or a burn that is the diameter of a cigarette are commonly recognized SNATs. These injuries, when brought to the attention of Arizona medical providers or CPS, will result in intervention by CPS. Depending on the degree of abuse, the child and that child’s siblings could be removed from their parents’ home and placed into foster care. If the SNAT is a spiral fracture of a child’s leg, placement in foster care is almost certain, even when the parents have a good explanation for the fracture (like a fall in a bouncy house).

Our firm has handled multiple spiral fracture cases involving Arizona CPS. Recently we were involved in a case where an infant was taken to the local ER because her parents suspected a leg injury. The situation, as consistently reported by both parents, occurred when the mother accidentally dropped the child approximately 18 inches from her lap to a tiled floor. The child was promptly transferred to Phoenix Children’s Hospital and diagnosed with a spiral fracture of the femur. The hospital’s social worker immediately intervened after one of the doctors claimed there was ‘no way’ the injury was accidental. The parents were placed on the defensive after they had done what any responsible parent would have – taken the child the emergency room.

The morning following the child’s accident, the parents were not allowed to leave the hospital with their baby. CPS informed them they were under investigation for the abuse of their infant

child and both the infant and their 4 year old were going to be taken into the state’s custody until CPS and police investigations were completed.

In cases involving complicated injuries of a child, the parents are essentially ‘guilty until proven innocent’. Because of that, parents are forced to jump through many hoops to satisfy CPS and the police, including participating in numerous evaluations and screenings. These evaluations and screenings may also be performed on siblings who have no visible injuries.

Our clients eventually were allowed to move in with the mother’s parents (grandparents), who were designated physical custodians of the children while the state remained legal custodian. However, they were not allowed to spend any “unsupervised” time with their children and were forced to live in the maternal grandparents’ home for months during the investigation and aftermath. In fact, our clients were lucky to have family available for placement. Those without such an option would be forced to have visitation in a setting chosen and supervised by CPS.

Ultimately, and with the help of pediatricians trained in forensic medicine, CPS and the court were convinced that the incident was accidental and the child was returned to the legal and physical care of her parents.

Effectively defending abuse and neglect cases takes more than a rudimentary knowledge of criminal or juvenile court practice. It involves understanding the science behind the allegation, knowledge of the experts in the field, and the ability to synthesize the medical and legal information to convince a judge or jury that the ER doctor’s first impression was hyper-cautious, but not accurate.



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Diocese of Phoenix, on issues pertaining to child abuse and complex custody issues. He is available for consultation or retention in matters dealing with CPS or criminal allegations.