



# MiPSAC

**Newsletter of the Michigan Professional Society on the Abuse of Children, Inc., the Michigan Chapter of APSAC.**

**Volume 10, Issue 2**

**May - December, 2005**

## **10<sup>th</sup> ANNUAL MEETING HONORS BARBARA WELKE, ROSALYNN BLISS, AND ELECTS NEW BOARD MEMBERS**

By Vincent J. Palusci, MD MS

The Tenth Annual Meeting of the Michigan Professional Society on the Abuse of Children, Inc. was held on October 17, 2005 at the Marriott in Ypsilanti during the University of Michigan Statewide Annual Child Abuse and Neglect Conference.

During this meeting, the By-Laws were amended to allow for a new category of state MiPSAC membership without APSAC membership. A membership committee is to be established to develop application forms and apply membership standards identical to those required for APSAC membership for Michigan child abuse and neglect professionals. Dues will be set by the Board of Directors.

Barbara Welke, Director of the Berrien County CAC, was presented the 2005 MiPSAC Ray Helfer MiPSAC Child Advocate Award. Rosalynn Bliss, MSW CSW, from the Kent County Child and Family Resource Council, was presented a special recognition award for her service to children.



*MiPSAC President Charles Enright, JD, MSW, presents a 2005 Special Recognition Award to Rosalynn Bliss, MSW, CSW, incoming MiPSAC President "for her tireless work to make Michigan a better place for children."*



*From left to right: MiPSAC President Charles Enright presents the 2005 Ray Helfer MiPSAC Child Advocate Award to Barbara Welke. With them are Brianne VanHekken (Berrien County CPS worker), Jamie Atkinson (Berrien County Foster Care Worker), Lee Gallay (CAC Counselor)*

Annamaria Church, Howard Fischer, Nancy Skula and Mary Smyth were elected to new Board terms (Jan 2006-Dec 2008). Our 2006 Officers are President Rosalynn Bliss, MSW CSW, Vice-President Colette Gushurst MD, Treasurer Vincent Palusci, MD MS, and Secretary Carol Siemon, JD. Honorary Board Members elected for 2006 were Leni Cowling, Robert Geake and Edie Kessler.

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# MiPSAC ANNOUNCEMENTS & UPCOMING MEETINGS



## MiPSAC Board Meetings

2<sup>nd</sup> Friday, even months, 12 noon – 2 PM

Michigan Children's Ombudsman's Office, Lansing

[Harmonm@michigan.gov](mailto:Harmonm@michigan.gov)

## APSAC ADVANCED TRAINING INSTITUTE.

Town and Country Resort

San Diego, California January 23, 2006

[www.apsac.org](http://www.apsac.org)

## APSAC Forensic Interview Clinics

Seattle, WA, April 24-28, 2006

[www.apsac.org](http://www.apsac.org)

## DHS Physicians' Medical Conference

'Methamphetamine and Child Maltreatment'

Mount Pleasant, MI May 23-24, 2006

[Tforrest@michigan.gov](mailto:Tforrest@michigan.gov)

## APSAC 14th ANNUAL COLLOQUIUM

Gaylord Opryland Resort

Nashville, Tennessee June 21st - 24th, 2006

[www.apsac.org](http://www.apsac.org)

## ISPCAN 16<sup>th</sup> International Congress

'Children in a Changing World: Getting it Right'

York, England. September 3-6, 2006

[www.ispcan.org](http://www.ispcan.org)

## ***MiPSAC's Goals***

- To bring together professionals working in the area of child maltreatment
- To foster networking
- To be an information resource
- To sponsor quality training

## Michigan Professional Society on the Abuse of Children, Inc.

### 2005 MiPSAC Board of Directors

President: Charles Enright, JD, MSW, Midland  
[enrightcha@voyager.net](mailto:enrightcha@voyager.net)

Vice President: Rosalynn Bliss, MSW, CSW  
Child and Family Resource Council, Grand Rapids  
[rbliss@childresource.cc](mailto:rbliss@childresource.cc)

Treasurer: Vincent Palusci, MD, MS  
Children's Hospital of Michigan, Detroit  
[vpalusci@med.wayne.edu](mailto:vpalusci@med.wayne.edu)

Secretary: Carol Siemon, JD  
State Court Administrator's Office, Lansing,

### At-Large Board Members:

Kimberly Aiken, MD, PhD, University of Michigan  
Annamaria Church, MD, DeVos Children's Hospital  
Leni Cowling, M.Ed. Bellaire, MI  
Howard Fischer, MD, Children's Hospital of Michigan  
Collette Gushurst, MD, MSU Kalamazoo Ctr Med Studies  
Michael Harmon, BA, Michigan Ombudsman Office  
Elaine Pomeranz, MD, University of Michigan  
Patricia Siegel, PhD, Children's Hospital of Michigan  
Mary Smyth MD, William Beaumont Hospital

### Honorary Members:

Eddie Kessler  
Lynne Martinez  
Nancy Skula

Newsletter Editor: Vince Palusci  
Editor Emeritus :Leni Cowling

*MiPSAC was founded in 1995 and incorporated in 1996 as the Michigan non-profit 501(C)3 state chapter of APSAC. The comments expressed in this newsletter reflect the views of the author(s) and do not necessarily represent the views of MiPSAC or the American Professional Association on the Abuse of Children. (APSAC).*

## **Join the MiPSAC member email listserv**

(sponsored by Wayne State University)

by contacting Vince Palusci at

[Vpalusci@med.wayne.edu](mailto:Vpalusci@med.wayne.edu)

or leave a message for MiPSAC at (616) 391-2297

# ***THE FIRST TEN YEARS: MIPSAC NEWSLETTER INDEX, 1996-2005***

## **1996: Vol 1, #1**

*Editors Notepad, by Leni Cowling  
Upcoming Conferences*

## **1996: Vol 1, #2**

*Missing*

## **1996: Vol 1, #3**

*Annual Meeting Program, by Leni Cowling  
Upcoming Meetings  
Just For Arguments sake, by Leni Cowling*

## **1996: Vol 2, #1**

*Just Venting, by Leni Cowling  
Upcoming Meetings  
Just for Arguments Sake, by Leni Cowling*

## **1997: Vol 2, #2**

*A Letter to Senator Joel Gougheon, by Vincent Palusci, MD  
Upcoming Conferences and Meetings  
Just for Arguments Sake, by Leni Cowling  
Board Minutes*

## **1997: Vol 2, #3**

*Legislative Update, by Bill Ladd and Vince Palusci  
Chlamydial and Gonococcal Cultures in Prepubertal Sexual Abuse,  
by Vincent Palusci, MD  
Meeting Notices  
Upcoming Conferences  
Board Minutes*

## **1997: Vol 2, #4**

*Annual Meeting: Child Death Review Teams, by Theresa Covington  
Legislative Update, by Nannette Bowler  
Medical Concerns: Pitfalls in the Physical Examination for Child  
Sexual Abuse, by Vincent Palusci, MD and Edward Cox, MD  
Just for Arguments Sake, by Leni Cowling  
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## **1998: Vol 3, #1**

*A Children's Forum, by Leni Cowling  
Coming Conferences and Meetings  
Just for Arguments Sake, by Leni Cowling*

## **1998, Vol 3, #2**

*From your Board of Director, by Vince Palusci  
Coming Conferences and Meetings  
Legislative Update: Recent Federal Legislation, by Fran  
Vandervort, JD  
Recent Michigan Legislation, by Frank Vandervort, JD  
Editorial Comment, by Vince Palusci*

## **1998, Vol 3, #3**

*Legislative Conference, by Roger Pickering  
Editor's Note, by Leni Cowling*

*Medical Concerns: Report from the APSAC Colloquium, by Vince  
Palusci*

*Report from APSAC: Children and the Internet, by Leni Cowling*

## **1999, Vol 4, #1**

*Medical Concerns: CATCCH Data, by Vince Palusci  
Editor's Note, by Leni Cowling  
Just for Arguments Sake, by Leni Cowling  
The President's Corner, by Tracy Cyrus & Pat Walsh  
Meetings and Conferences*

## **1999; Vol 4, #2**

*The APSAC Colloquium, by Roger Pickering  
Editorial Comment, by Leni Cowling, M Ed  
Legislative Update: Termination of Parental Rights, by Frank  
Vandervort, JD  
Conference Calendar  
Upcoming MiPSAC Meetings  
FIA Medical Resources System, by Vincent Palusci, MD  
The President's Corner, by Roger Pickering*

## **1999; Vol 4, #3**

*Medical Issues: Bruising, by Mary Smyth, MD  
Legislative Update: Personal Protection Orders, by Frank  
Vandervort, JD  
Editorial Comment, by Leni Cowling  
Upcoming Meetings  
Family Group Decision Making, by Pat Walsh, RN, MSW*

## **2000; Vol 5, #1**

*President's Corner, by Tracy Cyrus, MSW, ACSW  
Member Survey  
Child Abuse and Neglect in Michigan: Editorial Comment, by Leni  
Cowling  
Book Review*

## **2000; Vol 5, #2**

*What do Children need? By Leni Cowling, M Ed, LPC  
Michigan's Children's Law Update, by Frank Vandervort, JD*

## **2001; Vol 6, #1**

*Page 1...President's Corner, by Frank Vandervort, JD  
Page 2...MiPSAC Announcements  
Page 3. Requirements in Children Protection Cases involving  
Indian Children, by Frank Vandervort, JD  
Page 4. Editorial Comment: It's not my job, by Leni Cowling*

## **2002; Vol 7, #1**

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Page 3..Disclosure in CSA, by Kathleen Coulborn Faller, PhD  
Page 7.A Guide to the Medical Examination, by Mary Smyth, MD  
Page 8.How a Prosecutor Assesses a Case, by Carol Siemon, JD*

**2002;Vol 7, #2**

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Page 9 ..What a pediatrician wants the PS worker to know, by Howard Fischer, MD  
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Page 5 ..What You Need to Know About Evidence When Testifying in Court, by Carol A. Siemon, JD  
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Page 3 ..Legal Issues: New Court Rules Won't Help Children, by Frank Vandervort, JD  
Pages 4-7..Summaries from San Diego, by Howard Fischer, MD and Elaine Pomeranz, MD  
Page 8 ..MiPSAC 2003 Child Advocate Award

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Page 2 ..MiPSAC announcements  
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Pages 6-9 ...The DeVormer v. DeVormer Decision, by Frank Vandervort JD & Charles Enright JD MSW  
Pages 9-12.. Law and Policy as it affects CPS, Leni Cowling, MEd  
Page 12 ..Summary of Michigan budget cuts affecting children, submitted by Rosalynn Bliss, MSW

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***In this special issue on Medical Neglect (Guest Editor: Kimberly Aiken, MD PhD).....***

Page 1 .President's Corner, by Patricia Siegel, PhD  
Page 2 ..MiPSAC Announcements  
Page 3 ..Overview of Medical Neglect, by Kimberly Aiken, MD PhD  
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Page 3 .What I learned in San Diego, by Vincent J. Palusci MD MS  
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**REMINDER!**

Part of you dues to APSAC pays for MiPSAC membership  
**American Professional Society on the Abuse of Children**  
P.O. Box 30669, Charleston, S.C. 29417  
Phone: (843) 225-2772; Fax (843) 225-2779

[www.apsac.org](http://www.apsac.org) ; [www.michiganschildren.org](http://www.michiganschildren.org)  
[www.childtrauma.org](http://www.childtrauma.org); [www.firststar.org](http://www.firststar.org)  
[www.nationalcalltoaction.com](http://www.nationalcalltoaction.com)  
[www.preventchildabuse.org](http://www.preventchildabuse.org)  
[www.cwla.org](http://www.cwla.org); [www.childrensdefense.org](http://www.childrensdefense.org)

# Proving Shaken Baby Syndrome

By Frank E. Vandervort, JD

University of Michigan Child Law Advocacy Clinic

Shaken baby syndrome (SBS) cases present a challenge for the court system. In the vast majority of these cases children are injured in the privacy of the family home and without any witnesses to the abuse. Typically these cases come to light when a young child is brought to the emergency room in significant medical distress. If court action is taken, whether in the child protection system or in the criminal system, in the absence of an admission by the child's caretaker to having harmed the baby, the case must be proven by legally admissible evidence. Proving SBS will necessitate that at least one expert witness testify.

## Challenges to the Diagnosis

While courts have long permitted expert testimony describing this phenomenon and have permitted qualified doctors to render opinions regarding its symptoms and impact, recently, because some researchers have challenged the medical and scientific evidence underlying the diagnosis, lawyers have begun to challenge its admission in court. This can happen in two ways. Lawyers may challenge the individual doctor who made the SBS diagnosis or they may present an expert to testify as to the non-existence of the diagnosis, the perceived weaknesses in the research supporting the diagnosis, or presenting an opinion that the examining physician was not thorough in arriving at the SBS diagnosis. To help understand how this happens, we will consider state law.

## Michigan Law

If a judge determines that "scientific, technical or other specialized knowledge" will be of assistance to the judge or the jury in determining the facts of a case, a Michigan judge may permit a person qualified by "knowledge, skill, experience, training, or education" to provide expert testimony and render an opinion as to an issue to be decided by the court. Before permitting such expert testimony, the court must determine that the expert's opinion is based on enough facts, that it is the product of reliable principals and methods, and that the witness has reliably applied the principals to the facts of the particular case. If the court allows an expert witness to testify then the witness may render an opinion regarding all the issues in the case for which the witness is qualified to give an opinion.

## Application

When presenting expert testimony regarding SBS, the lawyer offering the expert has the burden to prove the three elements of admissibility. First, the attorney must demonstrate that the SBS expert has sufficient facts on which to base an opinion. In SBS cases this is typically not difficult to do. The expert being called is typically the doctor who

made the diagnosis. She has examined the child, reviewed the medical history and obtained various tests. She has accumulated a good deal of factual information about the case.

Next, it must be shown that the doctor used a reliable method in making the diagnosis. It is this element on which the SBS dissenters focus their criticism. To make the SBS diagnosis, doctors should exclude alternative explanations such as disease or accident, and must consider the child's injuries. Given the recent challenges to the SBS diagnosis, doctors should be prepared to explain such things as whether a short fall onto a hard surface may have caused or contributed to the child's condition and why a child who is shaken so hard that he suffers brain injury does not also suffer neck or spinal cord injuries. Doctors who testify in SBS cases must stay current with the literature regarding this form of child abuse.

Finally, the attorney calling the doctor must be prepared to demonstrate that she reliably applied her medical knowledge to the facts of this particular case. Medical professionals can assist in this task by taking a careful medical history and noting clearly any changes over time in the content of that history. They should also document the exclusion of alternative hypotheses that would explain the child's condition.

## Practice Tips

A practical challenge in proving SBS is the sheer complexity of a detailed explanation of the syndrome and its effect upon a child—turgid medical terminology is but one example. When presenting a case of SBS, it is best to remember the time honored rule of trial practice: keep it simple. When offering expert testimony regarding SBS, preparation is key. Careful, coordinated preparation will help the lawyer and the expert communicate clearly to the court the causes of SBS, its medical process and its impact upon a particular child.

Recently the Michigan Court of Appeals approved the use of a video demonstration of how SBS occurs and the injuries that may result from the shaking. The use of such media to break down the complexity of this phenomenon and make it understandable to lay persons is extremely important and should be utilized whenever possible.

## Conclusion

Proving a case of SBS can be a difficult task. Careful practice and pre-trial planning on the part of both the expert witness and the trial lawyer will help the court arrive at a just resolution of these cases.

# THE IMPACT OF THE CRAWFORD U.S. SUPREME COURT RULING: A CHILD'S STATEMENTS IN CHILD ABUSE CASES

By Carol A. Siemon, JD

Deputy Director of Child Welfare Services for the State Court Administrative Office

In a March, 2004 U.S. Supreme Court case with far-reaching ramifications, Crawford v Washington, the court's interpretation of the US Constitution's 6<sup>th</sup> amendment confrontation clause seriously limits the ability of prosecutors to use a child's out-of court statement in a criminal proceeding if the child does not testify during that criminal proceeding. The confrontation clause requires that, in a criminal case, a defendant has the right to cross-examine a witness before the witness's statement can be used to prove the defendant's guilt.

Crawford overruled a 1980 US Supreme Court case that provided for the admission of an unavailable witness's out-of-court statement if the statement bore "adequate indicia of reliability." The 1980 case said that to "bear adequate indicia of reliability," a statement must either fall within a "firmly rooted hearsay exception" (like the "excited utterance" or "statement made in the course of medical treatment" hearsay exceptions) or have "particularized guarantees of trustworthiness."

The Crawford court decided that the **only** indicia of reliability sufficient to satisfy the constitutional demands of the confrontation clause is the defendant's right to actually cross-examine the person who made the statement in the courtroom.

The Crawford opinion did, however, accept that if a defendant somehow keeps a witness from testifying, the defendant cannot then assert the right to confrontation to prevent an out-of-court statement. As a 1878 case stated, the Constitution grants a defendant "the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist upon the privilege."

Since an abuser frequently will threaten or bribe a child to avoid the child's disclosure or testimony, the prosecutor should be able to argue that the defendant cannot assert the right to confrontation if it is the defendant's own actions that caused the child to be unavailable to testify (being "unavailable to testify" may include the child refusing to testify, saying that he or she "cannot remember," becoming non-responsive to questions, or becoming so traumatized upon seeing the defendant that the child cannot testify).

The Crawford opinion also held that the bar on out-of-court statements only applies if the statement is "testimonial hearsay." In practical terms, that means a statement to a police officer, in an affidavit, or in prior testimony (if cross-examination was not involved) is testimonial hearsay. The US Supreme Court did not define "testimonial hearsay;" however, a 2004 Michigan Court of Appeals case did explore that issue.

In People v Geno, the defendant was charged with the sexual abuse of his girlfriend's 2-year old daughter after the child's father noticed blood in the child's pull-up. At an interview at the Children's Assessment Center, the child asked the CAC interviewer to accompany her to the bathroom. The interviewer noticed blood in the pull-up and asked the child if she "had an owie." The child then made a statement implicating the defendant in sexually abusing her. The Geno court held that this statement was not "testimonial" in nature, therefore was admissible, because it was not made to a government employee and the child's statement was not made in response to an interview question.

While the Geno case did not explicitly mention CPS workers, the Crawford decision will likely limit the admissibility of a child's out-of-court statement about abuse in a criminal proceeding if the statement is made to a governmental employee (including a CPS worker) and if the child does not testify at that criminal proceeding. The prosecutor, assisted by the CPS worker and/or law enforcement, should carefully document what the defendant may have done to procure the child's unavailability as a witness in the criminal case and should argue that the out-of-court statement is admissible because the defendant has forfeited his right to confrontation of the child witness.

Statements made to non-governmental employees, like a child's statement to a neighbor, a friend, or a family member, or a disclosure to a teacher that is not made in response to specific interview questions, or during medical evaluation probably would not be found to be "testimonial" and would, therefore, likely continue to be admissible in a criminal proceeding if the statement otherwise falls within a hearsay exception (e.g. "excited utterance"). Crawford only applies in criminal proceedings since the 6<sup>th</sup> amendment right to confrontation of the witnesses against oneself only applies in criminal cases and does NOT apply in civil child protective proceedings (family court child abuse and neglect cases). No published Michigan appellate court decisions have yet looked at issues involving the applicability of Crawford to child protective proceedings, but unpublished cases as recently as 6/14/05 continue to state that Crawford does not apply to child protective proceedings.