

NO. A05-45

State of Minnesota  
 In Supreme Court

Nancy Becker and Michael Becker, individually  
 and as parents and guardians of  
 Nykkole E. Becker f/k/a Nykkole E. Rossini,  
*Appellants,*  
 Minnesota Department of Human Services,  
*Appellant,*  
 vs.  
 Mayo Foundation,  
*Respondent.*

**BRIEF OF PREVENT CHILD ABUSE MINNESOTA AMICUS CURIAE**

Chris A. Messerly (#177039)  
 Laura M. Provinzino (#329691)  
 ROBINS, KAPLAN, MILLER &  
 CIRESI L.L.P.  
 2800 LaSalle Plaza  
 800 LaSalle Avenue  
 Minneapolis, MN 55402-2015  
 (612) 349-8500

*Attorneys for Appellants*

Elizabeth Melton (#0143820)  
 Ani Backa Hartzheim (#0334388)  
 FOLEY & MANSFIELD, P.L.L.P.  
 250 Marquette Avenue, Suite 1200  
 Minneapolis, MN 55402  
 (612) 338-8788

*Attorneys for Prevent Child Abuse Minnesota*

*(Additional Counsel Listed on following page)*

Paul B. Klaas (#56327)  
 Gillian A. Brennan (#314444)  
 DORSEY & WHITNEY, L.L.P.  
 50 South Sixth Street, Suite 1500  
 Minneapolis, MN 55402-1498

Ann E. Decker (#39701)  
 FREDRIKSON & BYRON, P.A.  
 200 South Sixth Street, Suite 4000  
 Minneapolis, MN 55402-1425  
 (612) 492-7000

*Attorneys for Respondent*

Mark R. Whitmore  
Charles E. Lundberg  
Susan E. Gustad  
BASSFORD REMELE  
33 South Sixth Street, Suite 3800  
Minneapolis, MN 55402-3707  
(612) 333-3000

*Attorneys for Minnesota Hospital Association  
Minnesota Medical Association; American  
Medical Association; Minnesota Orthopaedic  
Association; American Association of  
Orthopaedic Surgeons; American College of  
Emergency Physicians; American Academy of  
Pediatrics, Minnesota Chapter*

John M. Jerabek  
NIEMI, BARR & JERABEK P.A.  
510 Marquette Avenue, Suite 200  
Minneapolis, MN 55402-1121  
(612) 333-2400

*Attorneys for National Association of Counsel  
for Children*

Mary R. Vasaly  
MASLON, EDELMAN, BORMAN &  
BRAND  
90 South Seventh Street, Suite 3300  
Minneapolis, MN 55402  
(612) 672-8200

Gail Chang Bohr  
450 North Syndicate Street, #315  
St. Paul, MN 55104  
(651) 644-4438

*Attorneys for Children's Law Center of  
Minnesota*

Louise Dovre Bjorkman  
LARSON KING, L.L.P.  
2800 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
(651) 312-6500

*Attorneys for Minnesota Defense Lawyers  
Association*

Michael G. Finnegan  
JEFF ANDERSON  
& ASSOCIATES, P.A.  
E-1000 First National Bank Building  
332 Minnesota Street  
St. Paul, MN 55101  
(651) 227-9990

*Attorneys for Survivors Network Minneosta*

Karen Kingsley  
KINGSLEY LAW OFFICE, P.A.  
790 Cleveland Avenue South, Suite 214  
St. Paul, MN 55116  
(612) 375-1707

*Attorneys for Minnesota Trial Lawyers  
Association*

**TABLE OF CONTENTS**

Table of Authorities ..... ii-iii

Introduction ..... 1

I. Failure to Report Child Abuse Only Further Contributes to its Persistence ..... 3

    A. Minnesota law requires that if a report of maltreatment is made to the Child Protection Services, it must take measures to protect the child from future maltreatment. .... 4-5

    B. CPS does not become aware of many cases of child maltreatment due to failure to report ..... 5-7

II. The Minnesota Child Abuse Reporting Act (CARA) Does Not Allow for Discretion on Whether to Report Child Abuse: It Mandates that Physicians Must Report Child Abuse. .... 7-8

    A. CARA puts “may I” to rest and mandates that physicians, among other mandatory reporters, must report suspected child abuse. .... 8-10

    B. Disregard of CARA’s requirements promotes further disregard, which cycle can only be reversed by civil accountability, in addition to criminal liability ..... 10-11

Conclusion ..... 11

## TABLE OF AUTHORITIES

### Statutes:

Minn. Stat. §626.556 .....	2
Minn. Stat. § 626.556, Subd. 10. ....	4
Minn. Stat. § 626.556, Subd. 3(a). ....	9
Minn. Stat. § 626.556, Subd. 4(a). ....	9

### State Cases:

<u>Radke v. County of Freeborn</u> , 694 N.W. 2d 788 (Minn. 2005) .....	4
---	---

### Secondary Sources:

Anon, but often mistakenly ascribed to Edmund Burke, a member of the British House of Commons, <i>The Columbia World of Quotations</i> . (1996) .....	1
---	---

Jill Bryant & Amy Milsom, <i>Child Abuse Reporting By School Counselors</i> , Professional School Counseling (Oct, 2005) available at <a href="http://www.findarticles.com/p/articles/mi_m0KOC/is_1_9/ai_n15866132">http://www.findarticles.com/p/articles/mi_m0KOC/is_1_9/ai_n15866132</a> (last visited April 23, 2006) .....	8
---	---

Steven Delaronde, et al, <i>Opinions Among Mandated Reporters Toward Child Maltreatment Reporting Policies</i> , 24 CHILD ABUSE AND NEGLECT 901, 905 (2000) ...	2,6
---	-----

David Finkelhor, <i>Is Child Abuse Overreported?</i> , Pub. Welfare, Winter 1990 at 25 .....	6
--	---

Minnesota Department of Human Services website at <a href="http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS_id_001627.hcsp">http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS_id_001627.hcsp</a> (last visited April 23, 2006) .....	4
---	---

NIS-3 Report (1996) available at <a href="http://nccanch.acf.hhs.gov/pubs/statsinfo/nis3.cfm">http://nccanch.acf.hhs.gov/pubs/statsinfo/nis3.cfm</a> (last visited April 23, 2006) .....	4
--	---

PEDIATRICS Vol.101 No. 4 April 1998 at 715 available at <a href="http://aappolicy.aappublications.org/cgi/content/full/pediatrics;101/4/715">http://aappolicy.aappublications.org/cgi/content/full/pediatrics;101/4/715</a> reaffirmed in	
---	--

2005 at PEDIATRICS Vol. 115 No. 5 May 2005, pp. 1438 (doi:10.1542/peds.2005-0464), available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;115/5/1438> (last visited April 23, 2006) . . . . . 3,4

Bruce D. Perry, *How Children Adapt and Survive a Violent World*, THE VORTEX OF VIOLENCE (2002) available at [http://www.childtrauma.org/CTAMATERIALS/vortex\\_interd.asp](http://www.childtrauma.org/CTAMATERIALS/vortex_interd.asp) (accessed April 23, 2006) . . . . . 3

Andrea J. Sedlak & Diane D. Broadhurst, *Third National Incidence Study of Child Abuse and Neglect*, in APSAC HANDBOOK ON CHILD MALTREATMENT, 2<sup>nd</sup> ed., 454 (2002); See also Executive Summary of the Third National Incidence Study of Child Abuse and Neglect available at <http://nccanch.acf.hhs.gov/pubs/statsinfo/nis3.cfm> (last visited April 23, 2006) . . . . . 5

Haile Selassie, Emperor of Ethiopia in the opening of a special session of the General Assembly in Addis Ababa (1963), Simpson's Contemporary Quotations, compiled by James B. Simpson. (1988) . . . . . 1

U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2004*, 95 (2006); See also U.S. Department of Health and Human Services website at [http://www.acf.hhs.gov/programs/cb/stats\\_research/index.htm#can](http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can) (last visited April 23, 2006); Minnesota Department of Human Services, *Child abuse and neglect prevention: Protecting Minnesota's children, a fact-sheet* (April 2006) . . . . . 1

Victor I. Vieth, *Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years*, 12 *Journal of Aggression, Maltreatment & Trauma* 5 (2006) . . 3

Gail Zellman, *Preventing and Reporting Abuse*, APSAC HANDBOOK OF CHILD MALTREATMENT, 2<sup>nd</sup> ed., 455 (2002) . . . . . 6,7,8,10

## INTRODUCTION<sup>1</sup>

*“All that is necessary for the triumph of evil is that good men do nothing.”*<sup>2</sup>

“Child abuse - a true evil - will triumph if we continue to accept the inaction of those who can act; the indifference of those who should know better and the silence of those who can speak for those who cannot.”<sup>3</sup>

Childhood is a time when a child, particularly an infant, depends on his parents for survival. Parents ensure that their infant is fed, clothed, sheltered, nurtured and educated. Unfortunately, parents are also the most likely to abuse the child.

Seventy-eight percent of all child-maltreatment offenders in Minnesota are the birth parents.<sup>4</sup> An estimated 872,000 children have been determined to be victims of child abuse or neglect for 2004.<sup>5</sup> In Minnesota alone, in 2004, there were 8,183 substantiated cases of child abuse. Children in the age group of

---

<sup>1</sup> This Amicus Brief was authored by Prevent Child Abuse Minnesota and its counsel, Elisabeth Melton and Ani Backa Hartzheim, with research assistance by Nicole Cleveland. No other persons or entities made any monetary contributions to the preparation or submission of the brief.

<sup>2</sup> By Anon, but often mistakenly ascribed to Edmund Burke, a member of the British House of Commons, *The Columbia World of Quotations*. (1996)

<sup>3</sup> Haile Selassie, Emperor of Ethiopia in the opening of a special session of the General Assembly in Addis Ababa, 1963. *Simpson’s Contemporary Quotations*, compiled by James B. Simpson. (1988)

<sup>4</sup> U.S. Department of Health and Human Services, Administration on Children, Youth and Families, *Child Maltreatment 2004*, 95 (2006); See also U.S. Department of Health and Human Services website at

[http://www.acf.hhs.gov/programs/cb/stats\\_research/index.htm#can](http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can) (last visited April 23, 2006); Minnesota Department of Human Services, *Child abuse and neglect prevention: Protecting Minnesota’s children, a fact-sheet* (April 2006).

<sup>5</sup> U.S. Department of Health and Human Services, Administration on Children, Youth and Families: *Child Maltreatment 2004*, 10 (2006) available at [http://www.acf.hhs.gov/programs/cb/stats\\_research/index.htm#can](http://www.acf.hhs.gov/programs/cb/stats_research/index.htm#can) (last visited April 23, 2006).

newborn to 3 years suffer the highest rate of child abuse and fatalities. In 2004, an estimated 1,490 children died due to child abuse or neglect. Infant girls, like Nykkole Becker, had a rate of 17 deaths per 100,000 girls of the same age. (The overall rate of child fatalities was 2 deaths per 100,000 children.) In addition, more than 75 percent of children who were killed were younger than 4 years of age. Furthermore, children who had been prior victims of maltreatment were 84 percent more likely to experience a recurrence than those who were not prior victims.

Studies, however, have shown that only 40 percent of maltreatment cases and 35 percent of the most serious cases known to professionals mandated to report were, in fact, reported. In 2000, 53 percent of physicians were not reporting all cases of suspected abuse, in spite of unequivocally defined public policy in Minnesota, which mandates reporting of neglect, physical or sexual abuse of children.<sup>6</sup>

Prevent Child Abuse Minnesota (PCAMN) submits this brief urging this Court to find mandated reporters civilly liable for failing to report cases of suspected abuse or neglect to child protection authorities, as required under the Child Abuse and Reporting Act (CARA), Minn. Stat. §626.556. PCAMN is a non-profit agency that works to prevent child abuse and neglect by promoting positive parenting, healthy families and homes where children are loved and valued.

---

<sup>6</sup> See Steven Delaronde, et al, *Opinions Among Mandated Reporters Toward Child Maltreatment Reporting Policies*, 24 CHILD ABUSE AND NEGLECT 901, 905 (2000).

PCAMN believes that Minnesota can end child abuse, but not if we remain complacent in our inactivity and defiant of duties mandated by our ethical, moral and legal obligations. It is essential to the advancement of our public policy in this State that we hold civilly accountable those responsible for such failures, including physicians, so that our laws do not simply become relics of our wishful thinking but rather conduits compelling mandated reporters to act.

**I. Failure to Report Child Abuse Only Further Contributes to Its Persistence.**

Intra-familial abuse and domestic battery account for the majority of physical and emotional violence suffered by children in this country.<sup>7</sup> The National Center for the Prosecution of Child Abuse recognizes that one of the major obstacles to its goal to eliminate child abuse over the course of a century is under-reporting of child abuse into the system.<sup>8</sup> Furthermore, the American Academy of Pediatrics has recognized the critical role doctors play in diagnosing and treating child abuse in writing and reaffirming a policy that specifies that “physicians and other health care personnel have an ethical, moral, and legal obligation to diagnose and treat abused or neglected children.”<sup>9</sup>

---

<sup>7</sup> See Bruce D. Perry, *How Children Adapt and Survive a Violent World*, THE VORTEX OF VIOLENCE (2002) available at [http://www.childtrauma.org/CTAMATERIALS/vortex\\_interd.asp](http://www.childtrauma.org/CTAMATERIALS/vortex_interd.asp) (accessed April 23, 2006).

<sup>8</sup> See Victor I. Vieth, Unto the Third Generation: A Call to End Child Abuse in the United States Within 120 Years, 12 *Journal of Aggression, Maltreatment & Trauma* 5 (2006).

<sup>9</sup> See PEDIATRICS Vol.101 No. 4 April 1998 at 715 available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;101/4/715>

**A. Minnesota law requires that if a report of maltreatment is made to the Child Protection Services, it must take measures to protect the child from future maltreatment.**

CARA mandates that if the Child Protection Services agency (CPS) receives a report of child abuse, it must respond appropriately. See Minn. Stat. § 626.556, Subd. 10. Failure by CPS to perform these duties can result in civil liability. See generally Radke v. County of Freeborn, 694 N.W. 2d 788 (Minn. 2005). Each year in Minnesota, counties review approximately 18,000 reports of child abuse and neglect.<sup>10</sup> According to the Minnesota Department of Human Services, extensive research has found that children are safer and families are healthier when family support services are quickly made available. Id. They cannot be made available unless CPS becomes aware of potential cases of child maltreatment.

To assess the incidence of child abuse in the United States, the United States Department of Health and Human Services has gathered statistics and compiled several reports on National Incidence Studies of Child Abuse. The findings of the third such report (NIS-3)<sup>11</sup>, published in 1996, are based on a nationally-representative sample of over 5,600 professionals, including physicians,

---

*reaffirmed in 2005 at PEDIATRICS Vol. 115 No. 5 May 2005, pp. 1438 (doi:10.1542/peds.2005-0464), available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;115/5/1438> (last visited April 23, 2006).*

<sup>10</sup> See Minnesota Department of Human Services website at [http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS\\_id\\_001627.hcsp](http://www.dhs.state.mn.us/main/groups/children/documents/pub/DHS_id_001627.hcsp) (last visited April 23, 2006.)

<sup>11</sup> See NIS-3 Report (1996) available at <http://nccanch.acf.hhs.gov/pubs/statsinfo/nis3.cfm> (last visited April 23, 2006).

and agencies in 42 counties throughout the United States. A unique contribution of the NIS studies is their ability to determine what proportion of cases known to professionals (mandated reporters) were also known to child protection services (CPS) in the counties studied.<sup>12</sup>

While the NIS-3 report does not differentiate between those cases that are not reported and those cases that were reported but were not investigated by CPS, the findings concerning the percentages of abused and neglected children whose maltreatment received CPS investigation are cause for serious concern. *Id.* Only a minority of the children who were abused or neglected received CPS attention for their maltreatment. *Less than half* of the maltreated children in all categories of maltreatment, except fatalities, were determined to have received CPS investigation. Especially remarkable was the finding that CPS investigation extended to only slightly more than one-fourth of the children who were seriously harmed or injured by abuse or neglect. *Id.*

**B. CPS does not become aware of many cases of child maltreatment due to failure to report.**

Studies consistently show that most cases of child abuse are never reported to child protection services. If there is no report, there is no possibility of providing services to the family or taking measures to prevent further harm to the child. One

---

<sup>12</sup> See Andrea J. Sedlak & Diane D. Broadhurst, *Third National Incidence Study of Child Abuse and Neglect*, in APSAC HANDBOOK ON CHILD MALTREATMENT, 2<sup>nd</sup> ed., 454 (2002); See also Executive Summary of the Third National Incidence Study of Child Abuse and Neglect available at <http://nccanch.acf.hhs.gov/pubs/statsinfo/nis3.cfm> (last visited April 23, 2006).

study shows that mandated reporters fail, in many cases, to follow the requirements of mandated-reporting laws.<sup>13</sup> This study compiled information from completed surveys of mandated-reporters in 15 states regarding their reporting behavior. A staggering number of the mandated reporters, almost 40 percent of the 1,196 professionals responding to the survey, admitted that at some time in their career **“they had suspected abuse or neglect, but had decided not to make a report.”**<sup>14</sup> (emphasis added.) Similarly, the Second National Incidence Study of Child Abuse and Neglect (NIS-2) conducted in 1986 and 1987 found that only 40% of maltreatment cases and 35% of the most serious cases known to professionals mandated to report were in fact reported or otherwise getting to CPS.<sup>15</sup> In addition, a study published in 2000 found that 53% of physicians were not reporting all cases of suspected abuse.<sup>16</sup>

These studies are not anomalies. CARA and other mandated reporting laws attempt to ensure that the CPS becomes aware of potential cases by requiring certain classes of people, generally professionals who come in contact with children and families, to make reports to CPS when they know or have reason to suspect

---

<sup>13</sup> See Gail Zellman, *Preventing and Reporting Abuse*, APSAC HANDBOOK OF CHILD MALTREATMENT, 2nd ed., 455 (2002).

<sup>14</sup> *Id.* at 456.

<sup>15</sup> David Finkelhor, *Is Child Abuse Overreported?*, Pub. Welfare, Winter 1990 at 25.

<sup>16</sup> See Steven Delaronde, et al, *Opinions Among Mandated Reporters Toward Child Maltreatment Reporting Policies*, 24 CHILD ABUSE AND NEGLECT 901, 905 (2000).

child maltreatment. The problem is that mandated reporters are routinely failing to make the reports that they are mandated to make.

**II. The Minnesota Child Abuse Reporting Act (CARA) Does not Allow for Discretion On Whether To Report, Diagnose and Treat Child Abuse: It Mandates That Physicians Must Report, Diagnose and Treat Child Abuse.**

As many as 80 percent of the failures to report by mandated reporters, including physicians, have been attributed to what is called “discretionary reporting.”<sup>17</sup> In other words, these were failures to report by mandated reporters who had reported at least once and who had failed to report at least once.<sup>18</sup> This study found that most mandated reporters who failed to report could be categorized under three separate categories: the “bad for me” excuse; the “I can do better” aspiration; and, “not reportable” individual decision. The “bad for me” excuses related to perceived costs to the reporter for reporting and the “I can do better” excuses related to beliefs that the reporters felt themselves better able to help the child than the CPS agencies. Whereas, the “not reportable” excuses related to individual judgments that there was not enough evidence or that the maltreatment was not severe enough to have required reporting. This last category indicated that some mandated reporters misinterpret the law to allow them or require them to make these evidentiary determinations themselves.

---

<sup>17</sup> See Gail Zellman, Preventing and Reporting Abuse, APSAC HANDBOOK OF CHILD MALTREATMENT, 2nd ed., p. 455 (2002).

<sup>18</sup> Id.

Other studies have shown that mandated reporters are reluctant to report for several other reasons, including: (1) because the reporter interacts with the potential abuser, he or she would feel a lot of angst about making a report to CPS; (2) the reporter may not wish to believe that the adult in question is capable of reprehensible behavior toward a child; (3) the reporter may worry that the CPS will fail to follow through, as did school counselors in a study published in 2005;<sup>19</sup> or (4) they may worry about making a false accusation.

While these reasons, excuses or concerns are understandable, they are not valid justifications for failing to report under mandatory reporting laws, such as CARA. In fact, with regard to those who had reported suspected child abuse, in the Zellman study, 71 percent stated that compliance with the law was a strong reason.<sup>20</sup> This study concluded that discretionary reporters did not lack knowledge or experience; they lacked the “incentive” to comply with the law in spite of their own misgivings. Imposing civil liability could be the “incentive” that mandated reporters need to do what the law requires them to do -- namely, report suspected child abuse.

---

<sup>19</sup> See Jill Bryant & Amy Milsom, *Child Abuse Reporting By School Counselors*, Professional School Counseling (Oct, 2005) available at [http://www.findarticles.com/p/articles/mi\\_m0KOC/is\\_1\\_9/ai\\_n15866132](http://www.findarticles.com/p/articles/mi_m0KOC/is_1_9/ai_n15866132) (last visited April 23, 2006).

<sup>20</sup> Zellman, *Preventing and Reporting Abuse* at 456.

**A. CARA puts “may I” to rest and mandates that physicians, among other mandatory reporters, must report suspected child abuse.**

The duty to report under CARA is not discretionary. If there is reason to believe that abuse or neglect has occurred, CARA demands that the mandated reporter *shall immediately* report the information to the proper authorities. Minn. Stat. § 626.556, Subd. 3(a). (emphasis added.) CARA does not differentiate between a “certainty” that a child has been abused or a “suspicion” of abuse. Its mandate is simple and clear - - one in the position to know or have reason to believe that a child has been abused within the preceding three years must immediately report the information to the CPS. Id.

Furthermore, to induce compliance with this statutory mandate, the Minnesota legislature included, in the immunity provision, an indication of this state’s intent to recognize a civil cause of action for failure to report, in connection with a mandated reporter’s failure to report. Minn. Stat. § 626.556, Subd. 4(a). While CARA’s drafters could have been more specific on this issue, it is undeniable that, through the “immunity” provision, they contemplated imposition of civil liability. The way to prevent mandated reporters from deciding on a case-by-case basis whether to report is to make the mandated reporters civilly accountable if they decide not to comply with CARA. As shown by the studies above, the misdemeanor penalties provided by the law are not sufficient incentive to prevent discretionary non-compliance. Why should those who have the duty to report not also be subject to civil liability for the consequences to a defenseless infant like Nykkole

for their decision not to report child abuse? What message will this Court send to mandated reports if it refuses to impose civil liability in cases where the failure of those reporters to comply with this law results in further abuse of the child? The law in Minnesota leaves mandatory reporters, such as Nykkole's treating physicians at Mayo Clinic, with no legal justification for failing to diagnose and report suspected child abuse.

**B. Disregard of CARA's requirements promotes further disregard, which cycle can only be reversed by civil accountability, in addition to criminal liability.**

Widespread violation of the reporting mandate reduces wholehearted professional support for it.<sup>21</sup> When there is such widespread violation of a law, as in the case of speed limits on highways, it becomes much more difficult for someone to decide to comply with the law. The only way to ensure compliance in such a situation is to ensure enforcement of the law. In the case of mandated reporting, criminal sanctions that are minimal and rarely enforced are not enough. Cases in which civil liability is imposed will gain the attention of mandated reporters. It is impossible for professionals to endorse fully to the public and to other professionals a law that many have knowingly violated.<sup>22</sup>

Here, the physicians failed both the AAP policy pronouncement as well as the CARA mandate. They did not diagnose, treat and report child abuse until it as

---

<sup>21</sup> Zellman, *Preventing and Reporting Abuse* at 452.

<sup>22</sup> Id.

too late, failing both the ethical and moral obligations of the profession as well as the non-negotiable and unavoidable legal obligations under CARA.

Unless and until this situation is reversed and mandated reporters are given the clear message that the suspicion of child abuse requires them to report it, CARA will not have the effect the legislature intended it to have and it will not protect those, like Nykkole, meant to be protected by it.

### CONCLUSION

What happened to Nykkole Becker at 39, 47 and 51 days of age was not only regrettable, but also preventable, had the treating physician at Mayo Clinic diagnosed and reported the child abuse she was subjected to at 22 days old. The physicians had not only an ethical, moral and professional duty to diagnose and treat Nykkole's injuries -- they had a legal obligation under CARA to report Nykkole's abuse into the system. Prevent Child Abuse Minnesota respectfully requests that this Court hold mandated reporters civilly liable for failure to report under CARA.

Date: April 24, 2006.

Respectfully submitted,

Foley & Mansfield PLLP

By:   
Elizabeth Melton, #0143820  
Ani Backa Hartzheim, #0334388  
250 Marquette Avenue, Suite 1200  
Minneapolis, Minnesota 55401  
(612) 338-8788  
*Attorneys for Amicus Curiae,  
Prevent Child Abuse Minnesota*

## CERTIFICATE OF COMPLIANCE

I hereby certify that the Brief of Amicus Curiae Prevent Child Abuse Minnesota in Case No. A05-45 complies with Minnesota Rules of Appellate Procedure 132.01, Subd.3(c)(1) and that the brief contains 2354 words. The brief was prepared in Microsoft Word 97-2003.

