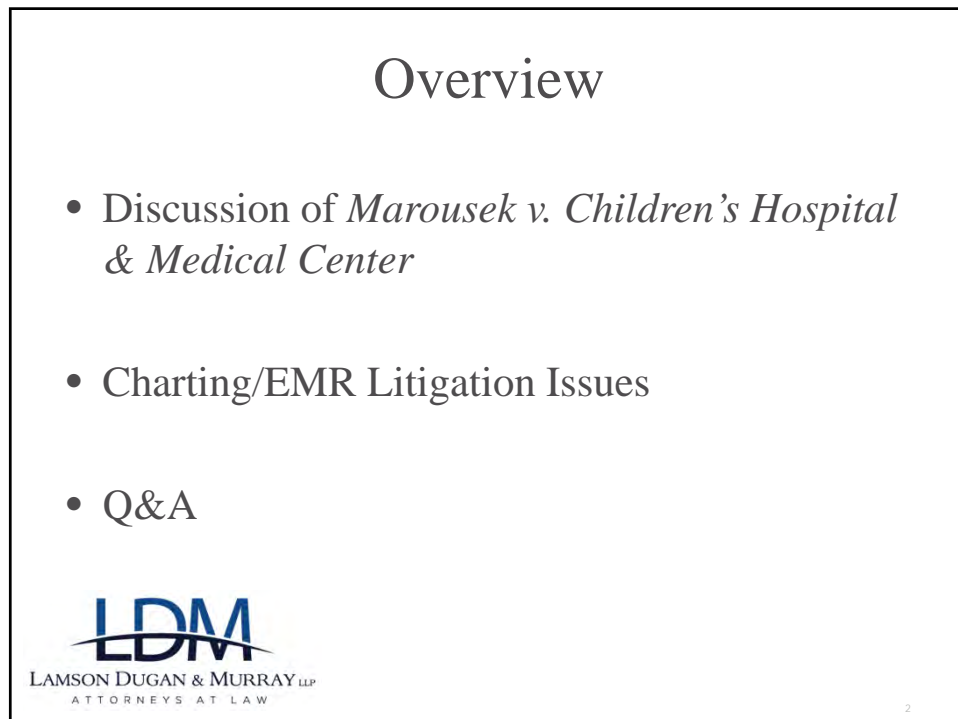




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*Marousek v. Children's Hospital &
Medical Center*

- 18 m/o with history of fall from riding toy at day care, no LOC
- Presented to ER because of vomiting, not acting right
- CT Negative



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- “Head Bobbing” in CT scanner
- Abnormal involuntary movements in ER that were distractible and could be stopped
- Ativan



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Admitted to hospitalist service overnight
- No abnormal movements or vomiting. Some unsteadiness and uncoordinated suck
- Discharged with instructions to return if vomiting, return of seizure-like activity



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Next day behaving normally
- Evening of next day began seizing
- Returned to ER following morning (8 hours later)



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Status epilepticus
- Withdrew to pain
- MRI – massive brain injury – spastic quadriplegia



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Plaintiffs' Theory: Admitted for workup of seizures – no EEG/neuro consult
- ER doc knew seizures – Ativan
- Resident knew seizures



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Defendants' Theory: Admitted for observation
– workup if further movements
- Unlikely seizures: low impact; distractible and suppressible
- Can rely on parents to return



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Vivianne
 - Economic: \$17,500,000
 - Non-Economic: \$4,000,000
- Parents
 - Economic: \$4,500,000
 - Non-Economic: \$100,000



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Hospital – 34%
- Hospitalists – 36%
- Parents – 30%



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Juror Interviews
 - Liked the Defendant Doctor
 - Didn't Believe the Plaintiffs
 - Our experts much better and more believable
- “If it was my child I'd want everything done”



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*Marousek v. Children's Hospital &
Medical Center (con't.)*

- Appeal Issues
 - Rib Fractures/Black Eyes/CAT team investigation
 - “Children’s accused these parents of child abuse with no evidence”
 - New Opinions from Expert
 - EMR evidence excluded



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Charting/EMR Litigation Issues

- What is the medical record?
- Common charting errors
- EMR considerations



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What is the Medical Record?

- How the care team communicates
- Legal record subject to review by licensing agencies and accreditation committees
- Most important witness in litigation



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The Medical Record in Litigation

- Statute of Limitations – 2 years (with exceptions)
- Objective evidence of what you observed and did
- Character Witness (Sloppy record)



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Common Charting Issues

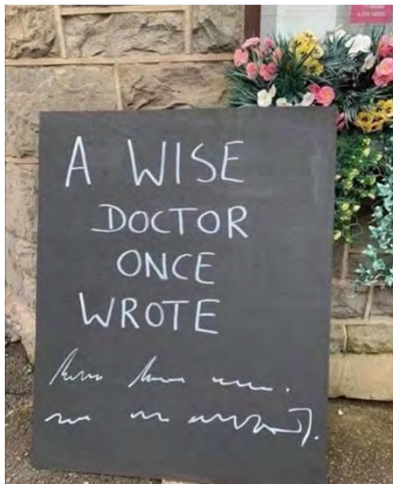
- Illegible Entries
- Early/Late Entries
- CYA Notes
- Altered Records
- EMR Issues



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Illegible Entries




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Illegible Entries

Notes: Spinal BA 12/5/10
Subcutaneous
1.5 - 7.4 MA
30 cc injected
PT supine
interviewer: N/A




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Illegible Entries

Notes: Chronic pain / Insomnia
It's knee + ankle Adema
1/6/10 Femoral/Sciatic Nerve Block. Pt informed
of risks / Benfer. Sterile Technique - Insulated
needle + nerve stimulator used. Sciatic
Block. PT Sedated. Sims position. Twitch 1.5 - 7.4 MA
Norapin 5% 4cc injected - Femoral
B: 2 Pt Supine. Twitch 1.5 - 7.4 MA
interviewer: Norapin 2% 30 cc injected. Pt
tolerant. & uncontrolled w/lets & pain
on injection - Doses injected incrementally



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Early/Late Entries

PACU Note	<input type="checkbox"/> See Progress Notes
Time:	<input type="checkbox"/> Epidural D/C'd Intact
<input checked="" type="checkbox"/> VSS	<input checked="" type="checkbox"/> Report Given
<input type="checkbox"/> CXR OK	
<input checked="" type="checkbox"/> No Complications Noted	
<input checked="" type="checkbox"/> OK to transfer	<i>[Signature]</i>
Postop Note	<input type="checkbox"/> See Progress Notes
Date:	<i>5-5-08</i>
<input checked="" type="checkbox"/> No Complications Noted	
<input checked="" type="checkbox"/> Patient has No Complaints	
<input type="checkbox"/> CABG Extubation Time: _____	
<input type="checkbox"/> Discharged prior to visit.	
Postop Event(s):	

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CYA Note

- Never a good idea. Almost always backfires.
- Example: Vacuum extractor case
- Keep charting factual. Avoid editorializing.

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Speculation/Editorializing

ED Provider Notes by Egberts, Margaret at 1/25/2017 8:02 PM (continued)

service for observation overnight and likely EEG tomorrow morning. Spoke with Dr. Snyder who accepted the patient.

Notes by Egberts, Margaret at 1/25/2017 8:02 PM (continued)

observation overnight and likely EEG tomorrow morning. S



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Altered Medical Records

- Always get caught
- Example: Handwritten OB record (“+fm”)
- Example: ROS “Positive for Seizures”



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Altered Medical Records

- Bottom Line: Don't
- If you suspect litigation, don't enter record unless legitimate medical reason to do it



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EMR Issues

- Organization of Printed Version
- Templates
- Missing Information
- Audit Trail



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Organization of Printed Version

- Not Chronological
- Tons of blank space (e.g., nursing flowsheet)
- Inpatient/Outpatient grouped together



Progress Notes (continued)

Kanne, Lori, RN at 1/25/2017 1:30 PM (continued)

Dr. Rizal advised immediately upon arrival and proceeded to room for evaluation of the patient.

PC to Lakeside ED, spoke with Scott RN and gave patient report.

1350 PC to Lakeside ED, spoke with Scott RN, he reports the family did arrive at the ED. The patient was asleep. The family stated that she seemed more like herself and they decided to leave without being seen for evaluation.

PC to Dad, Jacob. He reports after they left here she fell asleep. She woke briefly and was watching a video on his phone. She is currently sleeping at home. Dad states she normally takes a nap for 2 hours. Dr. Rizal updated and instructs to wake her up in an hour at 3:00PM. Make sure she is acting normal. No tylenol or ibuprofen. If returns lethargic state or non consolable cry, needs seen ASAP at Children's ED. Dad receptive.

Electronically signed by Kanne, Lori, RN on 1/25/2017 5:31 PM

H&P Notes

No notes of this type exist for this encounter.

Result Summary

All Results

No results found

Admission Information - Patient Record Only

Arrival Date/Time:	01/25/2017 1932	Admit Date/Time:	01/25/2017 1944	IP Adm. Date/Time:	
Admission Type:	Emergency	Point of Origin:	Non-health Care Facility Point Of Origin	Admit Category:	
Means of Arrival:	Car	Primary Service:	General Medicine	Secondary Service:	N/A
Transfer Source:		Service Area:	CHILDREN'S HOSPITAL	Unit:	Med Surg 5
Admit Provider:	Snyder, Shellah, MD	Attending Provider:	Rodkey, Mark L, MD	Referring Provider:	

Discharge Information - Patient Record Only

Discharge Date/Time:	01/25/2017 1130	Discharge Disposition:	Home Or Saf Care	Discharge Destination:	None	Discharge Provider:	Killefer, Heidi, MD	Unit:	Med Surg 5
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Final Diagnoses (ICD-10-CM)

Code	Description	PDA	CC	HAC	Affects DRG
S06.0X0A [Prinleal]	Concussion without loss of consciousness, initial encounter				
R25.9	Unspecified abnormal involuntary movements				

Marouset, Vivienne T
MRN: 7177360




Result Summary (continued)

Final Diagnoses (ICD-10-CM) (continued)

DISCHARGE SUMMARY
No notes of this type exist for this encounter.

Discharge Instructions
None


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Templates



oatly barista blend sommelier
@BUGPOSTING

the last time i went to urgent care
i checked off "excessive crying"
on the symptom list and the nurse
got really confused and told me
that was meant for babies

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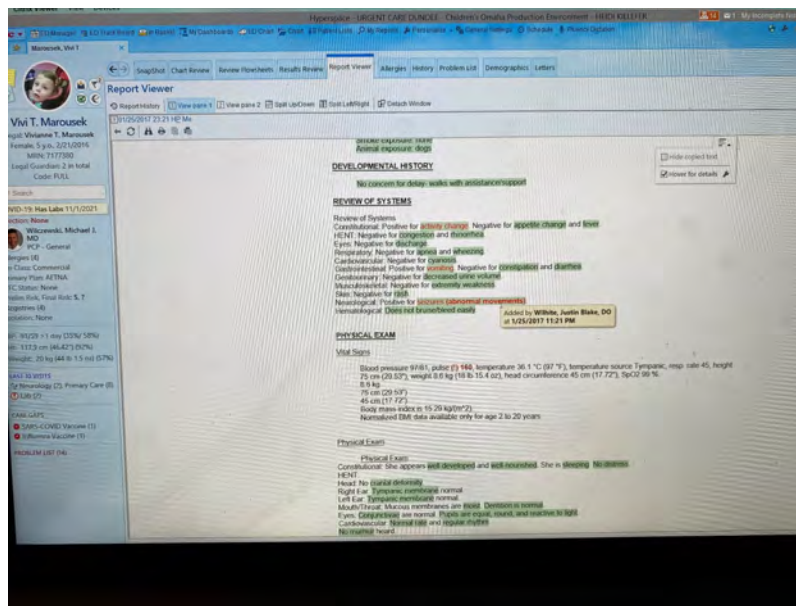
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Templates

Skin: Negative for rash.
 Neurological: **Positive for seizures** (abnormal movements).
 Hematological: Does not bruise/bleed easily.



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Missing Information

- Designated Record Set
 - Required by HIPAA
 - Defined by hospital policy
- Internal Messaging System
- “Sticky notes”
- Reports (e.g., chronological)
- Device data

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Audit Trail

- Metadata behind record
- Required to be retained and accessible by HIPAA, HITECH, and CARES Acts
- Courts have held metadata and audit trail included in patient right of access
- More Plaintiffs' Attorneys are pursuing



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Audit Trail

- Requires expert to interpret
- The proverbial double-edged sword
- The future of medical malpractice litigation in Nebraska



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Q&A



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