

April 29, 2014

Madam Chairman and Members of the Committee,

Thank you for the opportunity to share my experience regarding an important issue to Pennsylvania families.

My name is Mark Freeman and I live in Media, Delaware County. My remarks today are offered as the father of three natural sons, the foster father of three beautiful girls and as an attorney who has represented parents who have been falsely accused of abusing their children. Two of my three natural children have a disease that causes bruising that sometimes is mistaken as having been abusively inflicted.

I share the concern the Committee and all Pennsylvanians have that children in our Commonwealth are abused by parents and caregivers. We all have a zero tolerance policy towards child abuse. As is the case with most things in life, there are usually competing considerations, in this case the competing consideration to the protection of children is the fundamental right a parent has to the care, custody and control of a child. The complicating factor is this, what do we do when a report of suspected child abuse is made and the parent could be the perpetrator? In other words, what do we do when we think the protector may have become the abuser?

The provisions in this Bill are triggered by a report of suspected child abuse. It is important that the Committee keep in mind the definition of "suspected". Suspicion is a state of mind of a third party, it is not evidence or proof of abuse. To get right to the heart of this issue, you might ask what about the case of obvious abuse, such as a child with extensive bruising and intracranial hemorrhage? My response is that you should call Samuel and Elizabeth Glick before this Committee to testify about their experience. Sarah Glick was four months old when she had seizures and was rushed to the hospital. She died two days later. Sarah had significant bruising, subdural and retinal hemorrhage and was immediately diagnosed as having been abused. To the doctors, it was an obvious case of abuse. The seven other Glick children were placed in non-Amish foster homes and Samuel and Elizabeth Glick faced possible criminal charges. Their family was torn apart and lives were turned upside down. What the doctors at Geisinger Medical Center missed was that Sarah Glick had a vitamin K deficiency. Fortunately the Glick family was able to obtain the services of Dr. Holmes Morton of the Clinic for Special Children in Strasburg, Pennsylvania and an attorney who advocated on their behalf. Ultimately, this family was reunited and criminal charges were not filed. Not all innocent parents are so fortunate.

The Committee should consider the Department of Public Welfare's statistics on reports of suspected child abuse. From 2008 to 2012, over 100,000 Pennsylvania families endured an investigation of a report of suspected child abuse that was unfounded. 85% of reports of suspected child abuse are not supported by sufficient

evidence. In other words, a report of suspected abuse is six times more likely to be unfounded than indicated or founded.

It is in the context of a report of suspected abuse that Senate Bill 27 significantly impairs a parent's right to the care, custody and control of their child. The Bill provides that a doctor can secretly and unknown to the child's parent communicate confidentially with county investigators. This breaches the physician patient relationship that includes a fiduciary duty to maintain confidentiality and a contractual duty of good faith and fair dealing. In its essence, this Bill transforms physicians into child abuse investigators for the county, without any notice to the parents, while the parents are believing the doctor is searching for the cause of their child's illness. The Committee should not lightly impair a parents' fundamental right to the control of their children as this Bill does in the name of protecting children without carefully considering the impact on Pennsylvania families.

While a parent's right to the care, custody and control of their children is a fundamental right, it is not an absolute right, a parent does not have the right not to be investigated for child abuse. Just like we all have the right to free speech, but do not have the right to yell "fire" in the movie theater if there is no fire. The same is true for the obligation of the State to investigate child abuse. While the county has the right and obligation to investigate suspected child abuse, they do not have the right to investigate without also providing parents due process of law. We as a society value due process of law and have enshrined it into our Constitution. Anytime the government seeks to deprive a citizen of a fundamental right, that citizen must be afforded due process of law. Due process is afforded as a right in criminal cases, civil cases, administrative cases and in every instance where a citizen's right is impaired. By not requiring notice to the parents, this Bill denies parents the barest minimum of due process. It is not clear that even notice would satisfy due process, I suspect an opportunity to be heard would be required as well.

This Bill seeks to deprive a parent of the doctor-patient confidentiality, and breaches the duty of good faith and fair dealing between a doctor and a patient. Since a child does not have the capacity to enter into a contractual relationship with a doctor, the relationship is with the parent, and the doctor has a duty to act in good faith with the child's parent. A copy of a paper published by the Family Defense Center in Illinois has been supplied to the Committee and it addresses these important medical ethics issues. Aside from the obvious breach of confidentiality, it is hard to reconcile this Bill with a doctor acting in good faith regarding treatment of a child when the doctor is secretly communicating and cooperating with county child abuse investigators without informing the parents.

The Pennsylvania Legislature has cloaked the doctor patient relationship with confidentiality and, in the event of a medical malpractice case, requires consent of the patient before a treating physician can disclose confidential information. ChildLine appeals and dependency actions in Family Court are considered civil actions. If consent to disclose information is required in a civil case, shouldn't consent also be required when the stakes of a child abuse investigation may be even

higher, including the possible termination of parental rights? If the parents unreasonably refuse consent, then the county has the option of using due process to obtain the information they desire. This legislature has mandated that "Each court shall insure that a judge is available 24 hours a day, 365 days a year" under Title 23, Chapter 63. There is no reason not to require that the county agency seek the permission of a court, along with notice to the parents with an opportunity for the parents to be heard, when the county agency seeks confidential information from a doctor and, unknown to the parents, the doctor is no longer acting in good faith towards the parents. The same principle applies to the provisions of this Bill that enable the county to share confidential information it has with doctors.

After representing innocent parents falsely accused by the treating doctors of abusing their children in Pennsylvania, New Jersey, New York, Massachusetts, Oklahoma and Canada, I have personally seen the harm inflicted on innocent families by misguided and mistaken county employees and doctors. Due process is the only counterbalance and protection innocent families have against false accusations of abuse. By approving a measure that permits treating doctors to secretly collude with county investigators, in dereliction of their duty of confidentiality and duty of good faith and fair dealing, without notice or any due process to the parent, you will be participating in doing violence to many innocent Pennsylvania families. I urge the panel to reject any provision that eliminates a doctor's ethical duty to obtain informed consent from the parents of a minor child.

The issue of immunity is also relevant to this discussion. This Legislature has granted immunity to doctors for the mandatory reporting of suspected child abuse. Presumably, such State immunity would extend to whatever activity is approved in this Bill. This may give doctors a false sense of security that they have immunity for violations of a parent's right to due process secured by the federal constitution. Immunity granted by Pennsylvania or any other State does not protect doctors from lawsuits for violation of federal due process constitutional protections. A discussion of this issue is complex and beyond the scope of my remarks today but should also be considered by the Committee.

I urge you to review the paper published by the Family Defense Center supplied to the Committee entitled "Medical Ethics Concerns In Physical Child Abuse Investigations: A Critical Perspective". On behalf of the estimated 100,000, or more, Pennsylvania families who will be the subject of an unfounded report of suspected child abuse over the next five years, I urge the Committee to eliminate any provision in this Bill, or any other Bill, that recruits doctors to secretly collude and share confidential information with county investigators and impairs a parent's right to the care custody and control of their child without affording the parents due process protections. These due process protections are protections we have historically cherished and constitutionally guarantee to each citizen of Pennsylvania.

What do we do when we suspect that the protector may be an abuser?
The answer is simple, we afford parents due process.

Thank you Madam Chairman and Committee members for your time and attention to this important matter.

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