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TESTIMONY OF THOMAS J. (TJ) SCHMIDT

BEFORE THE PENNSYLVANIA HOUSE CHILDREN & YOUTH COMMITTEE

REGARDING SENATE BILL 27

My name is Tj Schmidt and I work with the Home School Legal Defense Association (HSLDA), a nonprofit association whose primary purpose is the protection of the right of parents to educate their children at home. Our association presently has over 82,000 homeschooling families in all 50 states and the District of Columbia, with almost 3,000 member families in Pennsylvania.

I want to thank the honorable chair and the members of this committee for allowing me to testify concerning proposed changes to the child protective services law of Pennsylvania. I appear before you today to speak in opposition to Senate Bill 27.

I am here today to testify against Senate Bill 27 not because this bill directly impacts the right of parents to teach their children at home. I am also not here because homeschooling families are investigated by county children and youth social service agencies any more, or any less, than other families. I am here because HSLDA believes this bill will negatively impact all families in Pennsylvania.

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As you know Senate Bill 27 would require all licensed medical practitioners in the state to turn over the medical records of any child listed in an investigation by the county children and youth social service agencies (county agency) without the consent of the parent. I want to repeat this concern. Senate Bill 27 would allow a county agency in Pennsylvania to obtain the medical records of any child under investigation, regardless of the allegation. Under Senate Bill 27 these medical records will be required to be turned over to the county agency without the consent of the child's parent or legal guardian.

HSLDA is opposed to the abuse and neglect of any child. But we believe Senate Bill 27 goes too far. Under this bill the county agency would be able to access a child's medical records where the allegations are that the family is abusing their 13 year old, who on her own initiative, runs around her house for exercise. A county agency would be able to obtain medical records where the source of the report previously informs the parents that they "hate" homeschooling and they don't think the family has done enough to "properly socialize" their children. The county agency would be able to get the medical records of the child when the allegation is that the 16 son was not adequately supervised when he decided to swing off the family's trampoline on the spur of the moment with a rope swing he had rashly tied in a nearby tree. Should all his medical records be turned over to the county agency because a report is made when someone observes the resulting bones and inquires how he obtained them?

Under Senate Bill 27 child protective services would also be able to get these records where the allegations were that a toddler (for the first time) slipped out of the home and wandered 4-5 houses down the block when the parent stepped in to use the bathroom. And when the allegations are that the family didn't practice birth control or allow their children to drink milk (the children happened to be lactose intolerant), the county agency would be able to get

access to the medical records of the children. Medical records could also be obtained under Senate Bill 27 where it was reported that the family didn't send their children to school; instead they educated their children at home in compliance with Pennsylvania law.

In all of those of these situations, there were no allegations of a medical nature (except perhaps the allegations that the children were not given milk/didn't use birth control). And yet the county agency would be permitted under Senate Bill 27 to get access to the medical records without the consent of the parents.

I hope you find the potential release of medical records in all of these situations as troubling as I do. All of these situations are real and the either occurred in Pennsylvania in the past few years or in a nearby state that has similar definitions of child abuse/neglect.

In addition to medical records being required under Senate Bill 27 when there is no medical concern in the allegations, these records must be provided regardless of the consent of the parent. Thus, any county agency will be able to obtain these records without any probable cause or court supervision.

In 2012, according to the most recent statistics provide by the Department of Public Welfare, Pennsylvania received 26,664 reports of suspected abuse. 3,565 of these reports (or 13.4%) were substantiated (either indicated by the county agency or founded after appropriate court action). The remaining 23,108 allegations (or 86.6%) were determined to be unfounded. These reports were found to have no indication of abuse or neglect.

Pennsylvania does not classify unfounded reports so it is impossible to determine how many of the reports in 2012 were maliciously or intentionally false. However, one state that does a good job of classifying unfounded reports is Tennessee. In 2012 Tennessee reported that over

7.5% of all reports they received were intentionally false. While I do not suggest that 7.5% of all reports in Pennsylvania are false or malicious, it would appear that at least some of the 23,108 unfounded reports are maliciously or intentionally false.

Again, HSLDA is opposed to the abuse and neglect of children and all child abusers should be prosecuted to the fullest extent of the law. The county agencies across this state are needed to pursue allegations of abuse and neglect. But under Senate Bill 27, hundreds, and even thousands, of families every year will be forced to have their medical records of their children turned over to the local county agency because someone made a false or even malicious allegation against them.

I understand that you have received some written testimony from Dr. Rodger Sayre, a Board Certified Family Physician and on the Board of Directors of www.ParentalRights.org. I hope you have a chance to read his testimony.

As you know, medical professionals are already required reporters under Pennsylvania law. If a doctor knows or suspects that a child has been abused or neglected they must report this orally to the Department and may report this information to the county agency. Within 48 hours the required reporter shall provide a written report of their suspicions of abuse to the county agency. See 23 Pa.C.S.A. § 6313.

In addition, Pennsylvania law already obligates required reporters in the medical profession to provide medical summaries or reports of any photographs, X-rays, and relevant medical test be sent to the county agency. See 23 Pa.C.S.A. § 6314. When legitimate situations of abuse or neglect get reported, and the appropriate records will be provided to the county agency.

But Senate Bill 27 will allow the county agency to obtain the medical records of every child that is investigated, when their own doctor, a required reporter, has no concerns about their wellbeing. Requiring that all medical records be turned over when there is no allegation of child abuse of a medical nature will cause a gross violation of both the parent's and child's privacy.

In addition, Senate Bill 27 will violate the trust that the family has with their family doctor. Requiring medical records to be turned over to social services in all cases will subject medical decisions that parents have made with their doctor to be second guessed by caseworkers who have little or no medical training. Who is better suited to determine whether there is a concern in a particular child's life? A doctor who has known and treated a child for years who is a required reporter, or a county agency caseworker who doesn't know the context of the child's unique health needs?

We have occasionally assisted homeschool families here in Pennsylvania who have natural or adopted children who are medically fragile. These children routinely see multiple doctors and specialists who coordinate together to treat and care for the needs of these children. Under Senate Bill 27 these families would face the potential of having all of their child's medical records scrutinized by the county agency when an uneducated or perhaps well-meaning individual makes a report about the child due to their profound disability. While some of these children hardly go a day without being seen by a required reporter, a person who would be mandated to file a report of any suspected abuse, a complete stranger who has no context on the daily struggles that the child and the family go through could force them to turn over all their child's medical records because of a false or uneducated allegation.

While I have only mentioned the medical records of the children specifically mentioned in the report investigated by social services, Senate Bill 27 also allows the county agency to gain access to the medical records of any child living in the home.

Imagine with me a scenario where a couple with two children divorces. Several years pass and the primary custodian of the children remarries. The new spouse has a child that they bring into the family. In time another child is born to the new couple. Under Senate Bill 27 if an allegation were to be made by the first spouse concerning the treatment of their biological children in this home, the medical records of the child of the new spouse would be required to be turned over to the caseworker as well as any children the new couple had together.

As I am sure you know, reports involving divorced couples are frequently received by a county agency. Some of the reports involve legitimate concerns of abuse. Unfortunately, there are many times when these types of reporters make false and/or malicious reports in an attempt to use the county agency as a tool to retaliate against other spouse. Under Senate Bill 27, a family in this situation will be forced to have the medical records for all of the children living within the home to be turned over to the county agency because of the retaliatory report.

Finally, under Senate Bill 27 the county agency will be required to provide certain information to a licensed medical practitioner who is providing ongoing medical care to a child who is the subject of a report of abuse. The county agency will be required to provide the reason for the assessment, investigation or provision of protective services to the child. The county agency will have to inform the medical practitioner of any service plan that is developed for the child and the child's family. The county will also have to provide the medical practitioner of the final determination of a child abuse report after the investigation is complete. Under Senate Bill

27, this is required in every report. Not just reports involving abuse of a medical nature that may properly concern a licensed medical practitioner who is providing ongoing medical care to a child. The county agency is required to provide this information in **every** report of abuse.

Think of the additional strain this will put on medical practitioners. What are they to do with the information when a family is reported for failing to send their child to school and instead are homeschooling them? Will this cause some medical practitioners to terminate their relationship with a family simply because someone made a false report of child abuse?

For these concerns, HSLDA strongly opposes Senate Bill 27. I ask that this committee oppose this bill. Thank you for your time.

Respectfully,

Tj Schmidt

HSLDA Staff Attorney

Licensed in CA