Commonwealth of Pennsylvania
Task Force on Child Protection

The Definition of Child Abuse

Testimony for the Pennsylvania Task Force on Child Protection Hearing

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Good morning Chairman Heckler and members of the Task Force. I am Maria McColgan, Director of the Child Protection Program at St. Christopher's Hospital for Children and Associate Professor of Pediatrics at Drexel University College of Medicine. I am honored to be here today among many of my esteemed colleagues and humbled by the opportunity to present to you today.

Since completing my pediatric residency at St. Christopher's Hospital, I have practiced Child Abuse Pediatrics and, along with several of the physician colleagues in the room, became one of the first Board Certified Child Abuse Pediatricians in 2009. In addition to my clinical responsibilities at St. Christopher's, I am also the Pediatric Advisor to Prevent Child Abuse Pennsylvania, an organization dedicated to the primary prevention of Child abuse and neglect, under the umbrella of the Pennsylvania Chapter of the American Academy of Pediatrics. I am proud to also represent these two organizations in my testimony today.

I am hopeful that my testimony will bear witness to the realities of how often and harshly some of this state's children are exposed to child abuse – abuse we'd all like to believe does not exist, but as my testimony will confirm is quite real and consequential for the child and society overall.

Over the last two years, I've been connected with an interdisciplinary coalition known as the Protect Our Children Committee (POCC). POCC has provided a forum for professionals and advocates like myself who work in the trenches of child protection and have solid insight of how things are working in practice, but who are often unconnected to the usual policy generating tables.

Through POCC, we've been able to share information, expertise and quite frankly frustrations, realizing there was potential in our collective advocacy. So last year, I joined other doctors, public and private child welfare workers, legal experts, social workers, children's advocacy center and victim services leaders, disability rights advocates, law enforcement, researchers, drug and alcohol and mental health clinicians in a call for a state level task force on child protection. We were certain that Pennsylvania's children and families could benefit from a research-driven and grassroots informed analysis about how Pennsylvania is doing both in preventing child abuse and implementing core front end child protection policies including defining, reporting, investigating and assuring a pathway to services for the child and the family.

So I am here today, first, to affirm that this Task Force and each of us can elevate the voice of very vulnerable children whose voices are muffled if not silenced in the halls of power. Together we must dedicate ourselves – individually and collectively – to chart a new course for Pennsylvania's most vulnerable children and families and recognize our children as our most valuable and cherished resource.

My testimony today is framed from the perspective of a practicing child abuse pediatrician for almost 10 years. In that time I have identified and treated thousands of injuries – physical and sexual – resulting from some of the most horrific treatment of children that can be imagined. My perspective is from the medical treatment of the child, I have too often witnessed how the tragedy is compounded by inadequate state laws that too often exacerbate the vulnerability of a child, leave the child and family unconnected to services, and complicate the decision-making of local child welfare workers.

A few weeks ago I was presenting at a conference in Bucks County. A children and youth services caseworker told me about a child that she was still losing sleep over. The child had a bruise on his ear, an almost diagnostic sign of inflicted injury, as it is very rare that a child will accidentally bruise their ear, as it is on the side of the head. She felt the injury was due to an abusive act and wanted to indicate the case as physical abuse. Ultimately she and her supervisors decided she was unable to indicate the case as child abuse because the bruise did not meet the threshold set by Pennsylvania's state law of a severe injury, nor did the injury cause sufficient pain or impairment. Regrettably we have seen countless cases like this – the child who has marks, bruises, or welts from being hit, spanked, whooped or otherwise physically disciplined, but state law establishes that the child's injuries were not severe enough to be determined to be child abuse.

And consider the 2 1/2 year old child who presented to our hospital last year with an extraordinarily high sodium level. After an exhaustive workup for other medical causes, we diagnosed her with salt poisoning and physical abuse. Based on the medical diagnosis of child abuse, the caseworker indicated the case and named the mother as the perpetrator of the child abuse and the child was placed in foster care. A court, however, overturned the finding of child abuse saying that the investigation had not proven that the mother was directly responsible for the abuse – in other words the court felt that the perpetrator had been undetermined. Therefore, the child was returned home with her mother. Several months later the child returned to St. Christopher's with multiple injuries including an old severe burn that had not received medical treatment, severe malnutrition, bruises and scars all over her body including bruises on both ears and a healed laceration behind her ear from being pulled so hard that "her ear almost fell off" as subsequently reported by her sister.

Consider as well the twins who had subdural hemorrhages, retinal hemorrhages and fractures, which led to a diagnosis of physical abuse and inflicted traumatic brain injury. The family members who were indicated appealed and won, because there were 5 different caretakers in the recent days leading up to finding the injuries, again rendering the case unfounded because the "perpetrator is unknown".

Building the foundation of child protection based on adult-driven versus child-centered policies is a significant shortcoming in Pennsylvania. I can recount too many cases where there was a clear medical diagnosis that the child was abused, but the child welfare investigation - driven by state law and practices - determined that abuse did not occur. In such cases, the child's injuries – that were medically diagnosed as child abuse – remain uncounted in official state statistics.

Consider too that in so many of these unfounded cases – despite medical diagnosis - critical pieces of information to better protect this child going forward will not exist, and, where information might be retained, it likely won't be shared with the next doctor or child welfare investigator. Where a perpetrator is undetermined but abuse has occurred or in other cases where the report was unfounded, the records must be destroyed in a certain period of time. Also Pennsylvania collects and retains no data about a child who may receive General Protective Services (GPS) – services offered since the 1990s to address circumstances where safety concerns exist but which were deemed to be non-abuse cases. So often, the child of a prior unfounded report or the recipient of GPS presents again, at a later date, in an emergency

department or with a new pediatrician because so often these children do not have medical homes. The treating physicians and the child welfare workers seeing the child this time often will not have all the facts, and are left with the impression that this is the first time a child has experienced injuries that could be abuse related.

The final case I will present here today is certainly far from the last example of cases that I have been involved with where Pennsylvania's definition of child abuse was confusing and not sufficiently protective of the child.

Recently, I cared for a 7-week-old infant who was brought to the Emergency Department because he wasn't moving his arm. He was noted to have a fracture of the humerus, the bone of the upper arm. On further workup we found other fractures, a bruise and a healing laceration in his mouth. The medical diagnosis was clearly inflicted injury. In family court, the defense attorney argued that this case, although likely inflicted injury, does not rise to the level of our states definition of abuse because it did not lead to impairment of the child. He argued, "How could the child be impaired because he was only 7 weeks old and couldn't even hold a bottle yet." Therefore this child could not be considered impaired as a result of this injury.

Remarkably the judge agreed and ruled that this was not child abuse and ordered that the child be returned home. We all appreciate and want to find the appropriate balance in safeguarding the rights of parents with protecting children, but this case and the high bar to determine a child has been abused illustrates, to me, that we've not yet struck the right balance. Even in this case of a clear medical diagnosis of abuse, our state's law raised enough confusion to rule against a legal definition of child abuse.

Another element of our state definition of child abuse relates to the inclusion of "severe pain." As a physician I am a mandated reporter and so I often find myself making a call to ChildLine to report child abuse. And during the course of my report and the later investigation, I will be repeatedly asked "Did the child suffer severe pain?" This question is fraught with problems. Pain is subjective, meaning that an injury that one person might rate as causing severe 10 out of 10 pain, another person might rate the pain from a similar injury as a moderate 6 or 7.

With children, this becomes even more difficult. I cannot determine with any certainty the level of pain a 7 week old, a 13 month old or often times even an older child is experiencing. For example, is a child who has bruises on her buttocks that make it uncomfortable to sit suffering severe pain? Or how about the infant with a femur fracture? When no one is touching or moving an injured child, they can fall asleep, but that does not mean they are not experiencing pain. Nor does it mean that they have not suffered an abusive injury.

As this Pennsylvania and much of our country turned its attention to reporting child abuse in the wake of the Jerry Sandusky and Penn State scandal, we will fail our children again if we ignore that reporting is impacted by how we define abuse and what happens after a report of concern for a child has been filed.

Pennsylvania's definition, particularly the provisions related to severe pain, impacts the likelihood of medical providers to report cases of suspected abuse and neglect to Childline. We

are piloting a new program called Family Safe Zone at St. Christopher's Hospital for Children, the goal of which is to change attitudes toward corporal punishment and increase bystander willingness to intervene on behalf of a child. During a meeting, one of our social workers noted her responsibility to report suspected child abuse. She voiced her frustrations with ChildLine stating: "Their mindset is so toward the severe that you have to fight and beg, even as a medical provider, to get them to accept the case."

I can go on for hours with similar cases in which Pennsylvania state law created such difficult restrictions that an injury must cause severe injury or impairment of the child to be deemed a case of abuse or neglect. I want to assure you this is not a Philadelphia specific challenge, because all of the other counties are operating under the same limiting law. I have consulted on similar types of cases I illustrated today from across the Commonwealth, and in fact, most of the cases I presented were from counties surrounding Philadelphia.

Linked to the definition - and influencing our adult versus child approach to child protection - is the role and nature of the state child abuse registry. Persons named as perpetrators of child abuse will have their status known when they apply to work or volunteer with children. This registry serves a critical role as it provides potential employers or community-based volunteer organizations with information to better protect our children. It is, however, time to evaluate the role of the registry in terms of who is on the registry, for how long and the mechanics of its operation, particularly the appeal process for having one's name removed.

In a Commonwealth that has set the bar very high as to what injuries can be inflicted on a child and not be deemed child abuse, I have been repeatedly cautioned to set my expectations for change low. I have been told that it is too controversial to bring up any discussion of corporal punishment. I'm reminded often that Pennsylvania is a more conservative state and that we are remiss to intervene in a parent or caregiver's ability and right to "discipline" their child with physical interventions.

With all due respect, I believe that it is not only time to begin this discussion, but it is long overdue. We must talk about what is appropriate and acceptable discipline and what is unreasonable punishment. In a talk by Dr. Sandy Bloom of Drexel University School of Public Health, I saw and remain influenced and inspired by the following slide:

Hitting and Adult = Assault
Hitting and Animal = Cruelty
Hitting a Child = Discipline?

I am not considering that we debate the appropriateness of a simple swat to a toddler's hand to caution them from touching a hot stove, or a tug on the arm to prevent a child from running into the street. However, I am suggesting that we begin to discuss moderate to severe forms of physical punishment.

We need to ask the question, when is it ever acceptable to hit a child? Should it be legal to hit an infant or toddler, who does not yet have the understanding of why they are being hit and are too vulnerable to physically defend themselves from excessive corporal punishment?
When, if ever is it acceptable to spank a child, and for what reason?

And most importantly, is it ever okay to hit any child with an implement such a broom, an extension cord or even a belt?

To find the answers, we have to look carefully at the data, as we now have a wealth of medical and psychological studies that show the effects of physical punishment. Several studies have looked at the frequency of hitting children.

- Seventeen percent of mothers reported spanking an infant under 13 months old in the past week
- 26% of mothers reported hitting their 3 year old children greater than 2 times in the past month
- 35% of parents have spanked their 4-5 year old children in the past week
- And 80% of all children were by the time they reached 5^{th} grade.

And we now know that physical punishment, including spanking can lead to toxic stress that can lead to detrimental changes in the developing brain.

In this study, subjects who were victims of physical punishment were noted to have significant reductions in gray matter of the brain.

And in various studies, Children who experience physical punishment are at higher risk for:

- Behavioral problems and delinquent behaviors
- Low self-esteem
- Depression
- Substance abuse
- Poorer quality of relationship with parents
- Physical abuse of one's own spouse and children as an adult

Spanking is also shown to lead to increased risk of physical aggression, anti-social behaviors, conduct problems and internalizing behaviors among children.

Therefore, the American Academy of Pediatrics strongly opposes striking a child for any reason.

As a result of what these studies have taught me and from my experience of treating children who have been injured by a disciplining parent, I encourage all parents to abandon all forms of hitting and to use other forms of positive parenting, which are proven to be more effective and lead to healthier outcomes. As a doctor and as a parent of young children myself, I invite discussion and work with parents who insist that they need to use hitting to punish their child. I ask that they consider the alternatives, but if they will not abandon the use of physical discipline, I recommend that they only hit with their open hand so that they too can feel the amount of pain they are inflicting on the child.

There are now 29 countries that prohibit corporal punishment of children, even in the home. In the US, there are no federal or state laws prohibiting physical punishment in the home, and in fact, only 28 states and the District of Columbia prohibit physical punishment in public schools. Legislation on use of physical punishment in other settings caring for children varies state to

state. We should look at the effects of the prohibitions in other countries, and other states to help guide us as we decide what the right legislation is for Pennsylvania.

As a lifelong Pennsylvania, I am disheartened at the fact that Pennsylvania was the last state in the country to become compliant with the federal Child Abuse Prevention and Treatment Act (CAPTA). It took until 2006 to achieve this compliance. I would love to be able to say that I live in a state that is a leader in Child Protection. That I live in a state where children are not only protected, but revered and held on a pedestal and recognized as our most valuable resource. I want to live in a state where it doesn't matter if your race or color is, it doesn't matter what your religion or political party, it is never ok to injure a child. I want to live in a state that values prevention, not only because it is economically beneficial, but because it is the right thing to do and the best chance for ensuring that all children are raised in nurturing environments that allow them to live up to their potential.

Well, now, I am 7 pages in, and I haven't even touched on sexual abuse, neglect or school abuse. But the themes are the same. Why should the threshold be severe neglect? Why do not routinely believe a child who says they were sexually or physically abused? Why isn't abuse of a child in a school setting considered a case of child abuse and investigated in a similar manner? It is very frustrating as a medical provider to repeatedly refer cases to ChildLine, only to find out they will not be investigated as a Child Protective Services (CPS) report, and are sometimes not even accepted for general Protective Services (GPS).

I also want to take a quick moment to focus on prevention. Of course the very wise Benjamin Franklin stated that an ounce of prevention is worth a pound of cure. Well, with child abuse and neglect, an ounce of prevention is worth more like a hundred billion dollars worth of a cure. Recent estimates of direct and indirect costs of child maltreatment range between $104 and $124 billion dollars per year in the United States. We need to shift our focus from intervening after damage has been done to prevention before it occurs. We must send a message to all Pennsylvanians that Prevention *IS* Possible and each and every one of us has a role to play.

Honored members of the Task Force, thank you again for the opportunity to present my testimony today. I hope that as you consider these complex issues, you will remember some of the children that we have discussed and know that the work you are doing will help to improve their future.

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