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Commentary

Children, Parents, CPS and Second Medical Opinions

A faulty medical determination of child abuse or neglect can destroy the life of a child and its family. “Measure twice, cut once,” is a great rule for carpenters; it’s also an important lesson for Child Protective Services.

By **Daniel Pollack and Elisa Reiter** | April 16, 2021 at 04:19 PM

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To ensure people maintain their maximum health, it is not uncommon to seek a second medical opinion. This provides an added measure of objective information in an effort to yield a truly informed decision. Not only does a person often have the right to this second opinion, providers and payers, in an effort to reduce costs and

unnecessary risks, will encourage patients to seek a second opinion. A person can trust their doctor yet still ask for a second opinion. Depending on the situation, be it regarding diagnosis or treatment, a second opinion can bolster a person's emotional outlook on their medical condition. This added peace of mind can positively impact treatment results.

Just as doctors may differ regarding their diagnosis and mode of treatment of a patient – stemming from their own unique experience, training, and education – they may have different perspectives regarding what may constitute child abuse and neglect. A single medical opinion may lead to a child being sent to foster care or to a termination of parental rights.

Recently, Texas state representatives unanimously approved House Bill 2536. Aimed particularly at supporting parents caring for medically fragile children, this legislation would prohibit CPS from terminating parental rights if the parents seek a second medical opinion if they are accused of child abuse or neglect.

Can CPS simply arrive at your door, unannounced, accompanied by police officers and demand the right to remove your minor child regarding concerns about medical treatment you sought for the child? The Pardo family went through an ordeal in 2019 regarding such allegations. Drake Pardo, who has special medical needs, sought treatment at Children's Medical Center in Texas. Following treatment in April, 2019, his parents filed a complaint regarding poor treatment of Drake and themselves while Drake was at Children's Medical Center. The Pardo family received a response from the hospital that they would review the complaint and respond within 45 days. The 46th day after the complaint was filed, June 20, 2019, CPS social workers and armed officers arrived at the Pardo's home, and removed 4-year-old Drake. The CPS social worker did not have a copy of the affidavit to present to the Pardos. Instead, the Pardos had to ask for the right to take pictures of the affidavit. The affidavit, written by a physician at Children's Medical Center, while listing several diagnoses made at Children's, implied that the Pardos might have been making up several of Drake's medical diagnoses.

Representatives of CPS refused to provide Drake's parents with details of the allegations. The family received assistance from Parent Guidance Center and Family

Rights Advocacy. The Texas Supreme Court ruled that CPS should allow Drake's parents to take him home in October, 2019. However, CPS still kept the Pardos' names on the Child Abuse Registry. An appeal was successful, and Drake's parents' names were removed from CPS' Child Abuse Registry.

The Texas Department of Family Protective Services (DFPS) may remove a child without a court order in limited emergency circumstances. If the removal is done without a Court order, DFPS must file a Suit Affecting the Parent Child Relationship, must ask the court to appoint an attorney ad litem to represent the child, and must request an initial court hearing no later than the next business day following the emergency removal.

DFPS may also ask a court to enter orders allowing the Department to remove a child from parents in an ex parte proceeding without the parents attending. If DFPS is successful in obtaining an emergency removal order, DFPS may remove the child from the parents after obtaining the order.

If the child is not perceived to be in immediate danger, DFPS may file a petition, provide notice to the parents, and request that Temporary Managing Conservatorship be granted to the Department following due notice of a hearing to the parents.

According to the Texas DPFS Handbook, the following steps are to be followed by social workers prior to removing a child from the care of the child's parents:

> DFPS must submit sufficient evidence, in the form of an affidavit, to prove to the court that the situation meets the following criteria:
>
> - There is continuing danger to the child's physical health or safety caused by an act or failure to act of the parent or caregiver.
> - It is contrary to the child's welfare to remain in the home.
> - The caseworker made reasonable efforts, consistent with the circumstances and providing for the safety of the child, to prevent or eliminate the need for removal.

HB 2536 seeks to amend Texas Family Code Section 161.001. Presently, the Texas Family Code Section 161.001(c) would not allow a Court to order termination of the parent-child relationship simply based on evidence that a parent is home-schooling a child, is economically disadvantaged, has been charged with a non-violent misdemeanor, has administered low level cannabis to a child pursuant to a prescription, or has declined immunization due to matters of conscience of for religious reasons. HB 2536 seeks to add to TFC 161.001(c)(5) Section, as follows:

(5) declined immunization for the child for reasons of conscience, including a religious belief, ***or***
(6) sought an opinion from more than one medical provider relating the the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to a new medical facility.

In the era of COVID-19, one wonders whether declining immunization should be relegated to matters of conscience, religious belief, or simply be made mandatory as a condition of work or school enrollment. What if a child is too young to articulate what has happened to them when they are presented for treatment at an emergency room, but they have been brutally beaten by a family member, only to have that very family member force them to leave a hospital or doctor's office before obtaining proper treatment, lest CPS be called by the treating physician? Will this proposed provision be grounds not to seek emergency removal? For now, it would appear that if a professional believes grounds exist to report abuse, they must do so within 24 hours of observing signs of abuse, neglect or endangerment.

A faulty medical determination of child abuse or neglect can destroy the life of a child and its family. "Measure twice, cut once," is a great rule for carpenters. It's also an important lesson for Child Protective Services.

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