

**IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT, STATE OF FLORIDA**

**CASE NO. 2D24-0382
L.T. Case No. 2018-CA-005321**

JOHNS HOPKINS ALL
CHILDRENS HOSPITAL, INC.,

Appellant,

v.

MAYA KOWALSKI, et al.,

Appellees.

**AMICI CURIAE BRIEF OF THE AMERICAN ACADEMY OF
PEDIATRICS AND THE CHILDREN'S HOSPITAL ASSOCIATION
IN SUPPORT OF APPELLANT**

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STATEMENT OF IDENTITY AND INTEREST
OF AMICI CURIAE

The American Academy of Pediatrics (AAP) is the largest nonprofit professional society of pediatricians in the world. The AAP represents 67,000 primary care pediatricians, pediatric medical subspecialists, and surgical specialists who are committed to the physical, mental, and social health and well-being for all infants, children, adolescents, and young adults. The Academy advances child and adolescent health through education, research, advocacy, and the provision of evidence-based policy and guidance.

The Children's Hospital Association (CHA) is the national voice of more than 220 children's hospitals. CHA advances child health through collaboration, improvement, and advocacy. CHA gives pediatric providers a shared voice to advocate for policies that allow children's hospitals and health systems to provide effective, patient-first care.

One of the issues in this appeal is the scope of the immunity provided to mandatory reporters of suspected child abuse and neglect under section 39.203, Florida Statutes, and how that immunity impacts the admissibility of evidence in a trial involving

alleged child abuse. This issue is vitally important to AAP, CHA, and their members because the proper application of the immunity provision is critical to the success of the mandatory reporting laws. An interpretation of section 39.203 that restricts immunity in a way that is contrary to the statutory text and all of the textual and structural clues that inform the meaning of the statute adversely impacts AAP, CHA, and their members and would result in unnecessary and costly litigation, to the detriment of chapter 39's purpose of protecting children.

AAP and CHA will assist the Court by providing unique information regarding the background and development of the mandatory reporting law and immunity provisions relating thereto—insight which will help the Court understand why the law exists and what is supposed to accomplish.

SUMMARY OF ARGUMENT

The laws requiring healthcare providers, among others, to report suspected child abuse to the state and authorizing those providers to take, in good faith, certain actions consistent with protecting a child from such abuse are vital to protecting Florida's children. Given the high stakes and emotions at play in any such proceeding, the robust immunity provided to those who are mandated to report such suspected abuse is absolutely critical to accomplishing the policy established by the legislature.

A review of the history of the enactment of these laws and the success they have had in protecting children establishes that the immunity provided to mandatory reporters is broad and applies not only to reporting suspected abuse but also in taking affirmative steps to protect the child while the suspected abuse is being investigated. Any lesser immunity, such as that construed by the trial court here, adversely impacts proper implementation of the Act.

It is not enough to provide immunity just for reporting. The plain text of chapter 39 demonstrates that its purpose is much broader and protects related activities authorized by that chapter,

such as sheltering, documenting abuse, and testifying in court proceedings regarding the suspected abuse.

ARGUMENT

In 2022, state child protective services (CPS) agencies identified nearly 600,000 victims of child abuse.¹ Mandatory reporting laws—laws that require certain professionals like social workers, teachers, childcare providers, healthcare professionals, and law enforcement to report suspicions of child abuse and neglect to the appropriate state agency—are responsible for the identification of many of these abused children.²

For example, in 2022, 41.9% of the reports that resulted in intervention came from law enforcement and education professionals.³ Healthcare professionals were responsible for the

¹ See Children’s Bureau, *Child Maltreatment 2022*, at 20-21, available at <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2022.pdf>

² *Id.* at 9; Child Welfare Information Gateway, *Mandatory Reporting*, available at <https://www.childwelfare.gov/topics/safety-and-risk/mandated-reporting/?top=78>.

³ *Child Maltreatment 2022*, *supra* n.1, at 9.

third largest percentage of interventions at 11.2%.⁴ Healthcare providers were particularly vital mandatory reporters during the COVID-19 pandemic, when schools were closed but the percentage of emergency department visits for child abuse increased.⁵

The immunity provisions that protect mandatory reporters from criminal and civil liability for good-faith reporting of suspected child abuse and participation in any resulting investigation are critical to the success of mandatory reporting laws. In Florida, for example, section 39.203, Florida Statutes, immunizes good faith reporting, as well as any act authorized by the statute governing child abuse investigations.

If statutory immunity for mandatory reporters is not robustly enforced, the risk of costly and time-consuming litigation could have a negative effect on even the most conscientious mandatory reporters. For mandatory reporting laws to continue to protect

⁴ *Id.*

⁵ *The State of Child Abuse in 2024*, Mandated Reporter, 2024, available at mandatedreporter.com/blog/the-state-of-child-abuse-in-2022/.

children and adolescents from child abuse, immunity clauses must be broadly enforced and immune conduct protected.

A. The history of mandatory reporting laws.

Mandatory reporting laws are largely the work of one man—a pediatrician named Dr. C. Henry Kempe.⁶ In 1962, Dr. Kempe published a paper creating a “medical profile of child abuse,” and called for legislation mandating that physicians report suspected abuse.⁷ Although modern mandatory reporting laws are more expansive, the first model reporting statutes were geared solely toward healthcare providers.⁸ The drafters believed that doctors were most likely to encounter injured children and had “the diagnostic abilit[ies]” to identify abuse.⁹ They also recognized that physicians faced unique deterrents to reporting; many felt it was a violation of “professional confidence” to report a patient’s family to

⁶ Jessica Ann Toth Johns, *Mandated Voices for the Vulnerable: An Examination of the Constitutionality of Missouri's Mandatory Child Abuse Reporting Statute*, 72 UMKC L. Rev. 1083, 1085-86 (2004).

⁷ *Id.*

⁸ Monrad G. Paulsen, *Child Abuse Reporting Laws: The Shape of the Legislation*, 67 Colum. L. Rev. 1, 3 (1967).

⁹ *Id.*

child welfare and were reluctant to “become involved” in court proceedings.¹⁰ Providers were “also deterred by a fear of civil liability should they report,” a fear that statutory immunity attempted to address.¹¹

By 1967, all 50 states had mandatory reporting laws.¹² In 1974, Congress passed the Child Abuse Prevention and Treatment Act (“CAPTA”), which required states to pass mandatory reporting laws and implement procedures for investigating child abuse to qualify for federal dollars.¹³ CAPTA has been amended many times over the past 50 years to expand protections for victims of child abuse and neglect and provide funding for child welfare agencies and other programs designed to help children and families.¹⁴

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Child Welfare Information Gateway, *About CAPTA: A legislative history* (2019), available at https://cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/about.pdf?VersionId=y7C6qleUR3mZJ_UJ5t_dnzCNfO6HPcPs

B. The importance of statutory immunity to mandatory reporting laws.

As the early drafters recognized, one of the barriers to physician-reporting is the fear of litigation. Accordingly, all state mandatory reporting statutes have criminal and civil immunity clauses.¹⁵ Immunity is particularly important for mandatory reporters because, while the “triggering level of suspicion” differs from state to state, none require a professional to be certain that abuse is occurring before the reporting requirement kicks in.¹⁶

Even with statutory immunity provisions, fear of litigation still inhibits physician reporting and participation in the child-protection process. Many “physicians admit that they do not report all suspected cases of child abuse and neglect.”¹⁷ In one study, 8% of doctors said they had not reported injuries despite suspecting

¹⁵ Toth Johns, *supra* n.4.

¹⁶ *Id.* at 1088.

¹⁷ Ellen Wright Clayton, *Children’s Health Symposium: To Protect Children from Abuse and Neglect, Protect Physician Reporters*, 1 Hous. J. Health L. & Pol’y 133, 140–41 (2001).

abuse and, in another, 30% of doctors said they had not reported suspected abuse at some point in their career.¹⁸

Doctors' concerns about being sued are valid. Although healthcare professionals submitted only ten percent of the more than 2.8 million reports of suspected abuse in 1998, "physicians represent the overwhelming majority of lawsuit defendants in cases seeking damages for allegedly inappropriate reports of child abuse or neglect."¹⁹ It is not enough for mandatory reporting statutes to include immunity clauses. Without robust *enforcement* of statutory immunity, mandatory reporting laws will not serve to protect children and adolescents.

It is clear why immunity is so critical in order to protect children and adolescents from abuse. In 2022, 67.4% of child abuse *investigations*, that is, reports of child abuse that met the criteria for further examination, were closed as unsubstantiated or with a

¹⁸ Emalee G. Flaherty, & Robert Sege, *Barriers to Physician Identification and Reporting of Child Abuse*, 34:5 *Pediatric Annals* 342, 351–52 (2005).

¹⁹ Clayton, *supra* n.15, at 142.

finding of “no alleged maltreatment.”²⁰ In other words, two-thirds of the reports serious enough to warrant an investigation did not uncover substantiated abuse or maltreatment sufficient to take further action. But that does not mean that a reporter’s suspicions were not valid or the report was not warranted. To the contrary, they were legally mandated and necessary to allow a full investigation to take place.

If healthcare providers can be held liable for damages stemming from a good-faith and appropriate report of suspected child abuse, the consequences could be devastating. Removing a child from a parent’s custody is disruptive and traumatic to both parent and child—but it can also be lifesaving. The stakes are extraordinarily high. It is precisely because of the gravity of the accusation of child abuse that mandatory reporting laws are necessary.

It is also why mandatory reporting of suspected abuse, as well as related activities including sheltering, documenting signs of abuse, and testifying in related court proceedings must be

²⁰ Child Maltreatment, *supra* n.1.

thoroughly immunized. Investigating abuse and removing children from abusive homes saves lives. In the interest of abused and neglected children throughout the United States, hospitals and healthcare providers must be reassured that their fulfilling their critical obligation will not give rise to liability.

CONCLUSION

Mandatory reporting laws protect children. In order for mandatory reporting to be effective, statutory immunity clauses must be broadly construed and robustly protected.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY FURTHER CERTIFY that the foregoing complies with the font and type-face requirements set forth in Florida Rule of Appellate Procedure 9.045 and complies with the word count limit requirements of Florida Rule of Appellate Procedure 9.370(b) because it does not exceed 5,000 words.

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