



IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,
Plaintiff

v.

THE PENNSYLVANIA STATE
UNIVERSITY,
Defendant

Docket No. 2012-1804

(Judge Gavin)

**Plaintiff's Brief in Opposition
to Defendant's Motion for
Post-Trial Relief**

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FILED FOR RECORD

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Plaintiff hereby submits his Brief in Opposition to the Defendant's Motion for Post-Trial Relief.

A. The Court did not err in instructing the jury that Curley and Schultz were mandated reporters; nor was Defendant prejudiced by this instruction.

The Child Protective Services Law was first enacted as Chapter 63 of Title 23 (Domestic Relations) by the Act of December 19, 1990, PL 1240, No. 206. The purpose clause of Chapter 63, set forth in 23 P.S. §6302(b) was initially stated "to encourage more complete reporting of suspected child abuse and to establish in each county a child protective service capable of investigating such reports swiftly and competently" (Plaintiff's Post-Trial [Pl. PPT] Ex. 1).

The purpose clause of Chapter 63 was expanded by the Act of December 16, 1994, PL 1292, No. 151, to include "to the extent permitted by this chapter, **to involve law enforcement agencies** in responding to child abuse; . . ." 23 Pa.C.S. §6302(b) (emphasis added). (Pl. PPT Ex. 2).

In addition, the trigger for 23 P.S. §6311-"Persons required to report suspected child abuse"-was changed in the 1994 amendment from persons who have reason to believe that a child was abused to persons with "reasonable cause to suspect child abuse."

The enumeration of persons required to report under §6311(b) has always been explicitly a non-exclusive listing: "include but are not limited to . . ." 23 P.S. §6311(b). This non-exclusive enumeration of persons required to

report has always included a "school administrator" and a "law enforcement official."

Finally, §6311(c) entitled "Staff members of institutions, etc." provides:

"Whenever a person is required to report under §(b) in their capacity as a **member** of the **staff** of a medical or other **public** or private **institution, school**, facility or agency, that person shall **immediately notify** the **person in charge** of the institution, school, facility or agency or the designated agent of the person in charge. **Upon notification**, the **person in charge** or the designated agent, if any, shall assume the **responsibility** and have the **legal obligation to report** or cause a report to be made in accordance with §6313. . . ." (emphasis added).

Now, it is undisputed that the Pennsylvania State University continuously has large numbers of minor children on its campus. Indeed, thousands of minors over the course of a year attend sports camps, football games, science fairs, etc. Many minor high school students come through to visit the campus as prospective enrollees. And many minor high school students take some college courses, usually in their senior year.

It is also undisputed that among Gary Schultz's responsibilities was oversight of the Penn State University police department and, as such, he regularly interacted with the chief of the Penn State University police department. (See e.g., Plaintiff's Exhibits 1-4 tracking the 1998 Sandusky investigation). Thus, Mr. Schultz was a law enforcement official and a mandatory reporter under 23 Pa.C.S.A §6311 as it existed in 2001.

Mr. Curley, as Athletic Director, came in contact with innumerable minors attending the university sports camps and coming to the university on

recruiting trips. He was therefore a person who, in the course of his employment, "come(s) into contact with children." 23 Pa.C.S.A. §6311(a).

So too, former President Spanier would come into contact with children in his role as President of the University, again children who would be visiting the campus for sports camps, recruiting trips, science fairs, etc.

Former President Spanier, as the person in charge of Penn State, also had a legal duty to report suspected child abuse:

"[U]pon notification, the **person in charge** or the designated agent, if any, shall assume the responsibility and **have the legal obligation to report** or cause a report to be made in accordance with §6313." 23 C.S.A. §6311(c). (emphasis added).

While generally penal statutes are strictly construed, a child protection statute should be "construed to effectuate its broad purpose of sheltering children from harm." Com. v. Lynn, 114 A.3d 796, 818 (Pa. 2015); See also, Com. v. Mack, 967 Pa. 613, 618 (1978). Construing the Child Protective Services Law to effectuate its purpose of sheltering children from harm, and "to involve law enforcement agencies in responding to child abuse," Messrs. Curley and Schultz, and head of institution Spanier, were mandated reporters as the law stood in 2001.¹

¹ In Commonwealth v. Curley (No. 3614 CR 2013, No. 5165 CR 2011), Commonwealth v. Schultz, (No. 3016 CR 213, No. 5164 CR 2011) and Commonwealth v. Spanier, (No. 3615 CR 2013) on February 1, 2017, the trial court ruled that the issue of whether Curley and Spanier were mandatory reporters was denied as moot because the failure to report charges were held barred by the Statute of Limitations. However, because the Defendants' Petitions for Habeas Corpus were denied, that would indicate that the Commonwealth had presented sufficient evidence that Curley and Schultz had a duty to report and that they failed to report. (Pl. PPT Ex. 3).

In addition, Schultz had reporting responsibilities under the Cleary Act. The Jeanne Cleary Disclosure of Campus Policy and Campus Crime Statistics Act or "Cleary Act" is codified at 20 U.S.C. §1092(f) with regulations promulgated at 34 C.F.R. §668.46. In 1998, the Cleary Act was amended through the Higher Education Amendments of 1998, Pub. L. 105-244, Title 1, §102(b)(3), Title IV, §486, Oct. 7, 1998, 112 Stat. 1622, to provide for reporting requirements of "campus security authorities or local police agencies" of institutions of higher education such as Penn State, 20 U.S.C. §1092(f)(1)(F).² The Cleary Act requires that any campus security authority who receives a "good faith" report of a crime by a witness, victim, third party, or offender of certain enumerated crimes, including sex offenses, must document and report good faith reports to the Secretary of the United States Department of Education 20 U.S.C. §1092(f)(4). While it is not the role of the campus security authority to investigate a good faith report or apprehend a perpetrator under the Cleary Act, the Campus Security Authority must record and maintain daily logs of same for purposes of reporting requirements under the Cleary Act.

The Defendant speculates that the mandated reporter instruction had prejudicial impact on the jury. The gravamen of the misrepresentation claim was the representation to Mr. McQueary that a proper investigation would be performed. On February 11, 2001, the outside General Counsel for the University advised Mr. Schultz to report the matter to DPW. On February

² Technical corrections were made to the Cleary Act in 2008 and 2009. In 2013, the Violence Against Women Reauthorization Act of 2013 expanded the Cleary Act to require reporting of additional crimes. Otherwise, the applicable portions here have remained relatively unchanged since 2001.

12, 2001, Mr. Schultz checked with former police chief Harmon to see if there was a record of the 1998 criminal investigation into Jerry Sandusky's purported child abuse on file. President Spanier, in Plaintiff's Trial Exhibit 10, discussed the vulnerability of not reporting. Although Curley and Schultz stated to Mr. McQueary that there would be a proper investigation, all the evidence was that there was no investigation, nor was there any report to any police or to the County Children and Youth Agency; and the weight of the evidence was they did not want there to be a proper investigation. Thus, irrespective of whether Curley and Schultz were mandated reporters, the evidence was overwhelming that they made a misrepresentation to Mr. McQueary in telling him that a proper investigation would be conducted. Accordingly, the instruction should not have had any prejudicial affect on the jury.

B. More than sufficient evidence was presented to support the intentional misrepresentation count.

The Defendant concedes on page 24 of its Brief, that Curley and Schultz told Mr. McQueary not only that what he was reporting was a serious matter and that appropriate action would be taken, but "that they would see that it was properly investigated." Their representation that they would see that Mr. McQueary's report was properly investigated is the egregious misrepresentation.

The evidence established that not only was the matter not properly investigated, it was not investigated at all, notwithstanding General Counsel Courtney's advice to Mr. Schultz of February 11, 2001 to report it to DPW. As

Mr. Harmon's and Mr. Sassano's testimony prove, the matter was never reported, much less investigated by DPW or any police. And indeed, emails of February 12, 2001 from Harmon to Schultz (Pl. Ex. 8)³ and among Messrs. Curley, Schultz and Spanier of February 27-28, 2001, (Pl. Ex. 10), confirm that Curley and Schultz's intent was to avoid a proper investigation. And with all of its vast resources, the University has been unable to produce even a scintilla of evidence that any investigation occurred.

Further, it was quite foreseeable that the failure to have this matter properly investigated would come back to haunt all connected with it. Former President Spanier stated as such in his email of February 27, 2001, Plaintiff's Exhibit 10 – "The only downside for us is if the message isn't heard and acted upon, and **we then become vulnerable for not having reported it.**" (emphasis added).

Defendant also challenges justifiable reliance. But Plaintiff testified that he knew that that Mr. Schultz oversaw the Penn State University police department. (NT 10/21/16, PM, p. 178). He also knew and trusted Athletic Director Curley. (NT 10/24/15, AM, p. 96). Therefore, he quite justifiably relied upon the representation that Curley and Schultz that they would see the matter was properly investigated. *Id.* at 96-97. The Plaintiff's father's follow up with Mr. Schultz (in the presence of Dr. Dranov) seemed to confirm a careful investigation. (10/24/16, AM, p. 95).

³ Exhibits entered by the Plaintiff at trial will be referred to herein as "Pl. Ex. ____".

Defendant argues that the reliance was not justifiable because a few weeks later Curley and Schultz told the Plaintiff that Sandusky would be barred from bringing children into the football facility and the Second Mile had been contacted. (Def. Brf., p. 28). However, those statements did not indicate a proper investigation had not been conducted, or was not ongoing. Indeed, from a layperson's standpoint, a proper investigation against icon Jerry Sandusky could have resulted in a law enforcement decision of not enough evidence to prosecute (as the Centre County District Attorney decided in 1998).

Mr. McQueary did not discover that not only was there no proper investigation, but there was no investigation at all until he read the Freeh Report sometime after it was issued on July 12, 2012. (NT 10/24/16 AM, p. 97).

And with respect to the University's argument that the misrepresentation by Curley and Schultz did not harm the Plaintiff, the very first Defense Exhibit, Defendant's Exhibit 35, contained an email accusing Mr. McQueary of being part of the cover up, and an intent to post same on the business' website. Other emails accused him of being Sandusky's "buddy". (Def. Ex. 23, pp. PSU000438, PSU000200). Mr. McQueary who justifiably relied upon the misrepresentation of Curley and Schultz, was unjustly accused of being part of the cover up upon public disclosure there was no investigation.

The Defendant seeks solace in Mr. McQueary's concern when he found out Curley was going to be charged. But again, in the Fall of 2011, this

was a time when he still was under the belief Curley and Schultz had taken appropriate action and that a proper investigation had been conducted.

Lastly, the Defendant argued in its brief, that the statute of limitations had lapsed. In its proposed points for charge, the Defendant did not propose any points for charge on the statute of limitations. Accordingly, this constituted a waiver of any statute of limitations defense for trial purposes. More importantly, as is evidenced by the testimony, Mr. McQueary did not have reason to know that no investigation at all had been conducted until he read the Freeh Report in July 2012.

C. President Spanier's Statement was not an opinion. Further, assuming arguendo it was an opinion, it was one that may have reasonably been understood to imply the existence of undisclosed defamatory facts justifying the opinion.

In its Opinion of April 13, 2015 dismissing the Defendant's preliminary objections, the Court properly concluded that the Spanier Statement was capable of defamatory meaning. As the Court held, reviewing the Spanier Statement in context that the charges against Curley and Schultz were groundless, "one cannot help but deduce that McQueary's contradictory testimony is untruthful", (p. 3, Opinion issued April 13, 2013).

Defendant argues that the Spanier Statement was merely an opinion that, "without more does not create a cause of action" for defamation." (Def. Brf., p. 35). Of course, Penn State totally ignores the "without more," which in this case is the context of President Spanier's Statement. The Statement begins with the sentence: "The allegations about a former coach are troubling, and it is appropriate that they be investigated thoroughly." There is

no such parallel statement concerning the presentments against Messrs. Curley and Schultz. President Spanier did not say that the presentments against Curley and Schultz were troubling; nor did he say that it is appropriate that the presentments against Curley and Schultz be investigated thoroughly. On the contrary, what he said was that "I am confident that the record will show that these charges are groundless and that they conducted themselves professionally and appropriately."

The charges against Curley and Schultz **at that time** in 2011, were perjury and failure to report child abuse.⁴ President Spanier admitted that at the time he issued this statement on November 5, 2011, he did not even know what the charges were. (NT 10/20/16 AM). So, he was making a statement that the charges were groundless without even knowing what the charges entailed. However, anybody reading this statement would naturally conclude, as President Spanier conceded, that the only way that the charges could be groundless as if Mike McQueary were lying about what he told Curley and Schultz. (NT 10/20/16, PM, p. 43). Spanier's Statement was clearly defamatory of Mike McQueary, because countless people reading it "could not help but deduce that McQueary's contradictory testimony is untruthful." (Op. 4/13/13, p. 3).

President Spanier's Statement that the charges were groundless was not an expression of opinion. And even assuming arguendo it could be so interpreted, it would have been an opinion reasonably understood to imply the

⁴ See, Commonwealth v. Curley, Dauphin County No. 5165 CR 2011 and Commonwealth v. Schultz, Dauphin County 5164 CR 2011.

existence of undisclosed defamatory facts causing Spanier to utter such a statement.

Further, in the last analysis, the Court gave instructions to the jury that essentially tracked Suggested Jury Instruction 17.150 concerning opinion.

D. The compensatory and punitive damages awarded by the jury are proper and supported by the evidence.

The Court properly instructed the jury that the award of damages for defamation and misrepresentation must “not be speculative.” (NT 10/27/16, p. 138). On multiple occasions, the Court advised the jury that there must be some “nexus,” “some connection between the amount of compensatory damages and/or punitive damages” such that “it’s not just a number plucked out of thin air.” (NT 10/27/16, pp. 138, 146, 152, 154). Moreover, the Court reminded the jury that it had “heard the testimony of the experts,” and “based on this credible evidence, what level of harm do [you] assess is the appropriate level of harm and/or damages based on that.” (NT 10/27/16, p. 138, 154). To be sure, the Court instructed the jury at length concerning the determination of compensatory (including special) versus punitive damages for both defamation and intentional misrepresentation, going so far as to compare and contrast the damages for clarification. (NT 10/27/16, pp. 139, 142, 146, 152, 153, 154).

The Court instructed the jury on the compensatory damages for defamation:

"If you find that the defendant is liable to the plaintiff, you must find an amount of money damages you believe will fairly and adequately compensate him for both the physical and financial injury he has sustained as a result of the occurrence. The amount you award today must compensate the plaintiff completely for damages sustained in the past as well as damages the plaintiff will sustain in the future. So you're looking from the date of the alleged defamatory article through today's date – again, if you get there."

(NT 10/27/16, p. 137). The Court instructed the jury on punitive damages for defamation as follows:

"You may also award punitive damages against the Pennsylvania State University if you find the actions of Mr. Curley or Mr. Schultz or Dr. Spanier were, first of all, outrageous; second, occurred during and within the scope of their duties. . . and third, they were not committed to satisfy either Mr. Curley and Mr. Schultz or Mr. Spanier's personal ill will or malice, but instead were committed with the intent to further the University's interest."

(NT 10/27/16, p. 142-143).

As for the tort of intentional misrepresentation, the jury then received instructions as follows:

"The first question is, if you find liability under misrepresentation, and I'm not suggesting that you find it, but if you do, you go back and you say what are the appropriate compensatory damages? And again, what you ask yourself is what is the actual harm to Mr. McQueary's reputation. . . here, he has to prove damages. In other words, he has to have presented evidence that would convince you that he suffered the type of harm that he is asking for. . ."

(NT 10/27/16, p. 152-153). The Court instructed the jury on punitive damages for intentional misrepresentation properly as follows: "the analysis is strictly the same, whether the conduct was outrageous, whether the type of harm he suffered was intended to reasonably anticipated, and that the intent of

the punitive damage award is to punish or deter conduct. . .” (NT 10/27/16, pp. 153-154).

The jury, charged and instructed appropriately, understood the difference between the torts of defamation and misrepresentation and compensatory and punitive damages, as evidenced by the **zero-dollar** punitive award for the tort of defamation, and the **five-million-dollar** punitive award for the tort of misrepresentation. (NT 10/27/16, pp. 180-181). There can be no doubt that the jury distinguished between the two actions in finding that Mr. McQueary did not meet his burden to prove punitive damages on the tort of defamation, whereas he did meet his burden to prove entitlement to punitive damages on the tort of intentional misrepresentation. Concerning the award for compensatory damages, it is not surprising or indeed, unwarranted, that the award for the separate torts was the same.

The jury heard the testimony of Penn State’s expert witness, Samuel Kursh, (NT 10/26/16, AM, pp. 60-98), and the testimony of Mr. McQueary’s expert witness, James Starvos, (NT 10/25/16, AM, pp. 4-56). Mr. Kursh provided three scenarios ranging from a loss of \$0 to \$589,950. (NT 10/26/16, P. 68, Def. Ex. 111). Mr. Starvos provided the jury with eight different hypothetical wage loss scenarios ranging from \$1,924,486 to \$7,609,131. (NT 10/25/16, AM, p. 55; Pl. Ex. 81). The jury found that Mr. McQueary was entitled to \$1.15 million in compensatory damages separately for the defamation and intentional misrepresentation claims – a finding well

below the supported evidence of record, including the Plaintiff's testimony about emotional harm and suffering.

Penn State misapplies the law concerning duplicative damages. (Br. of Def., p. 40). This is not a situation where the plaintiff was awarded damages "twice for the same injury," *Id.*, but instead, Mr. McQueary was damaged by two separate actions of Penn State administrators on at least two separate occasions! Logically, had Penn State only intentionally misrepresented its actions to Mr. McQueary in 2001 that it was going to see that a proper investigation was conducted, Mr. McQueary would only be able to recover on that tort theory alone. Instead, Penn State doubled down and defamed Mr. McQueary by publishing the statement on November 5, 2011. These are two separation actions that resulted in injury commencing around the same time.

It seems almost unnecessary to address Penn State's second argument concerning the lack of support in the record concerning the jury's award of compensatory and punitive damages considering the eight days of testimony. (Def. Br. p. 40). Whether Mr. McQueary had a future at Penn State after Joe Paterno's passing is immaterial as the issue of compensatory damages relates not just to McQueary's employment at Penn State, but also at any institution! There was significant testimony on the record evidencing McQueary's repeated attempts to secure employment.

It is well established that a cause of action for misrepresentation can support a claim for punitive damages, and the decision of whether and how

much to award in punitive damages is in the discretion of the fact-finder. See, McClellan v. Health Maintenance Org. of Pa., 604 A.2d 1053, 1061 (Pa. Super. 1992). Pennsylvania has adopted the rule under Section 908 of the Restatement (Second) of Torts, which defines punitive damages as: “damages, other than compensatory or nominal damages, awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future.” Hutchinson ex rel. Hutchinson v. Luddy, 870 A.2d 766, 770 (Pa. 2005)(quoting Restatement (Second) of Torts, §908(1)). Pennsylvania Courts have also stressed that “the act, or failure to act, must be intentional, reckless or malicious.” Feld v. Merriam, 485 A.2d 742, 748 (Pa. 1984).

In Hutchinson ex rel., the Pennsylvania Supreme Court considered the requisite statement of mind constituting reckless indifference in a tort claim for negligent retention and supervision. Hutchinson ex rel., 870 A.2d at 768-767. The Court found that:

“a punitive damages claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk.”

Id. at 772 (citing Martin v. Johns-Manville Corp., 494 A.2d 1088, 1097-1098 (Pa. 1985) (plurality opinion)). The Court elaborated that the fact that a cause of action was based in negligence, “the penal and deterrent purpose served by an award of punitive damages is furthered when the outrageous conduct

occurs in a case sounding in negligence no less than when an intentional tort is at issue.”

Here, the Court properly instructed the jury that outrageous conduct is necessary to warrant the issuance of punitive damages. (NT 10/27/16, pp. 143-144).⁵ There was overwhelming evidence on the record that that the actions of Messrs. Curley and Schultz in intentionally misrepresenting to Mr. McQueary that a proper investigation would occur was outrageous. Indeed, it is common sense that lying that a proper investigation would be performed to a good faith reporter of sexual abuse of a minor is outrageous.

E. The Defendant was not unfairly prejudiced by denying the motion to stay this trial after more than 4 years litigation.

The issue with respect to granting a stay of this proceeding has been briefed twice before and Plaintiff believes there is little need to reiterate his arguments previously made. However, quite objectionable is the University’s unverified allegation in its Brief that the stay was necessary “to permit the University to speak to key witnesses and produce those witnesses at trial.” (Def. Brf., p. 47).

Without verification, Defendant baldly alleges that

“The University was **denied access** to two key witnesses whose insight **could have helped** develop defenses and whose support and corroboration **might have aided** the presentation of the University’s defenses. Because the facts and claims are intrinsically intertwined with the factual

⁵ The Defendant argues that the Court instructed the jury that “intentionality suffices to establish the imposition of punitive damage.” (Br. of Def. pp. 44-45). We see no reference to “intentionality,” and instead the Court explains that conduct is “outrageous when it is malicious, wanton, willful, or oppressive, or shows reckless indifference to the interest of others.” (NT 10/27/16, p. 143).

allegation in the underlying criminal charges against Schultz and Curley, the University was severely constrained during discovery and at trial.” (Def. Brf., pp. 56-57). (emphasis added).

As was detailed on page 3 of Plaintiff’s Response to Pennsylvania State University’s Second Motion to Stay Proceedings, filed on June 23, 2016, as of that brief filing date:

“the Defendant has not made any effort to communicate to, or otherwise obtain information from, Messrs. Schultz and Curley, or any of their agents or attorneys, concerning or relating to the allegations made by the Plaintiff”

Nor, as of May 31, 2016, had the Defendant made any inquiry to former PSU outside General Counsel Courtney as to the advice which he had given Mr. Schultz on February 11, 2001, “to report to DPW”. Id. The Defendant does not claim that at any time it made any effort to contact either Messrs. Curley and Schultz, or their attorneys, to obtain information from either of them as to what each might testify to with respect to Plaintiff report to them in February of 2001.

The fact that Messrs. Curley and Schultz have taken the Fifth Amendment with respect to legal proceedings and depositions does not mean that had PSU approached them personally, they would have refused to communicate with PSU. But more importantly, if PSU had approached their attorneys, their attorneys could have provided information to PSU as to what they believe their clients would testify to once the threat of self-incrimination might be removed. Penn State does not contest that it did not even approach

Mr. Farrell or Ms. Rodriguez for information as to what their clients would testify to.

So, at the end of the day the Defendant is merely speculating that if at some point time in the future Curley and Schultz would be able to testify without Fifth Amendment consequences, at most they "could have helped develop defenses" which "might have aided" the University's defenses. The Defendant gives no basis for why it believes Messrs. Curley and Schultz would have contradicted the Plaintiff's testimony, much less that they could have done so credibly, in light of the substantial evidence to the contrary.

F. The Court's instruction on adverse inference was in accord with the law.

The issue of adverse inference to be drawn from the invocation of the Fifth Amendment by both Messrs. Curley and Schultz has been the subject of dispute between parties for quite some time.

In its Brief in Support of its Motion for Post-Trial Relief, the Defendant begins its argument by referring to three cases concerning the "missing witness" rule. (Def. Brf., pp. 65-66). Those cases hold that the adverse inference for a party's failure to produce a witness cannot be utilized where that witness was available for production by both parties. The adverse inference in this case is not based upon the missing witness rule. Further, the Plaintiff did subpoena Messrs. Curley and Schultz, (See Subpoenas and Accepted Subpoenas attached as Exhibits 4 and 5 hereto). A stipulation was entered between the parties concerning Messrs. Schultz and Curley, having been subpoenaed to testify by the Plaintiff, providing that with respect to that

testimony, the parties sought to avoid the necessity of Messrs. Curley and Schultz coming to court and publicly taking the Fifth Amendment.

Then Defendant's Brief goes on to cite inapposite non-Pennsylvania state court precedent to support its argument. The Defendant conspicuously omits reference to the Pennsylvania Supreme Court decision in Bailets v. Pennsylvania Turnpike Commission, 123 A.3d 300 (Pa. 2015). In Bailets, which was a Whistleblower case, the Turnpike Commission's

"chief operating officer George Hatalowich asserted his Fifth Amendment right to silence when specifically asked about appellant's termination during his deposition; appellant notes such an invocation supports an adverse inference in a civil case." 123 A.2d at 305.

In Bailets, the Supreme Court held that, Hatalowich's invocation of the Fifth Amendment "is relevant and admissible in this civil case." 123 A.3d at 309, n. 7. The Pennsylvania Supreme Court in Bailets cited Baxter v. Palmigiano, 425 U.S. 308 (1976) and RAD Services v. Aetna Cas. & Sur. Co., 808 F.2d 271, 275 (3rd Cir. 1986). Defendant's Brief conspicuously ignores this Pennsylvania Supreme Court precedent, as well as the Baxter v. Palmigiano and RAD Services cases relied on by our Supreme Court.

Finally, with respect to the Defendant's argument concerning adverse inference, it is worth noting that Defendant states that

"University continues to pay their [Curley and Schultz's] legal fees. It does not do so to curry favor with Curley and Schultz. It does not do so as *quid pro quo* for their silence. It does not do so to induce Curley and Schultz to provide them with information on how they would testify. Rather, it does so to honor its prior agreements with Curley and Schultz."

(Def. Brf., p. 70). There is no evidence of record in this case, nor is Plaintiff's Counsel aware of any evidence, as to any prior agreements with Curley and Schultz pertaining to provision by the Defendant to pay their legal fees with respect to the criminal charges against them, or any motives the Defendant may have in continuing to pay their very substantial legal fees over the past five plus years.

G. Mike McQueary is not a Public Figure or Limited Purpose Public Figure.

Plaintiff, Michael McQueary, is not a limited-purpose public figure nor is he an all-purpose public figure for purposes of his defamation claim. Mr. McQueary is a private figure and the proper burden of proof was applied.

It is well established that a plaintiff is not a public figure when he is "dragged unwillingly into the controversy." Wolston v. Reader's Digest Ass'n, Inc. 443 U.S. 157, 166 (1979), see also Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974). The burden of proof is on the defendant to prove that a plaintiff is a limited-purpose public figure. Rutt v. Bethlehem's Globe Pub'g Co., 484 A.2d 72, 76 (Pa. Super. 1984).

In Wolston, the plaintiff, who pled guilty to contempt of court after he failed to appear before a grand jury called for the investigation of Soviet espionage in the United States, was not a public figure even though his actions and the issue attracted media attention. Wolston, 443 U.S. at 166. The Supreme Court held that while Plaintiff's actions were:

"newsworthy. . . the simple fact that these events attracted media attention . . . is not conclusive of the public-figure issue. A private individual is not automatically transformed

into a public figure just by becoming involved in or associated with a matter that attracts public attention.”

Id. at 167. The plaintiff in Wolston “never discussed this matter with the press and limited his involvement to that necessary to defend himself against the contempt charge.” Id. In Gertz, the plaintiff, an attorney, was found not to be public figure “even though he voluntarily associated himself with a case that was certain to receive extensive media exposure.” Id. discussion of Gertz, supra.

In Weber v. Lancaster Newspapers, Inc., 878 A.2d 63, 76 (Pa. Super. 2005), the plaintiff, the domestic partner of an acting police chief and counsel to the borough, was neither a public figure nor limited purpose public figure in a defamation suit following the filing of a PFA that identified the plaintiff as a harasser (though did not name her as a defendant). Weber, 878 A.2d at 76-77. The Superior Court relied on the fact that a third party turned “these issues into a matter of public concern by filing a PFA petition against the chief of police. Of course, [the plaintiff] had no control over the fact that she was mentioned in the petition.” Id. at 77. “Likewise, she had no control over the fact that this petition generated significant media concern.” Id. Finally, the court noted that the plaintiff never “took any action to inject herself further into the controversy after it flared up. If anything, the newspaper defendants turned [plaintiff] into a public figure by their newspaper reports.” Id.

Here, the Plaintiff was called to testify before a grand jury, at preliminary hearings, and at criminal trial. He never discussed his testimony with the press and, even though the underlying matter attracted media

attention, he limited his involvement to only the judicial testimony. He had no control over media reports made concerning his testimony, and that his testimony created significant media concern. Accordingly, the Defendant fails to meet its burden of proof. The Plaintiff is not a limited-purpose public figure.

The Defendant cites to the Lawrence County case Sarandrea v. Sharon Herald Co., 30 Pa. D&C 4th 199 (C.P. Lawrence 1996), to support its claim that "Courts have found athletic coaches to be limited-purpose public figures." (See, PSU Br., p. 74). In Sarandrea, the high school football coach plaintiff alleged defamation for two articles and a poster that were published by defendant newspaper concerning an investigation into NCAA violations for illegal recruiting. Id. at 204. The issue in Sarandrea was the newspaper's articles regarding plaintiff coach's recruiting tactics which were published **after** plaintiff **coach** was willingly **interviewed** by the newspaper concerning his coaching and recruiting. Those facts are easily distinguishable from the facts here where Mr. McQueary has not discussed his testimony with the press, and where the underlying issue does not involve Mr. McQueary's coaching.

The Defendant also raises the argument that Mr. McQueary qualifies as an all-purpose public figure because he was recognized for playing intercollegiate football and was hired as an assistant coach. This argument must fail. One of the keynotes of the Coach Paterno era, and indeed a keynote of the entirety of the football program at Penn State, was the de-emphasis on personal recognition and notoriety of players. This includes "the tradition that

represented Penn State for 125 years” that no names would be on the back of players’ jerseys.⁶

Accordingly, the claims raised concerning Plaintiff’s public-figure status are baseless. Mr. McQueary is neither a limited-purpose nor all-purpose public figure.

H. Public concern is not the test adopted in Pennsylvania to determine burden of proof in defamation claims.

Without any authority to support its position, the Defendant baldly states that the November 2011 statement by Penn State concerning Messrs. Curley and Schultz “was clearly a matter of public concern.” (Def. Brf., pp. 76-77). Whether the ultimate “groundlessness” of the charges against Curley and Schultz on November 5, 2011 was “clearly a matter of public concern” is unproven. Even assuming arguendo that it was, the Pennsylvania Supreme Court in American Future Systems v. Better Business Bureau of Eastern Pennsylvania, 923 A.2d 389 (Pa. 2007) held that:

“Any focus on whether the speech is of public or private concern has been replaced by an inquiry into whether the plaintiff is a public or private figure.”

(citations omitted). 923 A.2d at 399.

In American Future Systems, the Supreme Court reviewed the argument from the defendant that where an issue is one of public concern, the proper standard is “actual malice” *Id.* at 398-399. However, the argument was unsuccessful as the Supreme Court found:

⁶ Penn State Football to Remove Names from Jerseys, GoPSUSports.com, July 16, 2015 <<http://www.gopsusports.com/sports/m-footbl/spec-rel/071615aaa.html>> (accessed October 16, 2016).

“States are free to allow a private-figure plaintiff to recover by establishing that the defendant acted negligently rather than maliciously. The Superior Court has adopted this test . . . Indeed, we do find this to be the appropriate standard relative to a private-figure plaintiff for the reasons stated above pertaining to the Pennsylvania Constitution’s protections in the area of reputational interests, and in view of our understanding of the United States Supreme Court’s present interpretation of the First Amendment.”

Id. at 400 (citing Rutt v. Bethlehem’s Globe Pub’g Co., 484 A.2d 72, 83 (Pa.Super. 1984)).

Whether or not the groundlessness of the charges against Curley and Schultz were a matter of public concern is of no consequence under Pennsylvania Supreme Court precedent. The Court properly found that Mr. McQueary was a private figure, and instructed the jury as to the proper burden of proof. Further, even if Penn State relied on good law concerning public concern, the Plaintiff established malice in the publication of Spanier’s Statement when neither Spanier, nor anybody else who participated in the drafting of the statement, had read the presentments.

I. The Court did not prejudice the Defendant in its even handed decision concerning publication of news articles.

The Defendant complains that at certain points of the trial, the Trial Court limited or prohibited the publication of certain news articles. However, the Defendant neglects to mention that several news articles offered by the Defendant were published to the jury. For example, in the morning session of October 24, 2016, the following Defense Exhibit news articles were published to the jury: D68 (NT 6), D69 (NT 8), D73 (NT 10), D76 (NT 11), D70 (NT 22), and pp. 5-6 of D74 (NT 23).

The Trial Court has the prerogative, if not the duty, to limit repetitive evidence. By the eighth day of the trial, the Trial Court properly observed that “if this jury hasn’t figured out that the news media is accusing [McQueary] of not being a man,” they never will. The Trial Court allowed the publication of more than a sufficient number of news articles offered by the Defendant to make out its defense.

J. The Court did not err in its colloquy with counsel concerning the attorney-client privilege.

Defendant complains about a colloquy with counsel on the afternoon of the first day of trial involving attorney-client privilege. Omitted from the Defendant’s Brief is that the attorney-client privilege had been the source of a discovery dispute, ultimately resolved by the Court following a hearing thereon. The Defendant complains about a question asked by the Court, out of the hearing of the jury, concerning inference, which ultimately was inconsequential because Plaintiff’s counsel framed his questioning to avoid any attorney-client privilege issue. (NT 10/17/16, PM, pp. 125-126).

Next, Defendant complains about a question asked of Dr. Ericson, out of the jury’s presence, (NT 10/24/16, AM, p. 135), concerning the Whistleblower Claim. Thus, this complaint by Defendant is not germane to Counts II and III, the counts at issue here. Further, Defendant did not object when Dr. Ericson was initially queried about getting his understanding of the Whistleblower Law from legal counsel. (NT 10/24/16, AM, p. 137). Then, after the cat was out of the bag that Dr. Ericson was relying on legal counsel for Whistleblower Law advice, he was asked if he was taking a neutral stance

concerning Mr. McQueary on advice of counsel. After initially raising the attorney-client privilege, Defendant withdrew the objection and Dr. Ericson answer the question.

Again, all of this occurred out of the jury's presence, was part of the Whistleblower case, and the jury was provided with no instruction about adverse inferences from attorney-client privilege.

K. The Court Properly Refused the Defendant's Request for Special Interrogatories.

Penn State was not entitled to special interrogatories because the various issues and arguments regarding Plaintiff's defamation and misrepresentation were set forth clearly in the Court's instructions. It is well established in Pennsylvania that:

"A trial judge . . . may grant or refuse a request for special findings on the basis of whether such would add to the logical and reasonable understanding of the issue. We will not disturb the trial court's decision to grant or refuse the request absent an abuse of discretion."

Century 21 Heritage Realty, Inc. v. Bair, 563 A.2d 114, 116 (Pa. Super. 1989).

"It is only when the charge as a whole is inadequate or not clear or has a tendency to mislead or confuse rather than clarify a material issue that error in a charge will be found to be a sufficient basis for the award of a new trial."

Smith v. Morrison, 47 A.3d 131, 134-34 (Pa. Super. 2012), appeal denied, 618 Pa. 690, 57 A.3d 71 (2012); Fisch's Parking, Inc. v. Independence Hall Parking, Inc., 638 A.2d 217, 274 (Pa. Super. 1994).

However, where the jury instructions present the jury with all of the considerations necessary to determine an issue, the "instructions were

complete, guided the jury's deliberations very clearly, and there was no need for special findings on these issues." Fisch's Parking, Inc., 638 A.2d at 223-224.

In Fisch's Parking, Inc., the Court provided the jury in its instructions with all of the considerations the jury needed to review to determine whether a contractual agreement was terminated. Id. The verdict sheet asked the jury to decide only: "Do you find that a consulting fee agreement existed between the plaintiff and defendant?" Fisch's Parking, Inc., 638 A.2d at 223. The appellant unsuccessfully argued that the verdict sheet "precluded the jury from addressing" the issue of how the contract was terminated because the court found that "the various issues and arguments regarding when and how the consulting agreement would be terminated were set forth clearly in the court's instructions." Id.

Here, the Court issued very specific jury instructions that walked the jury through the elements of defamation and misrepresentation, outlined the parties' arguments fairly, and guided the jury's deliberations in a step-by-step manner. (NT 10/27/17 pp. 108-154). There was no need for special findings on the elements of defamation and misrepresentation, and the Court properly refused to issue the 20 questions contained in "Defendant's Proposed Verdict Slip and Special Interrogatories to the Jury" as allowing them would not have added to the logical and reasonable understanding of the issue.

Penn State relies upon a statement made by the Court on August 15, 2016, before hearing any testimony at trial, in its Opinion denying Penn

State's second Motion to stay the proceedings. (Penn State Br. p. 96; Order and Opinion, 8/15/16, p. 5). As a matter of first concern, the Court's statement concerns the misrepresentation count alone – not the defamation count. (Order and Opinion, 8/15/16, p. 5). Furthermore, the statement was made two months before the beginning of trial and without the benefit of having heard the testimony. Indeed, following over a week of testimony, the Court discussed the simplicity of the issues facing the jury:

“MS. CONRAD: Your Honor, any special interrogatories or verdict slip going out with the jury?

THE COURT: If you want to submit a proposed verdict slip, go ahead. You know, it's pretty straightforward.

MS. CONRAD: Okay. Can we submit that tomorrow morning at 8:15, sir?

THE COURT: You can submit that at 8:15 as long as you have a copy. But I mean, you know, did the Spanier statement defame Mr. McQueary? Yes or no. And depending on that, you get to answer a damage question and then same thing with the misrepresentation. I mean, I don't see it as rocket science and I'm not going to be going down each individual element, do you find this element, do you find that element, you know, I don't think we need to do that.”

(NT 10/26/16, p. 62-63). The Defendant commented no further on the Court's summation of the instructions for the jury.

The Defendant took the simple issues of defamation and misrepresentation and parsed them out to 20 confusing and misleading questions that in some cases contained incorrect statements of the law. Defendant sought to ask the jury whether the subject of the Spanier statement was a matter of “public concern”, which is not the applicable standard in

Pennsylvania for determining the burden of proof in defamation cases. See American Future Sys., 923 A.2d at 399. In Pennsylvania, the burden of proof in defamation claims is whether the plaintiff is a public or private figure – a question of law for the court, not a question of fact for the jury. Id. at 395. U.S. Healthcare Inc. v. Blue Cross Greater Philadelphia, 898 F.2d 914, 938 (3rd Cir. 1990) (See, discussion supra.). The Defendant wanted the jury to determine whether McQueary proved that the Spanier statement was false – again, an issue not properly before the jury as the Court found McQueary to be a private figure. (See Def. Brf. Ex. K, p. 2, Question 3). Proposed Question 10 asked whether the Spanier statement was published with “actual malice” – once again, the wrong burden of proof. (See Def. Brf., Ex. K, p. 3, Question 10). (See, Hepps v. Philadelphia Newspapers, Inc., 506 Pa. 304, 323 (1984), Rev’d on other grounds, 475 U.S. 767 (1986) (quoting the Restatement (Second) of Torts to differentiate between the “actual malice” burden for public figure plaintiffs, and less “negligence” burden for private figure plaintiffs in defamation actions)).

The Court properly rejected the proposed special interrogatories, opting in the alternative to provide comprehensive instructions. The Defendant points to a concern that the two separate torts of defamation and misrepresentation were “interwoven” that requiring special interrogatories. (Def. Brf., p. 100). The Defendant fails to recognize that the jury – by nature of its award of punitive damages on misrepresentation but **not** on defamation – clearly understood the difference between the two actions. The Defendant’s

unhappiness with the jury's verdict is palpable, but fault lies not with the Court's logical and reasonable instructions.

L. The Defendant's allegation of judicial bias is factually and legally without merit.

On the basis of totally inapposite precedent, Penn State alleges that the trial judge, who ruled over Plaintiff's objection during jury selection that employees of Penn State were eligible to serve on the jury in this case, was biased against Penn State. And in fact, as a result of that ruling, 6 employees of Penn State were among the 20 prospective jurors from which the final jury was selected, with 2 employees of Penn State actually serving on the jury. Thus, it is truly astounding that having been granted such an overriding favorable ruling from the trial judge that PSU would have the audacity to claim judicial bias against the Defendant.

From start to finish, the Trial Court manifested impartiality and lack of bias against the Defendant. On Friday, September 30, 2016, Defendant requested an extension to file its Pre-Trial Memorandum, which was due on October 3, 2016, (PPT 6), which the Court granted. Two days before the trial began, the trial judge directed Plaintiff's counsel, to identify depositions to be used "so that Ms. Conrad can be prepared." (PPT 7). While to be sure, during the trial not every ruling was in favor of Penn State, there were also plenty of rulings against the Plaintiff or over Plaintiff's objection. After the jury returned its verdict, the Court extended assistance by asking Defense Counsel if she wanted the jury polled. (NT 10/27/16, p. 182).

Defendant conceded that to prevail on the most serious charge of judicial bias, “[T]he record must **clearly show** prejudice, bias, capricious disbelief or prejudgment.” (Defendant’s Post-Trial Motion Brief, p. 102) (emphasis added). Then, ignoring this mandate, the Defendant relies on selective quotes from totally inapposite cases concerning alleged judicial bias.

Defendant cited In re: Adoption of L.J.B., 18 A.3d 1098, 1111 (Pa. 2011). However, In re: Adoption of L.J.B., the trial judge among other things “permitted *ex parte* communications from Father” (18 A.3d 1111), advised the Father to have the Mother jailed for failure to pay child support and that he seek termination of the Mother parental rights. *Id.* Even with all of that, the Supreme Court held that such was merely an “appearance of impropriety.” *Id.* at 1113.

Similarly, in Joseph v. Scranton Times, 987 A.2d 633 (Pa. 2009), cited by the Defendant on pages 102 and 103 of its Brief, there was a finding that the President Judge had departed from normal procedural and hand selected the trial judge to preside over the trial. 987 A.2d at 635. In addition, the President Judge and the trial judge “were confederates in what appears to have been . . . a long-term criminal conspiracy.” *Id.* Further, the President Judge had carried on a long-term relationship with a convicted felon, who was identified with the Plaintiff in the newspaper articles which were the subject of the defamation lawsuit. 987 A.2d 636. Again, even this outrageous conduct only rose to the level of an appearance of judicial impropriety. *Id.* at 635.

In the case at bar, there is nothing faintly resembling *ex parte* communications, or appearance of case fixing. The Defendant harps on the mandated reporter instruction, but there is no precedent under Pennsylvania law that a jury instruction is evidence of judicial bias. The Defendant cites two instances during eight days of testimony where the Court directed questions to witnesses in the jury's presence.⁷ The first instance was on the first day of the trial, when the Court asked former state prosecutor to explain any input a grand jury presiding judge has over the presentment. (10/17/16, p. 113, lines 6-22). The second instance cited by the Defendant were a few questions asked of former General Counsel Baldwin by the Court concerning the existence of any human resources policies pertaining to the employment status of a person on administrative leave. (NT 10/18/16, PM, p. 141-142). It is extremely difficult to conceive of how these questions signal bias in favor of the Plaintiff, or against the Defendant; nor does the University explain how those questions evidence bias.

The Defendant also alleges disparate treatment with respect to the handling of News Articles, when in fact the Court treated the news articles in an even handed manner (E.g., NT 10/24/16, AM, p. 6-11, 22-26), see also Plaintiff's request for exhibits to be given to the jurors for their deliberations. (PPT 8), which was denied. The Defendant converts questions asked by the Court, out of the presence of the jury, into threats to provide an adverse inference instruction concerning attorney-client privilege, which was never

⁷ The Court was also sitting as a trier of fact in the Whistleblower case.

given, and the Court's decision not to use multiple special interrogatories as reflecting bias.

Again, the Defendant comes nowhere near meeting the requisite requirement that the "record must **clearly show** prejudice, bias, capricious disbelief or prejudgment."

Conclusion

On pages 11-13 of its Brief, the Defendant sets forth the rigorous standards upon which a trial court may award judgment NOV, grant a new trial, grant a request for remittitur and molding the verdict. The Defendant has not met these rigorous standards and therefore its Motion for Post-Trial Relief must be denied.

Respectfully submitted,

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DOMESTIC RELATIONS (23 PA.C.S.) - AMEND CODIFICATION**Act of Dec. 19, 1990, P.L. 1240, No. 206****Cl. 23**Session of 1990
No. 1990-206**AN ACT**

HB 1023

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, adding provisions relating to domestic relations; making conforming amendments to Titles 18 and 42; and repealing certain acts and parts of acts supplied by the act or otherwise obsolete.

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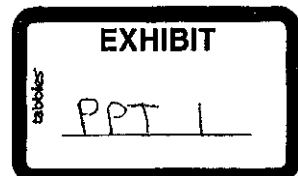
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- § 6332. Establishment of Statewide toll-free telephone number.
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- § 6334. Disposition of complaints received.
- § 6335. Information in pending complaint file.
- § 6336. Information in Statewide central register.
- § 6337. Disposition of unfounded reports.
- § 6338. Disposition of founded and indicated reports.
- § 6339. Confidentiality of reports.
- § 6340. Release of information in confidential reports.
- § 6341. Amendment, sealing or expungement of information.
- § 6342. Studies of data in records.

- § 6343. Investigating performance of child protective service.
- § 6344. Information relating to prospective child-care personnel.
- § 6345. Audits by Attorney General.
- § 6346. Cooperation of other agencies.
- § 6347. Annual reports to Governor and General Assembly.
- § 6348. Regulations.
- § 6349. Penalties.

Subchapter D. Organization and Responsibilities of Child Protective Service

- § 6361. Organization of child protective service.
- § 6362. Responsibilities of child protective service.
- § 6363. Local plan for child protective services.
- § 6364. Purchasing services of other agencies.
- § 6365. Services for prevention and treatment of child abuse.
- § 6366. Continuous availability to receive reports.
- § 6367. Reports to department and coroner.
- § 6368. Investigation of reports.
- § 6369. Taking child into protective custody.
- § 6370. Services for protection of child at home or in custody.
- § 6371. Rehabilitative services for child and family.
- § 6372. Protecting well-being of children maintained outside home.

Subchapter E. Miscellaneous Provisions

- § 6381. Evidence in court proceedings.
- § 6382. Guardian ad litem for child in court proceedings.
- § 6383. Education and training.
- § 6384. Legislative oversight.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Part IX of Title 23 of the Pennsylvania Consolidated Statutes is repealed.

Section 2. Title 23 is amended by adding parts, chapters or subchapters to read:

TITLE 23 DOMESTIC RELATIONS

Part

- I. General Provisions
- II. Marriage
- III. Adoption
- IV. Divorce
- V. Support, Property and Contracts
- VI. Children and Minors
- VII. Abuse of Family

PART I GENERAL PROVISIONS

Chapter

- 1. Preliminary Provisions

CHAPTER 1
PRELIMINARY PROVISIONS

Sec.

- 101. Short title of title.
- 102. Definitions.

§ 101. Short title of title.

This title shall be known and may be cited as the Domestic Relations Code.

§ 102. Definitions.

(a) General rule.--Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Clerk of court" or "clerk." The personnel of the office of the prothonotary or clerk of the division of the court having jurisdiction over the matter.

"Court." The court or district justice having jurisdiction over the matter under Title 42 (relating to judiciary and judicial procedure) exercised as provided in Title 42 or as otherwise provided or prescribed by law.

(b) Title 42 definitions.--Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, words and phrases not defined in subsection (a) which are defined in 42 Pa.C.S. § 102 (relating to definitions) when used in this title shall have the meanings given to them in Title 42 unless the context clearly indicates otherwise.

PART II
MARRIAGE

Chapter

- 11. Preliminary Provisions
- 13. Marriage License
- 15. Marriage Ceremony
- 17. Miscellaneous Provisions Relating to Marriage
- 19. Abolition of Actions for Alienation of Affections and Breach of Promise to Marry

CHAPTER 11
PRELIMINARY PROVISIONS

Sec.

- 1101. Short title of part.
- 1102. Definitions.
- 1103. Common-law marriage.
- 1104. Forms.
- 1105. Fees.
- 1106. Records and statistics.

§ 1101. Short title of part.

This part shall be known and may be cited as the Marriage Law.

§ 1102. Definitions.

The following words and phrases when used in this part shall

CHAPTER 63
CHILD PROTECTIVE SERVICES

Subchapter

- A. Preliminary Provisions
- B. Reporting Suspected Child Abuse
- C. Powers and Duties of Department
- D. Organization and Responsibilities of Child Protective Service
- E. Miscellaneous Provisions

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

- 6301. Short title of chapter.
- 6302. Finding and purpose of chapter.
- 6303. Definitions.

§ 6301. Short title of chapter.

This chapter shall be known and may be cited as the Child Protective Services Law.

§ 6302. Finding and purpose of chapter.

(a) Finding.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse and to establish in each county a child protective service capable of investigating such reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the well-being of the child and to preserve and stabilize family life wherever appropriate.

(c) Effect on rights of parents.--This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.

§ 6303. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Child abuse." Serious physical or mental injury which is not explained by the available medical history as being accidental, sexual abuse, sexual exploitation or serious physical neglect of a child under 18 years of age if the injury, abuse or neglect has been caused by the acts or omissions of the child's parents or by a person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent. No child shall be deemed to be physically or mentally abused for the sole reason the child is in good faith being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof or is not provided specified medical treatment in the practice of religious beliefs, or solely on the grounds of environmental factors which are beyond the control of the person responsible for the welfare of the child such as inadequate housing,

furnishings, income, clothing and medical care.

"Child-care services." Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation and drug and alcohol services for children; and any other child-care services which are provided by or subject to approval, licensure, registration or certification by the department or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

"Child protective service." That section of each county children and youth social service agency required to be established by section 6361 (relating to organization of child protective service).

"Cooperation with an investigation." Includes, but is not limited to, a school or school district which permits authorized personnel from the department or child protection services to interview a student while the student is in attendance at school.

"Department." The Department of Public Welfare of the Commonwealth.

"Expunge." To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

"Family members." Spouses, parents and children or other persons related by consanguinity or affinity.

"Founded report." A report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused.

"Indicated report." A report made pursuant to this chapter if an investigation by the child protective service determines that substantial evidence of the alleged abuse exists based on any of the following:

- (1) Available medical evidence.
- (2) The child protective service investigation.
- (3) An admission of the acts of abuse by the parent of the child or person responsible for the welfare of the child.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Sexual abuse." The obscene or pornographic photographing, filming or depiction of children for commercial purposes or the rape, molestation, incest, prostitution or other forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations of the department.

"Subject of the report." Any child reported to the central register of child abuse and a parent, guardian or other responsible person also named in the report.

"Under investigation." A report pursuant to this chapter which is being investigated to determine whether it is "founded," "indicated" or "unfounded."

"Unfounded report." Any report made pursuant to this chapter unless the report is a "founded report" or unless an investigation by the appropriate child protective service determines that the report is an "indicated report."

SUBCHAPTER B
REPORTING SUSPECTED CHILD ABUSE

Sec.

- 6311. Persons required to report suspected child abuse.
- 6312. Persons permitted to report suspected child abuse.
- 6313. Reporting procedure.
- 6314. Photographs and X-rays of child subject to report.
- 6315. Taking child into protective custody.
- 6316. Admission to private and public hospitals.
- 6317. Reporting and postmortem investigation of deaths.
- 6318. Immunity from liability.
- 6319. Penalties for failure to report.

§ 6311. Persons required to report suspected child abuse.

(a) General rule.--Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have reason to believe, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

(b) Enumeration of persons required to report.--Persons required to report under subsection (a) include, but are not limited to, any licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.

(c) Staff members of institutions, etc.--Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.

(d) Civil action for discrimination against person filing report.--Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or

discrimination occurred for appropriate relief. If the court finds that the person is an individual who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, made or caused to be made a report of suspected child abuse and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including, but not limited to, reinstatement with back pay. The department may intervene in any action commenced under this subsection.

§ 6312. Persons permitted to report suspected child abuse.

In addition to those persons and officials required to report suspected child abuse, any person may make such a report if that person has reasonable cause to suspect that a child is an abused child.

§ 6313. Reporting procedure.

(a) General rule.--Reports from persons required to report under section 6311 (relating to persons required to report suspected child abuse) shall be made immediately by telephone and in writing within 48 hours after the oral report.

(b) Oral reports.--Oral reports shall be made to the department pursuant to Subchapter C (relating to powers and duties of department) and may be made to the appropriate child protective service. When oral reports of suspected child abuse are initially received at the child protective service, the child protective service shall, after seeing to the immediate safety of the child and other children in the home, immediately notify the department of the receipt of the report, which is to be held in the pending complaint file as provided in Subchapter C. The initial child abuse report summary shall be supplemented with a written report when a determination is made as to whether a report of suspected child abuse is a founded report, an unfounded report or an indicated report.

(c) Written reports.--Written reports from persons required to report under section 6311 shall be made to the appropriate child protective service in a manner and on forms the department prescribes by regulation. The written reports shall include the following information if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the child.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.
- (5) The name of the person or persons responsible for causing the suspected abuse, if known.
- (6) Family composition.
- (7) The relationship of the suspected perpetrator to the child.
- (8) The source of the report.
- (9) The person making the report and where that person can be reached.
- (10) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
- (11) Any other information which the department may require by regulation.

(d) Failure to confirm oral report.--The failure of a person reporting cases of suspected child abuse to confirm an oral report in writing within 48 hours shall not relieve the child protective service from any duties prescribed by this chapter. In such event, the child protective service shall proceed as if a written report were actually made.

§ 6314. Photographs and X-rays of child subject to report.

A person or official required to report cases of suspected child abuse may take or cause to be taken photographs of the areas of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Medical summaries or reports of the photographs or X-rays taken shall be sent to the child protective service at the time the written report is sent or as soon thereafter as possible. Child protective services shall have access to the actual photographs and X-rays and may obtain them or duplicates of them upon request.

§ 6315. Taking child into protective custody.

(a) General rule.--A child may be taken into protective custody:

(1) As provided by 42 Pa.C.S. § 6324 (relating to taking into custody).

(2) By a physician examining or treating the child or by the director, or a person specifically designated in writing by the director, of any hospital or other medical institution where the child is being treated if protective custody is immediately necessary to protect the child from further serious physical injury, sexual abuse or serious physical neglect.

(b) Duration of custody.--No child may be held in protective custody for more than 24 hours unless the appropriate child protective service is immediately notified that the child has been taken into custody and the child protective service obtains an order from a court of competent jurisdiction permitting the child to be held in custody for a longer period. Each court shall insure that a judge is available 24 hours a day, 365 days a year to accept and decide the actions brought by a child protective service under this subsection within the 24-hour period.

(c) Notice of custody.--An individual taking a child into protective custody under this chapter shall immediately, and within 24 hours in writing, notify the parent, guardian or other custodian of the child of the whereabouts of the child and the reasons for the need to take the child into protective custody and shall immediately notify the appropriate child protective service in order that proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) may be initiated, if appropriate.

(d) Detention hearing.--In no case shall protective custody under this chapter be maintained longer than 72 hours without a detention hearing. If, at the detention hearing, it is determined that protective custody shall be continued, the child protective service shall within 48 hours file a petition with the court under 42 Pa.C.S. Ch. 63.

(e) Place of detention.--No child taken into protective custody under this chapter may be detained during the protective custody except in an appropriate medical facility, foster home or other appropriate facility approved by the department for this purpose.

(f) Conference with parent or other custodian.--A conference between the parent, guardian or other custodian of

the child taken into temporary protective custody pursuant to this section and the caseworker designated by the child protection service to be responsible for the child shall be held within 48 hours of the time that the child is taken into custody for the purpose of:

(1) Explaining to the parent, guardian or other custodian the reasons for the temporary detention of the child and the whereabouts of the child.

(2) Expediting, wherever possible, the return of the child to the custody of the parent, guardian or other custodian where custody is no longer necessary.

§ 6316. Admission to private and public hospitals.

(a) General rule.--Children appearing to suffer any physical or mental trauma which may constitute child abuse shall be admitted to and treated in appropriate facilities of private and public hospitals on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care.

(b) Failure of hospital to admit child.--The failure of a hospital to admit and properly treat and care for a child pursuant to subsection (a) shall be cause for the department to order immediate admittance, treatment and care by the hospital which shall be enforceable, if necessary, by the prompt institution of a civil action by the department. The child, through an attorney, shall also have the additional and independent right to seek immediate injunctive relief and institute an appropriate civil action for damages against the hospital.

§ 6317. Reporting and postmortem investigation of deaths.

A person or official required to report cases of suspected child abuse, including employees of a county children and youth social service agency and its child protective service, who has reasonable cause to suspect that a child died as a result of child abuse shall report that fact to the coroner. The coroner shall accept the report for investigation and shall report his finding to the police, the district attorney, the appropriate child protective service and, if the report is made by a hospital, the hospital.

§ 6318. Immunity from liability.

(a) General rule.--A person, hospital, institution, school, facility or agency participating in good faith in the making of a report, cooperating with an investigation or testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child pursuant to section 6315 (relating to taking child into protective custody) shall have immunity from any civil or criminal liability that might otherwise result by reason of those actions.

(b) Presumption of good faith.--For the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 (relating to persons required to report suspected child abuse) shall be presumed.

§ 6319. Penalties for failure to report.

A person or official required by this chapter to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

DOMESTIC RELATIONS CODE (23 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Dec. 16, 1994, P.L. 1292, No. 151

Cl. 23

Session of 1994

No. 1994-151

HB 1001

EXHIBIT

books

PPT 2

AN ACT

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for preliminary provisions, for reporting suspected child abuse, for powers and duties of the Department of Public Welfare, for organization and responsibilities of child protective service and for miscellaneous provisions; providing for school students and for background checks for school employment; and imposing powers and duties on the Department of State and various professional licensure boards.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 6302 and 6303 of Title 23 of the Pennsylvania Consolidated Statutes are amended to read:

§ 6302. [Finding] **Findings** and purpose of chapter.

[(a) Finding.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse and to establish in each county a child protective service capable of investigating such reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the well-being of the child and to preserve and stabilize family life wherever appropriate.]

(a) Findings.--Abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment.

(b) Purpose.--It is the purpose of this chapter to encourage more complete reporting of suspected child abuse; to the extent permitted by this chapter, to involve law enforcement agencies in responding to child abuse; and to establish in each county protective services for the purpose of investigating the reports swiftly and competently, providing protection for children from further abuse and providing rehabilitative services for children and parents involved so as to ensure the child's well-being and to preserve, stabilize and protect the integrity of family life wherever appropriate. It is also the purpose of this chapter to ensure that each county children and youth agency establish a program of protective services with procedures to assess risk of harm to a child and with the capabilities to respond adequately to meet the needs of the family and child who may be at risk and to prioritize the response and services to children most at risk.

(c) Effect on rights of parents.--This chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children.

§ 6303. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

["Child abuse." Serious physical or mental injury which is not explained by the available medical history as being accidental, sexual abuse, sexual exploitation or serious physical neglect of a child under 18 years of age if the injury, abuse or neglect has been caused by the acts or omissions of the child's parents or by a person responsible for the child's welfare, or any individual residing in the same home as the child, or a paramour of the child's parent. No child shall be deemed to be physically or mentally abused for the sole reason the child is in good faith being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof or is not provided specified medical treatment in the practice of religious beliefs, or solely on the grounds of environmental factors which are beyond the control of the person responsible for the welfare of the child such as inadequate housing, furnishings, income, clothing and medical care.)

"Accept for service." Decide on the basis of the needs and problems of an individual to admit or receive the individual as a client of the agency or as required by a court order entered under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

"Child-care services." Child day-care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, **early intervention** and drug and alcohol services for children; and [any] other child-care services which are provided by or subject to approval, licensure, registration or certification by the [department] **Department of Public Welfare** or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public and private schools, intermediate units or area vocational-technical schools.

["Child protective service." That section of each county children and youth social service agency required to be established by section 6361 (relating to organization of child protective service).]

"Child protective services." Those services and activities provided by the **Department of Public Welfare** and each county agency for child abuse cases.

"Cooperation with an investigation or assessment." Includes, but is not limited to, a school or school district which permits authorized personnel from the [department or child protection services] **Department of Public Welfare** or county agency to interview a student while the student is in attendance at school.

"County agency." The county children and youth social service agency established pursuant to section 405 of the act of June 24, 1937 (P.L.2017, No.396), known as the County Institution District Law, or its successor, and supervised by the **Department of Public Welfare** under Article IX of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code.

"Department." The **Department of Public Welfare** of the Commonwealth.

"Expunge." To strike out or obliterate entirely so that the expunged information may not be stored, identified or later recovered by any mechanical or electronic means or otherwise.

"Family members." Spouses, parents and children or other persons

related by consanguinity or affinity.

"Founded report." A child abuse report made pursuant to this chapter if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused[.], including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegation of child abuse.

"Founded report for school employee." A report under Subchapter C.1 (relating to students in public and private schools) if there has been any judicial adjudication based on a finding that the victim has suffered serious bodily injury or sexual abuse or exploitation, including the entry of a plea of guilty or nolo contendere or a finding of guilt to a criminal charge involving the same factual circumstances involved in the allegations of the report.

"General protective services." Those services and activities provided by each county agency for nonabuse cases requiring protective services, as defined by the Department of Public Welfare in regulations.

"Indicated report." A child abuse report made pursuant to this chapter if an investigation by the [child protective service] county agency or the Department of Public Welfare determines that substantial evidence of the alleged abuse exists based on any of the following:

- (1) Available medical evidence.
- (2) The child protective service investigation.
- (3) An admission of the acts of abuse by the [parent of the child or person responsible for the welfare of the child.] perpetrator.

"Indicated report for school employee." A report made under Subchapter C.1 (relating to students in public and private schools) if an investigation by the county agency determines that substantial evidence of serious bodily injury or sexual abuse or exploitation exists based on any of the following:

- (1) Available medical evidence.
- (2) The county agency's investigation.
- (3) An admission of the acts of abuse by the school employee.

"Individual residing in the same home as the child." An individual who is 14 years of age or older and who resides in the same home as the child.

"Perpetrator." A person who has committed child abuse and is a parent of a child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

"Person responsible for the child's welfare." A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in any public or private school, intermediate unit or area vocational-technical school.

"Protective services." Those services and activities provided by the Department of Public Welfare and each county agency for children who are abused or are alleged to be in need of protection under this chapter.

"Recent acts or omissions." Acts or omissions committed within two years of the date of the report to the Department of Public Welfare or county agency.

"Risk assessment." A Commonwealth-approved systematic

process that assesses a child's need for protection or services based on the risk of harm to the child.

"School employee." An individual employed by a public or private school, intermediate unit or area vocational-technical school. The term includes an independent contractor and employees. The term excludes an individual who has no direct contact with students.

"Secretary." The Secretary of Public Welfare of the Commonwealth.

"Serious bodily injury." Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

"Serious mental injury." A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

- (1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or
- (2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

"Serious physical injury." An injury that:

- (1) causes a child severe pain; or
- (2) significantly impairs a child's physical functioning, either temporarily or permanently.

"Sexual abuse[." The obscene or pornographic photographing, filming or depiction of children for commercial purposes] or exploitation." The employment, use, persuasion, inducement, enticement or coercion of any child to engage in or assist any other person to engage in any sexually explicit conduct or any simulation of any sexually explicit conduct for the purpose of producing any visual depiction of any sexually explicit conduct or the rape, molestation, incest, prostitution or other [forms] form of sexual exploitation of children [under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations of the department].

"Student." An individual enrolled in a public or private school, intermediate unit or area vocational-technical school who is under 18 years of age.

"Subject of the report." [Any child reported to the central register of child abuse and a parent, guardian or other responsible person also named in the report.] Any child, parent, guardian or other person responsible for the welfare of a child or any alleged or actual perpetrator or school employee named in a report made to the Department of Public Welfare or a county agency under this chapter.

"Substantial evidence." Evidence which outweighs inconsistent evidence and which a reasonable person would accept as adequate to support a conclusion.

"Under investigation." A child abuse report pursuant to this chapter which is being investigated to determine whether it is "founded," "indicated" or "unfounded."

"Unfounded report." Any report made pursuant to this chapter unless the report is a "founded report" or [unless an investigation by the appropriate child protective service determines that the report is] an "indicated report."

(b) Child abuse.--

- (1) The term "child abuse" shall mean any of the following:
 - (i) Any recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a

child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) Any recent act, failure to act or series of such acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care.

(3) If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of seriously held religious beliefs of the child's parents, guardian or person responsible for the child's welfare, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. The county agency shall closely monitor the child and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health. In cases involving religious circumstances, all correspondence with a subject of the report and the records of the Department of Public Welfare and the county agency shall not reference "child abuse" and shall acknowledge the religious basis for the child's condition, and the family shall be referred for general protective services, if appropriate.

Section 2. The heading of Subchapter B of Chapter 63 of Title 23 is amended to read:

SUBCHAPTER B
PROVISIONS AND RESPONSIBILITIES FOR
REPORTING SUSPECTED CHILD ABUSE

Section 3. Sections 6311(a) and (b), 6313, 6314, 6315, 6316, 6317, 6318, 6331, 6332, 6333, 6334, 6335, 6336, 6337, 6338, 6339, 6340, 6341, 6343, 6344(b) (2) and (c), 6345, 6346, 6347 and 6349(a) and (b) of Title 23 are amended to read:

§ 6311. Persons required to report suspected child abuse.

(a) General rule.--Persons who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when they have [reason to believe,] **reasonable cause to suspect**, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child. [The] **Except with respect to confidential communications made to an ordained member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), the privileged** communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

(b) Enumeration of persons required to report.--Persons required to report under subsection (a) include, but are not limited to, any

licensed physician, osteopath, medical examiner, coroner, funeral director, dentist, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, [a] Christian Science practitioner, **member of the clergy**, school administrator, school teacher, school nurse, social services worker, day-care center worker or any other child-care or foster-care worker, mental health professional, peace officer or law enforcement official.

* * *

§ 6313. Reporting procedure.

(a) General rule.--Reports from persons required to report under section 6311 (relating to persons required to report suspected child abuse) shall be made immediately by telephone and in writing within 48 hours after the oral report.

(b) Oral reports.--Oral reports shall be made to the department pursuant to Subchapter C (relating to powers and duties of department) and may be made to the appropriate [child protective service] **county agency**. When oral reports of suspected child abuse are initially received at the [child protective service] **county agency**, the [child protective service] **protective services staff** shall, after seeing to the immediate safety of the child and other children in the home, immediately notify the department of the receipt of the report, which is to be held in the pending complaint file as provided in Subchapter C. The initial child abuse report summary shall be supplemented with a written report when a determination is made as to whether a report of suspected child abuse is a founded report, an unfounded report or an indicated report.

(c) Written reports.--Written reports from persons required to report under section 6311 shall be made to the appropriate [child protective service] **county agency** in a manner and on forms the department prescribes by regulation. The written reports shall include the following information if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the [child] **subjects of the report**.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.
- (5) The name **and relationship** of the person or persons responsible for causing the suspected abuse, if known, **and any evidence of prior abuse by that person or persons**.
- (6) Family composition.
- [(7)] The relationship of the suspected perpetrator to the child.
- [(8)] (7) The source of the report.
- [(9)] (8) The person making the report and where that person can be reached.
- [(10)] (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
- [(11)] (10) Any other information which the department may require by regulation.

(d) Failure to confirm oral report.--The failure of a person reporting cases of suspected child abuse to confirm an oral report in writing within 48 hours shall not relieve the [child protective service] **county agency** from any duties prescribed by this chapter. In such event, the [child protective service] **county agency** shall

proceed as if a written report were actually made.

§ 6314. Photographs, **medical tests** and X-rays of child subject to report.

A person or official required to report cases of suspected child abuse may take or cause to be taken photographs of the [areas of trauma visible on a] child who is subject to a report and, if [medically] **clinically** indicated, cause to be performed a radiological examination **and other medical tests** on the child. Medical summaries or reports of the photographs [or], X-rays **and relevant medical tests** taken shall be sent to the [child protective service] **county agency** at the time the written report is sent or as soon thereafter as possible. [Child protective services] **The county agency** shall have access to [the] actual photographs **or duplicates** and X-rays and may obtain them or duplicates of them upon request.

§ 6315. Taking child into protective custody.

(a) General rule.--A child may be taken into protective custody:

(1) As provided by 42 Pa.C.S. § 6324 (relating to taking into custody).

(2) By a physician examining or treating the child or by the director, or a person specifically designated in writing by the director, of any hospital or other medical institution where the child is being treated if protective custody is immediately necessary to protect the child [from further serious physical injury, sexual abuse or serious physical neglect.] **under this chapter.**

(b) Duration of custody.--No child may be held in protective custody for more than 24 hours unless the appropriate [child protective service] **county agency** is immediately notified that the child has been taken into custody and the [child protective service] **county agency** obtains an order from a court of competent jurisdiction permitting the child to be held in custody for a longer period. Each court shall insure that a judge is available 24 hours a day, 365 days a year to accept and decide the actions brought by a [child protective service] **county agency** under this subsection within the 24-hour period.

(c) Notice of custody.--An individual taking a child into protective custody under this chapter shall immediately, and within 24 hours in writing, notify the parent, guardian or other custodian of the child of the whereabouts of the child, **unless prohibited by court order**, and the reasons for the need to take the child into protective custody and shall immediately notify the appropriate [child protective service] **county agency** in order that proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) may be initiated, if appropriate.

(d) [Detention] **Informal hearing.**--In no case shall protective custody under this chapter be maintained longer than 72 hours without [a detention hearing.] **an informal hearing under 42 Pa.C.S. § 6332 (relating to informal hearing).** If, at the [detention] hearing, it is determined that protective custody shall be continued **and the child is alleged to be without proper parental care or control or is alleged to be a dependent child under 42 Pa.C.S. § 6302 (relating to definitions),** the [child protective service] **county agency** shall within 48 hours file a petition with the court under 42 Pa.C.S. Ch. 63[.] **alleging that the child is a dependent child.**

(e) Place of detention.--No child taken into protective custody under this chapter may be detained during the protective custody except in an appropriate medical facility, foster home or other appropriate facility approved by the department for this purpose.

(f) Conference with parent or other custodian.--A conference between the parent, guardian or other custodian of the child taken

into temporary protective custody pursuant to this section and the [case worker designated by the child protection service] **employee designated by the county agency** to be responsible for the child shall be held within 48 hours of the time that the child is taken into custody for the purpose of:

(1) Explaining to the parent, guardian or other custodian the reasons for the temporary detention of the child and the whereabouts of the child, **unless prohibited by court order.**

(2) Expediting, wherever possible, the return of the child to the custody of the parent, guardian or other custodian where custody is no longer necessary.

(3) Explaining to the parent, guardian or other custodian the rights provided for under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights).

§ 6316. Admission to private and public hospitals.

(a) General rule.--Children appearing to suffer any physical or mental [trauma which may constitute child abuse shall be admitted to and treated in appropriate] **condition which may constitute child abuse shall be admitted to, treated and maintained in** facilities of private and public hospitals on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care.

(b) Failure of hospital to admit child.--The failure of a hospital to admit and properly treat and care for a child pursuant to subsection (a) shall be cause for the department to order immediate admittance, treatment and care by the hospital which shall be enforceable, if necessary, by the prompt institution of a civil action by the department. The child, through an attorney, shall also have the additional and independent right to seek immediate injunctive relief and institute an appropriate civil action for damages against the hospital.

§ 6317. [Reporting] **Mandatory reporting** and postmortem investigation of deaths.

A person or official required to report cases of suspected child abuse, including employees of a county [children and youth social service] agency [and its child protective service], who has reasonable cause to suspect that a child died as a result of child abuse shall report that [fact to the] **suspicion to the appropriate** coroner. The coroner shall accept the report for investigation and shall report his finding to the police, the district attorney, the appropriate [child protective service] **county agency** and, if the report is made by a hospital, the hospital.

§ 6318. Immunity from liability.

(a) General rule.--A person, hospital, institution, school, facility [or agency participating], **agency or agency employee that participates** in good faith in the making of a report, cooperating with an investigation [or], testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child pursuant to section 6315 (relating to taking child into protective custody), **and any official or employee of a county agency who refers a report of suspected abuse to law enforcement authorities or provides services under this chapter,** shall have immunity from [any civil or] **civil and criminal** liability that might otherwise result by reason of those actions.

(b) Presumption of good faith.--For the purpose of any civil or criminal proceeding, the good faith of a person required to report pursuant to section 6311 (relating to persons required to report suspected child abuse) **and of any person required to make a referral to law enforcement officers under this chapter** shall be presumed.

§ 6331. Establishment of pending complaint file [and], Statewide central register and file of unfounded reports.

There shall be established in the department:

(1) A pending complaint file of child abuse reports under investigation and a file of reports under investigation pursuant to Subchapter C.1 (relating to students in public and private schools).

(2) A Statewide central register of child abuse which shall consist of founded and indicated reports [of child abuse].

(3) A file of unfounded reports awaiting expunction.

§ 6332. Establishment of Statewide toll-free telephone number.

(a) General rule.--The department shall establish a single Statewide toll-free telephone number that all persons, whether mandated by law or not, may use to report cases of suspected child abuse. A [child protective service may] **county agency shall** use the Statewide toll-free telephone number for determining the existence of prior founded or indicated reports of child abuse in the Statewide central register or reports under investigation in the pending complaint file.

(b) Limitation on use.--A [child protective service] **county agency** may only request and receive information pursuant to this subsection either on its own behalf because it has received a report of suspected child abuse or on behalf of a physician examining or treating a child or on behalf of the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated, where the physician or the director or a person specifically designated in writing by the director suspects the child of being an abused child.

§ 6333. Continuous availability of department.

The department shall be capable of receiving oral reports of child abuse made pursuant to this chapter, **reports under section 6353.2 (relating to responsibilities of county agency)** and report summaries of child abuse from [child protective services] **county agencies** and shall be capable of immediately identifying prior reports of child abuse and **prior reports of abuse or injury under Subchapter C.1 (relating to students in public and private schools)** in the Statewide central register and reports under investigation in the pending complaint file and of monitoring the provision of child protective services 24 hours a day, seven days a week.

§ 6334. Disposition of complaints received.

(a) Notice to [child protective service] **county agency**.--Upon receipt of a complaint of suspected child abuse, the department shall immediately transmit orally to the appropriate [child protective service] **county agency** notice that the complaint of suspected child abuse has been received and the substance of the complaint. If the Statewide central register or the pending complaint file contains information indicating a prior report or a current investigation concerning a subject of the report, the department shall immediately notify the appropriate [child protective service] **county agency** of this fact. **The appropriate county agency shall mean the agency in the county where the suspected child abuse occurred. If the residency of the subjects is a factor that requires the cooperation of more than one county agency, the department shall develop regulations to ensure the cooperation of those agencies in carrying out the requirements of this chapter.**

(b) Referral for services or investigation.--If the complaint received does not suggest suspected child abuse but does suggest a need for social services or other services or investigation, the department shall transmit the information to the county [children and youth social service] agency or other public agency for appropriate action. The information shall not be considered a child abuse report unless the agency to which the information was referred

has [reason to believe] **reasonable cause to suspect** after investigation that abuse occurred. If the agency has [reason to believe] **reasonable cause to suspect** that abuse occurred, the agency shall notify the department, and the initial complaint shall be considered to have been a child abuse report.

(c) Recording in pending complaint file.--Upon receipt of a complaint of suspected child abuse, the department shall maintain a record of the complaint of suspected child abuse in the pending complaint file. Upon receipt of a report under section 6353.2 (relating to responsibilities of county agency), the department shall maintain a record of the report in the report file under section 6331 (relating to establishment of pending complaint file, Statewide central register and file of unfounded reports).
 § 6335. Information in pending complaint [file] and unfounded report files.

[(a) Information authorized.--No information other than that permitted to be retained in the Statewide central register in section 6336 (relating to information in Statewide central register) shall be retained in the pending complaint file or otherwise by the department.]

(a) Information authorized.--The information contained in the pending complaint file shall be limited to the information required in sections 6313(c) (relating to reporting procedure) and 6353.2 (relating to responsibilities of county agency). The information contained in the file for unfounded reports shall be limited to the information required by section 6336 (relating to information in Statewide central register).

(b) Access to information.--Except as provided in sections 6332 (relating to establishment of Statewide toll-free telephone number), 6334 (relating to disposition of complaints received), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), no person, other than an employee of the department in the course of official duties in connection with the responsibilities of the department under this chapter, shall at any time have access to any information in the pending complaint file or Statewide central register. Information in the file of unfounded reports shall be available only to employees of the department pursuant to this subsection, to subjects of a report pursuant to section 6340 and to the Office of Attorney General pursuant to section 6345 (relating to audits by Attorney General) until the reports are expunged pursuant to section 6337 (relating to disposition of unfounded reports).

§ 6336. Information in Statewide central register.

(a) Information authorized.--The Statewide central register shall include and shall be limited to the following information:

- (1) The names, Social Security numbers, age and sex of the subjects of the reports.
- (2) The date or dates and the nature and extent of the alleged instances of suspected child abuse.
- (3) The home addresses of the subjects of the report.
- (4) The county in which the suspected abuse occurred.
- (5) Family composition.
- (6) The name and relationship to the abused child of [the person or persons responsible for causing the abuse.] other persons named in the report.
- (7) Factors contributing to the abuse.
- [(7)] (8) The source of the report.
- [(8)] (9) Services planned or provided.
- [(9)] (10) Whether the report is a founded report or an indicated report.
- (11) Information obtained by the department in relation to

a perpetrator's or school employee's request to release, amend or expunge information retained by the department or the county agency.

[(10)] (12) The progress of any legal proceedings brought on the basis of the report of suspected child abuse.

(13) Whether a criminal investigation has been undertaken and the result of the investigation and of any criminal prosecution.

No information other than that permitted in this subsection shall be retained in the Statewide central register[, the pending complaint file or otherwise by the department].

(b) Type of information released.--Except as provided in sections 6334 (relating to disposition of complaints received), 6335 (relating to information in pending complaint [file] and unfounded report files), 6340 (relating to release of information in confidential reports) and 6342 (relating to studies of data in records), persons receiving information from the Statewide central register or pending complaint file may be informed only as to:

(1) Whether the report is a founded or indicated abuse or is under investigation.

(2) The number of such reports.

(3) The nature and extent of the alleged or actual instances of suspected child abuse.

(4) The county in which the reports are investigated.

(5) Any other information available which would further the purposes of this chapter.

(c) Limitation on release of information.--Except as provided in sections 6334, 6335, 6340 and 6342, no information shall be released from the Statewide central register or pending complaint file unless pursuant to section 6332 (relating to establishment of Statewide toll-free telephone number) and unless the department has positively identified the representative of the [child protective service] county agency requesting the information and the department has inquired into and is satisfied that the representative has a legitimate need, within the scope of official duties and the provisions of section 6332, to obtain the information. Information in the Statewide central register or pending complaint file shall not be released for any purpose or to any individual not specified in section 6340.

§ 6337. Disposition of unfounded reports.

(a) General rule.--When a report of suspected child abuse is determined by the appropriate [child protective service] county agency to be an unfounded report, the information concerning that report of suspected child abuse shall be expunged from the pending complaint file [within 12 months of], as soon as possible, but no later than 120 days after the date the report was received by the department, and no information other than that authorized by subsection (b), which shall not include any identifying information on any subject of the report, shall be retained by the department.

(b) Absence of other determination.--If an investigation of a report of suspected child abuse conducted by the appropriate [child protective service] county agency pursuant to this chapter does not determine within 60 days of the date of the initial report of the instance of suspected child abuse that the report is a founded report, an indicated report or an unfounded report, or unless within that same 60-day period court action has been initiated and is responsible for the delay, the report shall be considered to be an unfounded report, and all information identifying the subjects of the report shall be expunged [within 12 months] no later than 120 days after the date the report was received by the department. The agency shall advise the department that court action or an arrest

has been initiated so that the pending complaint file is kept current regarding the status of all legal proceedings and [expungement] **expunction** delayed. [Nothing in this subsection shall in any way limit the powers and duties of the department as provided in section 6343 (relating to investigating performance of child protective service).]

(c) [Expungement] **Expunction** of information.--All information identifying the subjects of any report of suspected child abuse **and of any report under Subchapter C.1 (relating to students in public and private schools)** determined to be an unfounded report shall be expunged from the pending complaint file [within 12 months of the date the report was received by the department. The expungement] **pursuant to this section. The expunction** shall be mandated and guaranteed by the department.

§ 6338. Disposition of founded and indicated reports.

(a) General rule.--When a report of suspected child abuse **or a report under Subchapter C.1 (relating to students in public and private schools)** is determined by the appropriate [child protective service] **county agency** to be a founded report or an indicated report, the information concerning that report of suspected child abuse shall be expunged immediately from the pending complaint file, and an appropriate entry shall be made in the Statewide central register. Notice of the determination must be given to the subjects of the report, other than the abused child, **and to the parent or guardian of the affected child or student** along with an explanation of the implications of the determination. Notice given to [subjects of the report] **perpetrators of child abuse and to school employees who are subjects of indicated reports for school employees or founded reports for school employees** shall include notice that their ability to obtain employment in a child-care facility or program **or a public or private school** may be adversely affected by entry of the report in the Statewide central register. The notice shall also inform the [subject of the report of his right, at any time, to request the secretary to amend, seal or expunge information contained in the Statewide central register] **recipient of his right, within 45 days after being notified of the status of the report, to appeal an indicated report, and his right to a hearing if the request is denied.**

[(b) Expungement of information when child attains 18 years of age.--All information identifying the subjects of all indicated reports and all information identifying the subject child of all founded reports shall be expunged when the subject child reaches the age of 18 years, unless another report is received involving the same child, his sibling or offspring, or another child in the care of the persons responsible for the subject child's welfare. The identifying information may then be maintained in the register for five years after the subsequent case or report is closed. The expungement shall be mandated and guaranteed by the department.]

(b) **Expunction of information when child attains 23 years of age.--Except as provided in subsection (c), all information which identifies the subjects of founded and indicated child abuse reports shall be expunged when the subject child reaches the age of 23. The expunction shall be mandated and guaranteed by the department.**

(c) Retention of information.--A subfile shall be established in the Statewide central register to indefinitely retain the names of perpetrators of child abuse and school employees who are subjects of founded or indicated reports only if the individual's Social Security number or date of birth is known to the department. The subfile shall not include identifying information regarding other subjects of the report.

§ 6339. Confidentiality of reports.

Except as otherwise provided in this subchapter, reports made pursuant to this chapter, including, but not limited to, report summaries of child abuse and written reports made pursuant to section 6313(b) and (c) (relating to reporting procedure) as well as any other information obtained, reports written or photographs or X-rays taken concerning alleged instances of child abuse in the possession of the department[, a county children and youth social service agency or a child protective service] **or a county agency** shall be confidential.

§ 6340. Release of information in confidential reports.

(a) General rule.--Reports specified in section 6339 (relating to confidentiality of reports) shall only be made available to:

(1) An authorized official of a [child protective service in the course of official] **county agency or of an agency of another state that performs protective services analogous to those services performed by county agencies or the department in the course of the official's duties, multidisciplinary team members assigned to the case and duly authorized persons providing services pursuant to section 6370(a) (relating to [services for protection of child at home or in custody] voluntary or court-ordered services; findings of child abuse).**

(2) A physician examining or treating a child or the director or a person specifically designated in writing by the director of any hospital or other medical institution where a child is being treated when the physician or the director or the designee of the director suspects the child of being an abused child[.] **or a child alleged to be in need of protection under this chapter.**

(3) A guardian ad litem **or court designated advocate** for the child.

(4) An authorized official or agent of the department in accordance with department regulations or in accordance with the conduct of a performance audit as authorized by section 6343 (relating to investigating performance of [child protective service] **county agency**).

(5) A court of competent jurisdiction pursuant to a court order.

(5.1) A court of common pleas in connection with any matter involving custody of a child. The department shall provide to the court any reports and files which the court considers relevant.

(6) A standing committee of the General Assembly, as specified in section 6384 (relating to legislative oversight).

(7) The Attorney General.

(8) Federal auditors if required for Federal financial participation in funding of agencies except that Federal auditors may not [have access to identifiable reports.] **remove identifiable reports or copies thereof from the department or county agencies.**

(9) Law enforcement officials of any jurisdiction, as long as the information is relevant in the course of investigating cases of:

(i) Homicide, sexual abuse, sexual exploitation or serious bodily injury perpetrated by persons whether or not related to the victim.

(ii) Child abuse perpetrated by persons who are not family members.

(iii) Repeated physical injury to a child under circumstances which indicate that the child's health or welfare is harmed or threatened.

(iv) A missing child report.

(10) Law enforcement officials who shall receive,

immediately after the county agency has ensured the safety of the child, reports of abuse [in which the initial review], either orally or in writing, according to regulations promulgated by the department, from the county agency in which the initial report of suspected child abuse or initial inquiry into the report gives evidence that the abuse is:

(i) homicide, sexual abuse, sexual exploitation or serious bodily injury perpetrated by persons, whether or not related to the victim[,]; or

(ii) child abuse perpetrated by persons who are not family members. [Reports referred to law enforcement officials shall be on forms provided by and according to regulations promulgated by the department.

(11) County commissioners, to whom the department shall forward specific files upon request, for review when investigating the competence of county children and youth employees.]

(11) Designated county officials, in reviewing the competence of the county agency or its employees pursuant to this chapter. Officials under this paragraph are limited to the following:

(i) The board of commissioners in counties other than counties of the first class.

(ii) Mayor in a city of the first class under the act of April 21, 1949 (P.L. 665, No. 155), known as the First Class City Home Rule Act.

(iii) An individual serving as a county chief executive as designated by a county home rule charter or optional plan form of government pursuant to the act of April 13, 1972 (P.L. 184, No. 62), known as the Home Rule Charter and Optional Plans Law.

(12) A mandated reporter of suspected child abuse as defined in section 6311 (relating to persons required to report suspected child abuse) who made a report of abuse involving the subject child, but the information permitted to be released to the mandated reporter shall be limited to the following:

(i) The final status of the child abuse report following the investigation, whether it be indicated, founded or unfounded.

(ii) Any services provided, arranged for or to be provided by the [child protective service to protect the child from further abuse.] county agency to protect the child.

(13) Persons required to make reports under Subchapter C.1 (relating to students in public and private schools). Information under this paragraph shall be limited to the final status of the report following the investigation as to whether the report is indicated, founded or unfounded.

(14) A prospective adoptive parent, approved by an adoption agency, when considering adopting an abused child in the custody of a county agency. The county agency having custody of the child and the adoption agency shall determine the scope and detail of information which must be provided so that the prospective parent may make an informed decision to adopt.

(b) Release of information to subject [child] of report.--At any time and upon written request, a subject of a report may receive a copy of all information, except that prohibited from being disclosed by subsection (c), contained in the Statewide central register or in any report filed pursuant to section 6313 (relating to reporting procedure).

(c) Protecting identity of person making report.--[The] Except

for reports pursuant to subsection (a) (9) and (10), the release of data that would identify the person who made a report of suspected child abuse or the person who cooperated in a subsequent investigation is prohibited unless the secretary finds that the release will not be detrimental to the safety of that person. **Law enforcement officials shall treat all reporting sources as confidential informants.**

[(d) Definition.--As used in this section, "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.]

(d) **Exclusion of administrative information.--Information maintained in the Statewide central register which was obtained from an investigating agency in relation to an appeal request shall not be released to any person except a department official, as provided by regulation.**

§ 6341. Amendment[, sealing or expungement] or **expunction** of information.

(a) General rule.--At any time:

(1) The secretary may amend[, seal] or expunge any record **under this chapter** upon good cause shown and notice to the appropriate subjects of the report.

(2) [A subject of a report may request the secretary to amend, seal or expunge information contained in the Statewide central register] **Any person named as a perpetrator, and any school employee named, in an indicated report of child abuse may, within 45 days of being notified of the status of the report, request the secretary to amend or expunge an indicated report on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this chapter.**

(b) Review of grant of request.--If the secretary grants the request under subsection (a) (2), the Statewide central register, appropriate [child protective service] **county** agency and all subjects shall be so advised [within seven days from the date] of the decision. The [child protective service] **county** agency and any subject have 45 days in which to file an **administrative** appeal with the secretary. If an **administrative** appeal is received, the secretary or his designated agent shall schedule a hearing pursuant to Article IV of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, and attending departmental regulations. If no **administrative** appeal is received within the designated time period, the Statewide central register shall comply with the decision of the secretary and advise the [child protective service] **county** agency to amend[, seal] or expunge the information in their records so that the records are consistent at both the State and local levels.

(c) Review of refusal of request.--If the secretary refuses the request under subsection (a) (2) or does not act within a reasonable time, but in no event later than 30 days after receipt of the request, the [subject] **perpetrator or school employee** shall have the right to a hearing before the secretary or a designated agent of the secretary to determine whether the **summary of the indicated report** in the Statewide central register [or the contents of any report filed pursuant to section 6313] should be amended[, sealed] or expunged on the grounds that it is inaccurate or that it is being maintained in a manner inconsistent with this chapter. **The perpetrator or school employee shall have 45 days from the date of the letter giving notice of the decision to deny the request in which to request a hearing.** The appropriate [child protective service] **county** agency shall be given notice of the hearing. The burden of proof in the hearing shall be on the appropriate [child

protective service] **county agency**. The department shall assist the [child protective service] **county agency** as necessary. [In the hearings, the fact that there was a court finding of child abuse shall be presumptive evidence that the report was substantiated.]

(d) **Stay of proceedings.**--Any administrative appeal proceeding pursuant to subsection (b) shall be automatically stayed upon notice to the department by either of the parties when there is a pending criminal proceeding or a dependency or delinquency proceeding pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters), including any appeal thereof, involving the same factual circumstances as the administrative appeal.

[(d)] (e) **Order.**--The secretary or designated agent may make any appropriate order respecting the amendment [or expungement] or **expunction** of such records to make them accurate or consistent with the requirements of this chapter.

(e) **Notice of expungement.**--Written notice of an expungement of any record, made pursuant to the provisions of this chapter, shall be served upon the subject of the record who was responsible for the abuse and the appropriate child protective service. The latter, upon receipt of the notice, shall take appropriate, similar action in regard to the local child abuse records and inform, for the same purpose, the appropriate coroner if that officer has received reports pursuant to section 6367 (relating to reports to department and coroner). Whenever the investigation reveals that the report is unfounded but that the subjects need services and voluntarily accept services, the county children and youth social service agency may retain those portions of its records which do not specifically identify the source of the investigation or report as suspected child abuse.]

(f) **Notice of expunction.**--Written notice of an expunction of any child abuse record made pursuant to the provisions of this chapter shall be served upon the subject of the record who was responsible for the abuse or injury and the appropriate county agency. Except as provided in this subsection, the county agency, upon receipt of the notice, shall take appropriate, similar action in regard to the local child abuse and school employee records and inform, for the same purpose, the appropriate coroner if that officer has received reports pursuant to section 6367 (relating to reports to department and coroner). Whenever the county agency investigation reveals, within 60 days of receipt of the report of suspected child abuse, that the report is unfounded but that the subjects need services provided or arranged by the county agency, the county agency may retain those records and shall specifically identify that the report was an unfounded report of suspected child abuse.

[(f)] **Access to sealed record.**--Once sealed, a record shall not be otherwise available except as provided in section 6342 (relating to studies of data in records) or except if the secretary, upon notice to the subjects of the report, gives personal approval for an appropriate reason.]

§ 6343. Investigating performance of [child protective service] **county agency**.

(a) **General rule.**--If, within 30 days from the date of an initial report of suspected child abuse, the appropriate [child protective service] **county agency** has not [properly] investigated the report and informed the department that the report is an indicated report or an unfounded report or unless within that same 30-day period the report is determined to be a founded report, the department shall [immediately] **have the authority to** begin an inquiry into the performance of the [child protective service] **county agency** which inquiry may include a performance audit of the

[child protective service] **county agency** as provided in subsection (b). On the basis of that inquiry, the department shall take appropriate action to require that the provisions of this chapter be strictly followed, which action may include, without limitation, the institution of appropriate legal action and the withholding of reimbursement for all or part of the activities of the county [children and youth social service] agency. **The department shall determine in its review whether the county agency has sufficiently documented reasons why the investigation has not been completed in the 30-day period.**

(b) Performance audit.--Notwithstanding any other provision of this chapter, the secretary or a designee of the secretary may direct, at their discretion, **and after reasonable notice to the county agency**, a performance audit of any activity engaged in pursuant to this chapter.

§ 6344. Information relating to prospective child-care personnel.

* * *

(b) Information submitted by prospective employees.--Administrators of child-care services shall require applicants to submit with their applications the following information obtained within the preceding one-year period:

* * *

(2) A certification from the department as to whether the applicant is named in the central register as the perpetrator of a founded [or] **report of child abuse**, indicated report of child abuse, **founded report for school employee or indicated report for school employee**. [An indicated report shall not be included until the department adopts regulations specifying the manner in which the investigation required by sections 6366 (relating to continuous availability to receive reports) through 6372 (relating to protecting well-being of children detained outside home) is to be conducted.]

* * *

(c) Grounds for denying employment.--In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section. In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted[, within five years immediately preceding the date of the report,] of one or more of the following offenses under Title 18 (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2709 (relating to harassment and stalking).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4303 (relating to concealing death of child born out of wedlock).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials **and performances**).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

* * *

§ 6345. Audits by Attorney General.

The Attorney General shall conduct a mandated audit done randomly but at least once during each year on an unannounced basis to ensure that the [expungement] **expunction** requirements of this chapter are being fully and properly conducted.

§ 6346. Cooperation of other agencies.

(a) **General rule.**--The secretary may request and shall receive from Commonwealth agencies, political subdivisions, an authorized agency or any other agency providing services under the local [child] protective services plan any assistance and data that will enable the department and the [child protective services] **county agency** to fulfill their responsibilities properly, including law enforcement personnel when assistance is needed in conducting an investigation [of alleged child abuse] **or an assessment of risk to the child**. School districts shall cooperate with the department and the agency by providing them upon request with the information as is consistent with law.

(b) **Willful failure to cooperate.**--Any agency, school district or facility or any person acting on behalf of an agency, school district or facility that violates this section by willfully failing to cooperate with the department or a county agency when investigating a report of suspected child abuse or a report under Subchapter C.1 (relating to students in public and private schools) or when assessing risk to a child commits a summary offense for a first violation and a misdemeanor of the third degree for subsequent violations.

(c) **Cooperation of county agency and law enforcement agencies.**--Consistent with the provisions of this chapter, the county agency and law enforcement agencies shall cooperate and coordinate, to the fullest extent possible, their efforts to respond to reports of suspected child abuse and to reports under Subchapter C.1.

(d) **Advice to county agency.**--Whenever a report of suspected child abuse is referred from a county agency to a law enforcement agency pursuant to section 6340(a)(9) and (10) (relating to release of information in confidential reports), as soon as possible, and without jeopardizing the criminal investigation or prosecution, the law enforcement agency shall advise the county agency as to whether a criminal investigation has been undertaken and the results of the investigation and of any criminal prosecution. The county agency shall ensure that the information is referred to the **Statewide central register**.

§ 6347. Annual reports to Governor and General Assembly.

(a) **General rule.**--No later than [April 15] **May 1** of every year, the secretary shall prepare and transmit to the Governor and the General Assembly a report on the operations of the central register of child abuse and [the various] child protective services **provided by county agencies**. The report shall include a full statistical analysis of the reports of suspected child abuse made to the department **and the reports under Subchapter C.1 (relating to students in public and private schools)**, together with a report on the implementation of this chapter and its total cost to the Commonwealth, the evaluation of the secretary of services offered under this chapter and recommendations for repeal or for additional legislation to fulfill the purposes of this chapter. All such recommendations should contain an estimate of increased or decreased costs resulting therefrom. The report shall also include an

explanation of services provided to children who were the subjects of founded or indicated reports [of child abuse] while receiving child-care services. The department shall also describe its actions in respect to the perpetrators of the abuse.

(b) **Reports from county agencies.**--To assist the department in preparing its annual report, each county agency shall submit a quarterly report to the department, including, at a minimum, the following information, on an aggregate basis, regarding general protective services, child protective services and action under Subchapter C.1:

(1) The number of referrals received and referrals accepted.

(2) The number of children over whom the agency maintains continuing supervision.

(3) The number of cases which have been closed by the agency.

(4) The services provided to children and their families.

§ 6349. Penalties.

(a) Failure to amend or expunge information.--

(1) A person or official authorized to keep the records mentioned in section 6337 (relating to disposition of unfounded reports) or 6338 (relating to disposition of founded and indicated reports) who willfully fails to **amend or expunge** the information when required commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

(2) A person who willfully fails to obey a final order of the secretary or designated agent of the secretary to amend or expunge the summary of the report in the Statewide central register or the contents of any report filed pursuant to section 6313 (relating to reporting procedure) commits a summary offense.

(b) **Unauthorized release of information.**--A person who willfully releases or permits the release of any [data and] information contained in the pending complaint file, the Statewide central register or the [child welfare] **county agency** records required by this chapter[, including records maintained by any county children and youth social service agency and any child protective service,] to persons or agencies not permitted by this chapter to **receive that information** commits a misdemeanor of the third degree. **Law enforcement agencies shall insure the confidentiality and security of information under this chapter. A person, including an employee of a law enforcement agency, who violates the provisions of this subsection shall, in addition to other civil or criminal penalties provided by law, be denied access to the information provided under this chapter.**

* * *

Section 4. Chapter 63 of Title 23 is amended by adding subchapters to read:

SUBCHAPTER C.1

STUDENTS IN PUBLIC AND PRIVATE SCHOOLS

Sec.

6351. Definitions.

6352. School employees.

6353. Administration.

6353.1. Investigation.

6353.2. Responsibilities of county agency.

6353.3. Information in Statewide central register.

6353.4. Other provisions.

§ 6351. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the

COMMONWEALTH

v.

TIMOTHY M. CURLEY

GARY CHARLES SCHULTZ

GRAHAM BASIL SPANIER

: IN THE COURT OF COMMON PLEAS
: DAUPHIN COUNTY, PENNSYLVANIA

: NO. 3614 CR 2013

: NO. 5165 CR 2011

: NO. 3616 CR 2013

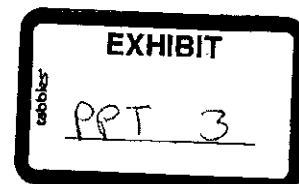
: NO. 5164 CR 2011

: NO. 3615 CR 2013

ORDER

AND NOW, this 1st day of February, 2017, upon consideration of Defendants' various Pre-Trial filings, and any responses thereto, and having heard oral argument on October 13, 2016, it is hereby ORDERED as follows:

1. Defendants' Petitions for Writ of Habeas Corpus are DENIED;
2. Defendants' Motions to Quash the summary charge of Failure to Report Child Abuse as barred by the Statute of Limitations is GRANTED;
3. Defendants' Motions to Quash the charges of Endangering the Welfare of Children and Conspiracy to commit same as barred by the Statute of Limitations is DENIED;
4. Defendants' Motions to Quash the charges of Endangering the Welfare of Children as barred by the *ex post facto* clause is DENIED;
5. Defendants' Motions to Quash the charge of Endangering the Welfare of Children under 18 Pa. C.S. §4304(a)(2) as the Statute is unconstitutionally vague is DENIED;



6. Defendants Schultz and Spanier's Motions to Quash the charge of Endangering the Welfare of Children under 18 Pa. C.S. §4304(a)(1) as violating basic principles of due process is DENIED;

7. Defendant Spanier's Motion to Quash the charges of Endangering the Welfare of Children, asserted on the basis that the charge does not apply to a person in his position is DENIED;

8. Defendants Curley and Spanier's Motions to Quash charge of Failure to Report Child Abuse, asserted on the basis that those Defendant are not mandated reporters is DENIED as MOOT.

9. Defendant Curley's Motion to Quash based on Prosecutorial Misconduct is DENIED;

10. Defendants Curley and Schultz's Motions to Suppress Grand Jury Statements and Testimony is rendered MOOT by stipulation of the Commonwealth;

11. Defendants Curley and Schultz's Motions for severance of counts is DENIED as MOOT;

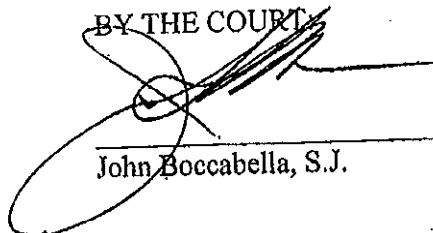
12. Defendants' Motions for severance of Defendants is DENIED;

13. Defendant Spanier's Motion for Change of Venue or Venire is DENIED;

and

14. Defendants' request for a Bill of Particulars is DENIED.

RECEIVED
OFFICE OF
CLERK OF COURTS
2017 FEB -1 PM 12:58
DAUPHIN COUNTY
PENNA

BY THE COURT

John Boccabella, S.J.

Distribution:

Senior Judges' Chambers

Laura Ditka, Esquire, Chief Deputy Attorney General
Office of PA Attorney General, Criminal Prosecutions Section, 16th Floor-Strawberry Square,
Harrisburg, PA 17120
(Attorneys for the Commonwealth)

Caroline Roberto, Esquire
Amy Dibella, Esquire
Law & Finance Building, 5th Floor, 429 Fourth Avenue,
Pittsburgh, PA 15219
(Attorney for Defendant Curley)

Brian Perry, Esquire
2411 N. Front Street
Harrisburg, PA 17110
(Attorney for Defendant Curley)

Thomas J. Farrell, Esquire
Farrell & Reisinger, 436 7th Avenue, Suite 200
Pittsburgh, PA 15219
(Attorney for Defendant Schultz)

Timothy K. Lewis, Esquire
Elizabeth K. Ainslie, Esquire
1600 Market Street, Suite 3600
Philadelphia, PA 19103
(Attorneys for Defendant Graham B. Spanier)

Gayle C. Sproul, Esq.,
1760 Market Street, Suite 1001
Philadelphia, PA 19103
(Attorney for the Associated Press and ALM Media LLC)

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,
Plaintiff

v.
THE PENNSYLVANIA STATE
UNIVERSITY,
Defendant

Docket No. 2012-1804

NOTICE

To: Timothy Curley

The enclosed subpoena is served pursuant to Pennsylvania Rule of Civil Procedure 234.2(b)(3). Please complete the acknowledgment part of this form and return the copy of this completed form to the sender in the enclosed self-addressed stamped envelope.

Please sign and date the acknowledgment. If you are served on behalf of a partnership, unincorporated association, corporation or similar entity, indicate under your signature your relationship with that entity. If you are served on behalf of another person and you are authorized to receive the subpoena, please indicate under your signature your authority.

Date Notice Mailed: 9/27/16

Elliot A. Strokoff
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
(717) 233-5353
Attorney for Plaintiff

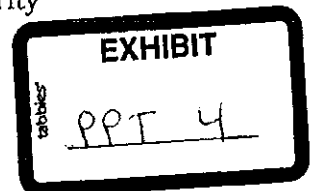
ACKNOWLEDGMENT OF RECEIPT
OF SUBPOENA

I acknowledge receipt of a copy of the subpoena in the above captioned matter.

Date: 10/6/16

Caroline Roberto
Signature

Caroline Roberto, Esquire
Attorney for Timothy Curley
Relationship to entity or authority
to receive the subpoena



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE

MICHAEL MCQUEARY

VS

THE PENNSYLVANIA STATE UNIVERSITY

File No. 2012-1804

SUBPOENA TO ATTEND AND TESTIFY

TO: Timothy Curley
c/o Caroline Roberto, Esq.
429 4th Ave., Suite 500, Pittsburgh, PA 15219

1. You are ordered by the court to come to Centre County Annex Courtroom
108 S. Allegheny Street

(Specify courtroom or other place)

at Bellefonte, Centre County, Pennsylvania, on October 17, 2016
at 9:00 o'clock, A.M., to testify on behalf of Plaintiff

in the above case, and to remain until excused.

2. And bring with you the following: _____

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

REQUESTED BY A PARTY/ATTORNEY IN COMPLIANCE WITH Pa.R.O.P. No. 234.2(a):

NAME: William T. Fleming

ADDRESS: 111 Sowers Street, Suite 330
State College, PA 16801

TELEPHONE: 814-278-5280

SUPREME COURT ID # 39563

BY THE COURT:



Prothonotary/Clerk, Civil Division

DATE: _____
Seal of the Court

Deputy

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with Pa.R.O.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete paragraph 2.

IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,
Plaintiff

v.
THE PENNSYLVANIA STATE
UNIVERSITY,
Defendant

Docket No. 2012-1804

NOTICE

To: Gary Schultz

The enclosed subpoena is served pursuant to Pennsylvania Rule of Civil Procedure 234.2(b)(3). Please complete the acknowledgment part of this form and return the copy of this completed form to the sender in the enclosed self-addressed stamped envelope.

Please sign and date the acknowledgment. If you are served on behalf of a partnership, unincorporated association, corporation or similar entity, indicate under your signature your relationship with that entity. If you are served on behalf of another person and you are authorized to receive the subpoena, please indicate under your signature your authority.

Date Notice Mailed: 9/28/16

Elliot A. Strokoff
Strokoff & Cowden, PC
132 State Street
Harrisburg, PA 17101
(717) 233-5353
Attorney for Plaintiff

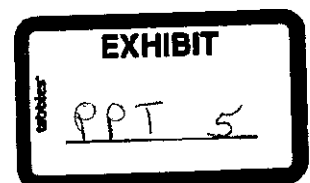
ACKNOWLEDGMENT OF RECEIPT
OF SUBPOENA

I acknowledge receipt of a copy of the subpoena in the above captioned matter.

Date: 10/3/16

Thomas Farrell
Signature

Thomas Farrell, Esquire
Attorney for Gary Schultz
Relationship to entity or authority
to receive the subpoena



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CENTRE

MICHAEL MCQUEARY

VS.

THE PENNSYLVANIA STATE UNIVERSITY

File No. 2012-1804.

SUBPOENA TO ATTEND AND TESTIFY

TO: Gary Schultz

c/o Thomas J. Farrell, Esq., Farrell & Reisinger, LLC

300 Koppers Bldg-436 7th Ave., Pittsburgh, PA 15219

1. You are ordered by the court to come to Centre County Annex Courtroom
108 S. Allegheny Street

(Specify courtroom or other place)

at Bellefonte, Centre County, Pennsylvania, on October 17, 2016

at 9:00 o'clock, A.M., to testify on behalf of Plaintiff

in the above case, and to remain until excused.

2. And bring with you the following:

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

REQUESTED BY A PARTY/ATTORNEY IN COMPLIANCE WITH Pa.R.C.P. No. 234.2(a):

NAME: William T. Fleming

ADDRESS: 111 Sowers Street, Suite 330

State College, PA 16801

TELEPHONE: 814-278-5280

SUPREME COURT ID # 39563

BY THE COURT:



Prothonotary/Clerk, Civil Division

DATE:

Seal of the Court

Deputy

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with Pa.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete paragraph 2.



Nancy Conrad

3701 Corporate Parkway, Suite 300 | Center Valley, PA 18034-8233
Direct 610.782.4909 | Fax 610.782.4935
conradn@whiteandwilliams.com | whiteandwilliams.com

September 30, 2016

VIA EMAIL

The Honorable Thomas G. Gavin
Court of Common Pleas of Chester County
P.O. Box 2746
West Chester, PA 19380-0989

RE: McQueary v. The Pennsylvania State University
Centre County Docket No. 2012-1804

Dear Judge Gavin:

The Parties' Pre-Trial Memoranda are due on Monday October 3, 2016 in the above matter. The University respectfully requests a short extension of this deadline. We have discussed this request with Attorney Strokoff and he does not oppose this request.

By way of background, the University requested, and Plaintiff agreed, to provide a list of Plaintiff's trial exhibits to the University early in the week of September 26, 2016 in order to streamline the organization and identification of a single set of proposed trial exhibits. Plaintiff forwarded a working draft copy of an exhibit list earlier this week, however, we have not received a final exhibit list from Plaintiff at this time.

The University respectfully requests a brief four (4) day extension, until October 7, 2016, to submit its Pre-Trial Memorandum to the Court. As noted, Plaintiff's counsel does not object to this request. Thank you.

Respectfully,

WHITE AND WILLIAMS LLP

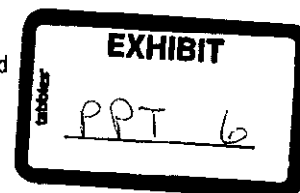
Nancy Conrad

NC:dlw

cc: Elliott Strokoff, Esquire - via email
William T. Fleming, Esquire - via email

Delaware | Massachusetts | New Jersey | New York | Pennsylvania | Rhode Island

17888310v.1



Elliot Strokoff

From: Gavin, Thomas G. <tgavin@chesco.org>
Sent: Saturday, October 15, 2016 9:20 AM
To: Elliot Strokoff; 'wtfleming@fleminglaw.info'
Cc: Nancy Conrad; 'Suzanne R. Hahn'
Subject: FW: McQueary v. The Pennsylvania State University [WW-PHLDMS1.FID3098482]
Attachments: image002.jpg; 17930164_1.pdf

Mr. Strokoff,

Please be prepared to identify what depositions etc you plan to use first thing Monday morning, if not sooner so that Ms. Conrad can be prepared.

G

From: Werner, Debbie [mailto:WernerD@whiteandwilliams.com]
Sent: Friday, October 14, 2016 4:53 PM
To: Gavin, Thomas G.
Subject: McQueary v. The Pennsylvania State University [WW-PHLDMS1.FID3098482]

Your Honor,

Please see attached correspondence from Nancy Conrad.

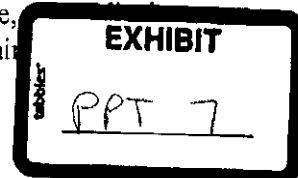
Debbie



Debbie Werner | Legal Assistant
3701 Corporate Parkway, Suite 300 | Center Valley, PA 18034-8233
Direct 610.782.4957 | Fax 610.435.8420
wernerD@whiteandwilliams.com | whiteandwilliams.com

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Elliot Strokoff

From: William Fleming <wtfleming@fleminglaw.info>
Sent: Wednesday, October 26, 2016 6:33 PM
To: Thomas G. Gavin; Nancy Conrad; Werner, Debbie; George Morrison; Elliot Strokoff
Subject: Plaintiff's Proposed Exhibits
Attachments: image001.jpg

Judge Gavin:

As requested, here are the Plaintiff's proposed exhibits that we request to go out with the jury for their deliberations (there are both Plaintiff's and Defendant's exhibits):

Plaintiff's Exhibits:

6
7
10
20
29
35
39
44
45
47
48
55
79
80
81

Defendant's Exhibits:

32
35
44

Thank you,
Tim Fleming

William T. Fleming, Esquire

Fleming Law Offices
Armenara Building
111 Sowers Street, Suite 330
State College, PA 16801
t: 814.278.5280
f: 814.278.5281
c: 814.360.0698
wtfleming@fleminglaw.info

Confidentiality Notice:



IN THE COURT OF COMMON PLEAS OF
CENTRE COUNTY, PENNSYLVANIA

MICHAEL J. MCQUEARY,
Plaintiff

v.

THE PENNSYLVANIA STATE
UNIVERSITY,
Defendant

Docket No. 2012-1804

(Judge Gavin)

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have this day served a true and correct copy of the foregoing Plaintiff's Brief in Opposition to Defendant's Motion for Post-Trial Relief by email and First-Class Mail on the following person(s):

conradn@whiteandwilliams.com

Nancy Conrad, Esq.
White and Williams LLP
3701 Corporate Parkway, Suite 300
Center Valley, PA 18034

Dated: 3/8/17

By:  for
Elliot A. Strokoff