

**CHILD FATALITY AND NEAR FATALITY EXTERNAL REVIEW PANEL**  
**KY Domestic Violence Association Building**  
**November 4, 2013**

**Members Present:** Judge Roger Crittenden, Chair; Robert Walker, Social Work Clinicians, University of Kentucky; Dr. Kim McClanahan, CEO, Pathways, Inc.; Nathan Goins, State Chair, Citizen Foster Care Review Board Executive Committee; Detective Kevin Calhoon, Kentucky State Police (KSP); Dr. Tracey Corey, State Medical Examiner; Joel Griffith, Prevent Child Abuse Kentucky; Commissioner Teresa James, Department for Community Based Services, Cabinet for Health and Family Services (CHFS); Maxine Reid, Family Resource and Youth Service Centers, CHFS; Dr. Ruth Shepherd, State Child Fatality Review Team, CHFS; Dr. Jaime Pittenger, Child Abuse Pediatrician, University of Kentucky School of Medicine; Dr. Carmella Yates, Chrysalis House, Inc.; Sharon Currens, Kentucky Domestic Violence Association; and Andrea Goin, Court Appointed Special Advocate (CASA).

**Members Absent:** Senator Julie Denton; Representative Tom Burch; Judge Brent Hall; Jenny Oldham; Dr. Melissa Currie; and Dr. Stephanie Mayfield.

The meeting was called to order by Judge Roger Crittenden, Chair, who began by noting a budget proposal has been submitted to Governor Beshear for \$420,000 that includes staff. Mr. Walker inquired about the necessity for a funding for an attorney. Judge Crittenden explained that the panel currently uses legal staff from the Justice & Public Safety Cabinet. Judge Crittenden also commented on the new panel letterhead and asked if there were any questions regarding the sample letter for information. Dr. Shepherd noted the sample letter indicated requested information could be emailed to Tom Cannady. She commented that you would not want information emailed if it contains personal identifiers. Judge Crittenden noted that while the panel does not have the authority to subpoena records, agencies that do not cooperate can be reported to the legislature and may be asked to appear before committees. Dr. Corey added that coroners can subpoena records. Dr. Shepherd remarked that another way to access information that will be useful in the future will be the health information exchange and recommended that the panel look into the possibility of being able to access the health information and the hospital visits thru the exchange. Judge Crittenden asked who is responsible for the exchange. Dr. Shepherd responded that it is within the Cabinet for Health and Family Services. Mr. Griffith commented there are records the panel should request on every case and some records that should be requested on a case by case basis such as school records. Judge Crittenden remarked that law enforcement records are needed on every case. Mr. Griffith added court records, medical records, and medical examiner records. Commissioner James inquired about mental health records, assessments and substance abuse. Mr. Walker commented all behavioral health records would be helpful. He also noted there are privileged communication statutes which protect some records. Mr. Griffith commented that the process of requesting records and the complexity of legal issues supports the need for the funding request. Also, as it is a labor intensive process for DCBS, he hopes the requested funding received would shift workload from DCBS to panel staff.

Judge Crittenden recognized Glenn Thomas, Commonwealth Office of Technology, to present a brief overview of the case review process in SharePoint. Panel members discussed how information would be entered into SharePoint. There was some discussion about having further training on the use to SharePoint for case reviews.

Dr. Pittenger inquired about the appropriate process for shredding reviewed case files. Judge Crittenden asked Mr. Cannady to check the statute as it relates to the destruction of documents. Mr. Cannady stated all records provided to the panel regarding individual cases shall be destroyed by the Justice & Public Safety Cabinet. Mr. Griffith noted the cases previously reviewed were released to the panel under executive order and are redacted. Judge Crittenden indicated those case files could be destroyed by the panel members. Commissioner James suggested having panel members sign a document indicating they have destroyed the records so there will be documentation that it has been done.

Judge Crittenden noted the annual report must be submitted by December 1<sup>st</sup>. He also remarked that this first annual report will have recommendations for the process rather than dealing with case reviews and findings. He noted for statutory purposes the panel has only been in existence since July. Judge Crittenden asked panel members if they had any additions or corrections to the proposed draft and noted the report could be adopted at the next meeting on Monday, December 2<sup>nd</sup>. He stated that staffing was one of the recommendations. Mr. Griffith suggested moving from listing formal recommendations to stating issues identified for further study and data gathering. Mr. Walker suggested prioritizing those issues identified by the panel. Dr. Corey noted that if the panel wanted to suggest an educational campaign, the main thing that is killing children under two for unnatural reasons in Kentucky is unsafe sleeping environments. Mr. Walker suggested also listing goals for the panel going forward for the next year. Mr. Griffith and Dr. Shepherd agreed to work on the list of issues to forward to Mr. Cannady for the annual report. Dr. Pittenger remarked that the panel needs to come to a consensus on how reviews will be completed. Mr. Griffith agreed. Dr. Shepherd commented that part of that depends on staffing as a large part of the organizing is having the appropriate staff to do the case summaries. Kelly Scherchock (CHFS) stated there were an additional forty-seven cases received up to September 13<sup>th</sup> that will be uploaded by the end of the year with ten of those being uploaded by November 15<sup>th</sup> and an additional ten by November 30<sup>th</sup>. The remaining twenty-seven will be uploaded in December along with any additional cases that come in. Judge Crittenden stated that based upon the time scheduled for the December meeting, the first twenty cases would be the maximum the panel can discuss in two hours. The twenty additional cases uploaded by the end of the month can be reviewed for the January meeting. Ms. Reid asked the cases to be assigned by Mr. Cannady as they are uploaded. Judge Crittenden agreed. Commissioner James suggested the panel create a review tool that every member would use to identify areas of concern. Judge Crittenden inquired about the review completed by CHFS being provided to the panel. Commissioner James indicated the review is not included in the case but she did not object to including it if approved by CHFS. Mr. Griffith inquired about the review form. Ms. Scherchock noted they are releasing it but the form itself is not detailed. Commissioner James noted the tool CHFS is using is not what the panel needs to use. She suggested the panel look to addressing some of the broader systemic issues such as co-sleeping and making recommendations toward a collaborative effort between public health, health providers and communities. Dr. Shepherd commented there is something to learn in every case. She noted that some panels such as in Michigan spend all day reviewing cases rather than a 2 hour or 4 hour meeting. Judge Crittenden

commented that he can review five cases a month but not twenty-five and most of the panel members are employed fulltime. Mr. Walker inquired about the groups meeting prior to the panel meeting. Mr. Griffith noted that SharePoint is available to case discussion. Dr. Pittenger suggested setting a deadline for case reviews as they are assigned. Judge Crittenden agreed so that information could be discussed on SharePoint prior to meeting. Mr. Griffith suggested reviewing the sixteen supervisory neglect cases for the next meeting. Judge Crittenden stated that Mr. Cannady would provide the list of case numbers along with groups assigned for the December 2<sup>nd</sup> meeting.

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Judge Crittenden asked Dr. Yates to comment on this case. Dr. Yates commented that this was a death due to sleeping environment and the father had agreed to drug testing. Mr. Griffith noted that it appeared there had been a report from 4/09 but the investigation was not included in the file. He stated that in addition to the father stating he did not know the mother was using drugs, after the mother tested positive the baby was sent home but there appeared to be no further follow up or safety planning. Judge Crittenden asked if CHFS was involved and Mr. Griffith indicated the cabinet was involved. Judge Crittenden noted the panel had discussed drug testing after child fatalities before and had been informed the chances of getting the requirement passed would be difficult. However, perhaps it could be looked at in the future to try to define specific cases. Mr. Griffith noted there was drug testing on these parents at this baby's death and at that point both parents were found positive for opiates. Dr. Yates commented that at the hospital it was recognized immediately that the child had marijuana in its system and after further testing was determined it also had narcotics in its system. The mother admitted to narcotic abuse and stated the father did not know. Mr. Griffith stated it was striking to him was that there was no substantiation by the department on the fatality even though both parents tested positive and apparently admitted to doing drugs the night the child died. He noted this is inconsistent with other cases that have been reviewed where the cabinet did substantiate neglect when parents were intoxicated during a co-sleeping death. Commissioner James noted that because the case was unsubstantiated, be it right or wrong, it has not been released so the panel needs to be mindful of that. Mr. Griffith stated the question in this case from a prevention standpoint is how did this child go home with apparently little safety planning or planning after a positive drug test. He noted there was a subsequent report that a doctor called in and said that the child was dehydrated. Commissioner James explained that the child was re-hospitalized and died the day after released. Mr. Griffith noted at the hospital there was no documentation for wrap around services after the child was to come home. Mr. Griffith noted one of the pieces that you would do in terms of parents capability of caring for a child born exposed is to know if they had prenatal care, do they have a crib, do they have WIC, what does their home look like and are they prepared to take a baby home. Dr. Walker commented that it raises the question of what is the role of managed care as to what they authorize and what they fund. Dr. Pittenger stated testing cannot be done on parents because a child is admitted. Mr. Griffith stated that DCBS can request that if they are involved and raised the question of whether OBGYN's address drug use issues with expectant mothers. Commissioner James noted the co-sleeping issue should be addressed prior discharge of newborns. Mr. Griffith stated the biggest issue was the baby was born exposed, the family admitted to having drug issues and the baby went home with no services. Commissioner James stated a case was opened. Mr. Griffith noted that opening a case but providing no services to the family until the second referral comes in raises questions from a

prevention point of view such as what was the training level of the worker, what is the supervisory level, and what is the experience level. Commissioner James inquired what should be done for a family in this situation. Mr. Griffith stated the first thing should be for the worker to go to the home to do a thorough assessment, talk with the family and look at the sleeping arrangements. He noted the worker did not know where the family lived. Dr. Yates also noted there was a report from 2010 where the father had been involved in another situation. Mr. Griffith noted that for the sake of consistency in terms of findings and the statistics we gather on cases, why is a case with almost identical scenario in this county unsubstantiated for fatal neglect but a case read last year with the exact scenario was substantiated. Consistency is important in terms of baseline data. Commissioner James remarked that the consistency factor is something that is addressed at the department but is difficult with almost 1500 employees. She noted that incidents such as this one are what has driven the cabinet to develop a new quality assessment that began testing last week. She noted that once the development is complete she can provide information to the panel. She also commented that the case happened over only an eleven day period and also remarked about the lack of wrap around services for these types of situations that are currently available. Mr. Walker agreed there are time issues and managed care options are limited. Mr. Griffith inquired about policies regarding home visits and how quickly they are to occur. Commissioner James noted the worker saw the child within ten days of leaving the hospital. Mr. Griffith noted that occurred after the second report and asked what if there hadn't been a second report. Ms. Scherchock noted policy does not specify that a home visit needs to be made within a specific amount of time so it is done within 45 days of the investigation. Ms. Currens inquired if there is any research in terms of what the risk level is for children who are exposed and whether there should be a policy that should be in place because of the high risk situation. Commissioner James commented on the relevance of the type of drugs being used and noted that obviously a parent on meth versus a parent on marijuana could arguably change the level of risk. She also noted a parent could be on a prescribed medication that may also impair their capacity to provide appropriate supervision and care for their children. Dr. Yates noted in this case there was some serious and heavy drug use occurring. Judge Crittenden commented that if the child is born with drugs in their system that should be a signal to get someone there immediately to see if there are other problems in the home. Mr. Griffith commented he felt confident he could find a substantial amount of data that would indicate a newborn infant in a home with people snorting oxycontin would be considered high risk. Commissioner James asked what the data would indicate about marijuana and would it be looked at differently by drug. Mr. Griffith responded that relative to this case a parent admitted they were snorting oxycontin. Judge Crittenden remarked that it should be a signal to go look at the home. He noted that the panel's recommendations can say that any child born with drugs in their system should have a worker reviewing the home situation within 24 or 48 hours and we need to know if that is possible with current staff. Commissioner James also noted a broader issue of the lack of access to substance abuse treatment for families. Dr. McClanahan noted it is limited in many parts of the state as to what is available. Mr. Griffith reminded the panel that caseload information would be helpful to determine if that was a contributing factor to the worker's decisions. Without the data, recommendations for staffing are difficult to make. He noted it would be ideal to have the experience, caseload, and training level of every worker involved in these cases in order to help support the recommendation for more staff.

Judge Crittenden stated this case involved a nine month old who ingested the grandmother's medication. He commented he thought the major reason why it was investigated was that there had been a prior incident a couple of years earlier in another area where a two year old had pulled boiling water off the table. He noted in this case the father comes home in the afternoon and takes the child to the hospital because he is in distress; however, the mother and grandmother had called poison control and were told not to do anything other than give fluids. He noted there was no prior cabinet involvement and no substantiation. Mr. Walker asked the panel physicians about the advice given by poison control. Dr. Pittenger remarked that the medical training level at poison control may not be that extensive and sometimes they are reading off of sheets provided to them depending on what medication they are given and may not have been given the correct name of the medication. She noted that in general for that medication you would not do fluids but rather you would be concerned about respiratory depression and death. Dr. Yates also commented there may have been a language barrier. Dr. Pittenger inquired if the call to poison control was confirmed. Judge Crittenden remarked that poison control did admit that they received the call and they did tell the family not to do anything. Mr. Griffith commented that the worker followed up with poison control.

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Mr. Griffith stated this case involved premature triplets born at home under a faith-based non-licensed midwife and two of them died within the first 24 – 48 hours. The midwife never called the police, CPS or anyone. Judge Crittenden noted the midwife was from Indiana. Mr. Griffith commented he would like to see law enforcement records as he wanted to know why the midwife was not charged with failure to report. Detective Calhoon commented that he had consulted with the commonwealth attorney on this case and he indicated there was no precedent for a situation where a family is faith based refusing medical treatment. He noted the midwife advised the family to contact and they did not. Dr. Yates noted the state should be able to step in and remove the third child. Mr. Griffith stated the cabinet has the right to intervene even if there is failure to treat for faith and if someone had reported the cabinet could have gotten an ECO and removed the children. He noted if no one tells the cabinet, no one can do anything. Judge Crittenden stated that regardless of her faith, the midwife has an obligation under the law to report. Mr. Griffith noted that once DCBS was informed, they took care of the other baby. Ms. Reid noted that the midwife told the family to take the babies somewhere which indicates she knew the situation should be reported. Dr. Yates commented on religious exemptions that vary state by state. Judge Crittenden remarked that such exemptions should apply until it relates to someone who cannot make the decision for themselves.

NF 02 13

Judge Crittenden noted this case involved a ten year old diabetic. He stated someone was charged with neglect but there was no substantiation because the doctors disagreed. Dr. Pittenger noted that does happen because they can only speak to what they see. At the time they saw the child, her diabetes management was appropriate. Mr. Griffith stated it was a very thorough investigation by the worker.

NF 04 13

Mr. Walker noted this case involved a child that was last checked on at 9:13 p.m. and was found dead in bed at 2:30 p.m. the next day. Mr. Griffith noted the seventeen hour timeframe may not have caused the death but that it is a reasonable expectation to check on a baby within sixteen hours. Mr. Walker noted the mother worked nightshift. He also said there was some suspicion of sexual abuse but that was not confirmed. He noted there was a three year old also in the home that is the child of the paramour but not this mother. This child was assessed and there was no evidence of any harm to her. Mr. Griffith noted the three year old is the one who found the deceased baby. He also noted that both mom and paramour were both in the system as having been abused or neglected as children. He also noted there was some reference to a brother living in the home but no interview. Judge Crittenden inquired about cabinet involvement and prosecution. Mr. Griffith noted that there was cabinet involvement and no prosecution because the cause of death was sudden unexplained death of a child. He also noted the case did not include law enforcement records or any information from first responders.

NF 24 13

Mr. Walker explained this case involved three previous reports of domestic violence, the first resulting in no findings and the third was unsubstantiated for neglect. The perpetrator was in the National Guard and had been in the Navy. He noted the account the perpetrator reported of the child stumbling in the threshold falling and hitting her head did not match the injury which was vastly worse. Dr. Pittenger remarked that the mechanism and injury were not consistent. Mr. Griffith commented that it was worth noting that one of the domestic violence reports was three years prior to the birth of this victim and also involved a different perpetrator. He also noted the worker's investigation in this death was very thorough. Commissioner James noted the prior reports dated back to 2002 and 2005. Mr. Griffith stated this is another case where the panel needs the law enforcement records. He noted it took law enforcement a long time to press charges and in the meantime the mother is starting to realign herself with the perpetrator. She would not believe he did this until the charges were filed. Mr. Walker noted the other records to obtain would be the military records. He also noted the referrals provided for the mother were good.

NF 25 13

Mr. Walker indicated this case also involved domestic violence. Ms. Currens noted almost every case reviewed has had domestic violence. Mr. Griffith remarked the investigation was appropriate and all the right people were contacted and the initial response was timely; however, there was no other contact with the family until November. He noted there was no documentation from law enforcement in the file. Mr. Walker commented there was a brief reference in this case regarding a parent in law school but it is rare to see any inference to the cognitive level of the parents. Therefore, having a simple indicator in the file of the educational attainment would be useful.

With no further business to discuss, the meeting was adjourned.