

# Court-ordered vaccinations for children?

In *Kagen aka Gaurino vs. Kagen*, Unpub Per Curiam Opinion, (#318459, 7/14/2015) the Court of Appeals reversed a trial court order denying the father's motion to update the children's vaccinations; and ordered that the children be vaccinated, but in strict compliance with the recommendations of the children's pediatrician.



FROM THE  
BENCH  
BY JUDGE  
DAVID HOORT

The determination of requiring vaccinations requires the circuit court to verify that the vaccination decision would not affect the children's established custodial environment, and the proponent of the vaccinations must prove by a preponderance of the evidence that updating the children's vaccinations would serve their best interests. The court, on the record, must identify and apply all relevant factors relating to the statutory best-interest factors of MCL 722.23.

Hearsay evidence may be admissible under the catch-all exception of MRE 803(24). "To be admissible under MRE 803(24), a hearsay statement must: (1) demonstrate circumstantial guarantees of trustworthiness equivalent to the categorical exceptions, (2) be relevant to a material fact, (3) be the most probative evidence of that fact reasonably available, and (4) serve the interests of justice by its admission." *People v Katt*, 468 Mich 272, 290 (2003).

In *Katt*, 468 Mich at 291 n 11, the Michigan Supreme Court quoted with approval various factors that federal courts have adopted in analyzing a statement's trustworthiness. Of particular relevance are the following factors: (3) The personal truthfulness of the declarant. If the declarant is an untruthful person, this cuts against admissibility, while an unimpeachable character for veracity cuts in favor of admitting the statement. The government cannot seriously argue that the trust due

an isolated statement should not be colored by compelling evidence of the lack of credibility of its source: although a checkout aisle tabloid might contain unvarnished truth, even a devotee would do well to view its claims with a measure of skepticism. (4) Whether the declarant appeared to carefully consider his statement. (8) Whether the declarant had personal knowledge of the event or condition described. (11) Whether the statement was made under formal circumstances or pursuant to formal duties, such that the declarant would have been likely to consider the accuracy of the statement when making it.

In *Kagen*, the parties provided relatively equal amounts of information regarding the safety of vaccinations, although the volume of admissible evidence presented by Mr. Kagen surpassed that of Mrs. Kagen.

Mr. Kagen presented information from the CDC regarding vaccine safety, recommendations, and side effects and risks, as well as debunking the vaccine-autism connection theory. The CDC-generated information included a list of studies conducted to examine the vaccine-autism connection. Mr. Kagen provided information from the FDA regarding the "types of vaccines that are routinely given to children," and the specific vaccinations (along with brand names) that are given on a regular basis. The FDA document included a description of the risks and benefits of the vaccines, common side effects, and conditions which contraindicate vaccination.

Mrs. Kagen presented a substantively identical document, which opened with the exact quote as her first source, from the CDC (accessed July 1, 2015). These studies did reveal that some severe reactions had occurred following childhood vaccinations.

For example, the DTaP (diphtheria, tetanus, acellular pertussis) vaccination had caused serious allergic reactions "in less than 1 out of a million doses." Seizures, coma, lowered consciousness, and permanent brain damage had

also been reported but these reactions "are so rare it is hard to tell if they are caused by the vaccine." *Id.* These documents, while warning readers of the potential risks associated with vaccinations, reveal that severe and even moderate risks are rare and far outweighed by vaccine benefits.

A review of the parties' evidence clearly supports that vaccination of children is in their best interests, unless the child's medical condition contraindicates vaccination. The reports generated after public-agency research and investigation, including those presented by Mrs. Kagen, establish that the benefits associated with vaccination far outweigh any dangers. The USDHHS and CDC documents advise that vaccine side effects are "[f]or the most part . . . minor" and caution that "a decision not to immunize a child . . . could put the child and others who come into contact with him or her at risk of contracting a potentially dangerous disease."

We previously discussed the extreme rarity of "severe problems" arising from DTaP vaccination. Similarly, severe reactions to the MMR vaccination (measles, mumps, and rubella), such as deafness, brain damage, and coma, "are so rare that it is hard to tell whether they are caused by the vaccine." In relation to the Hepatitis B vaccination, the agencies describe that "[m]ore than 100 million people in the United States have been vaccinated" and "[s]evere allergic reactions were limited to one in 1.1 million doses."

Other potential dangers noted by the agencies are irrelevant to the current case as they impact only young children. For example, the studies indicated that young children receiving the seasonal unactivated flu vaccine at the same time as receiving a pneumococcal vaccine "may be at an increased risk for seizures caused by fevers." See (emphasis in original) (accessed June 22, 2015); (accessed July 1, 2015).

Judge David Hoort is one of two judges for 8th Judicial Circuit Court in Ionia and Montcalm counties. Have a question for the judge? Email him at dhoort@ioniacounty.org